

Queen-empress Vs. Karim Buksh

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Court : Kolkata

Decided On : Jun-10-1887

Reported in : (1887)ILR14Cal633

Judge : W. Comer Petheram, C.J. and ;Ghose, J.

Appellant : Queen-empress

Respondent : Karim Buksh

Judgement :

ORDER

W. Comer Petheram, C.J.

1. In this case we think there is no reason for the interference of the Court. This case has been referred to us by the Magistrate in order that this Court may revise the sentence of fine which has been passed on the accused on a conviction of having made a false charge before the Police, because the charge which he made was a charge of an offence under Section 380 of the Indian Penal Code, the punishment for which may be seven years' rigorous imprisonment, and the Magistrate thinks that the sentence of fine was illegal, because by the latter portion of Section 211 of the Indian Penal Code, the punishment must be a punishment of imprisonment and there is no option to impose a fine only.

2. The facts of the case here are, that the accused made a charge before the Police which he did not afterwards press before the Magistrate, and the only

offence which he has committed has been that of making a false charge before the Police, and not of instituting any criminal proceedings beyond that. The question which arises is, whether the offence which he has committed comes within the earlier or later portions of Section 211 of the Indian Penal Code.

3. The earlier portion of that section provides that 'whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;' this is the first part of the section. And then the section goes on to say: And, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, the person instituting such criminal proceeding shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.' The class of offence which is included in the last half of this section is punishable with imprisonment without option of fine; and the question is, whether the offence of which the accused has been guilty is within the latter Half of the section.

4. Now, the latter half of the section is confined to criminal proceedings instituted on false charges and by the earlier part of the section the distinction is drawn between criminal proceedings instituted and false charges alone. We think that we must make the same distinction and must hold, as has been held in several cases in the Allahabad Court, though not in this Court, that the latter part of the section is confined to cases in which criminal proceedings have been instituted, and that it does not apply to false charges merely.

5. But, as I said before, the accused in this case did not institute any criminal proceedings in the sense of his instituting any proceedings in any Court. What he did was to make a false charge before the Police, and that, it seems to us, is the kind of false charges which is dealt with in the first part of the section, and consequently that the Magistrate was entitled to inflict the punishment which is

provided by that part of the section, and that he was not compelled or, indeed, empowered, to inflict the punishment fixed by the latter half of the section, and therefore it was competent to him to award a fine only, if in his discretion he thought fit.

6. For these reasons we think that the Deputy Magistrate committed no legal error in the course he took in this case, and there is no reason for the interference of the Court.

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