CRIMINAL REVISION.

1906.
November 16.

Before Mr. Justice Batty and Mr. Justice Heaton.

EMPEROR v. RAMCHANDRA YESHWANT ADURKAR.*

Indian Penal Code (Act XLV of 1860), sections 182, 211—False information—False charge—Distinction between the two offences.

The accused sent a telegram to the Collector of Ratnagiri, in his capacity of the head of the Municipality at Vengurla, to the effect that: "Head Master, English School (Vengurla), misappropriated Rs. 168 of fees since October. Please investigate yourself soon." For this, the accused was convicted under section 182 of the Indian Penal Code (Act XLV of 1860), on the grounds that he had no probable cause for making the assertion contained in the telegram, and that he probably knew that a peon had confessed that he was guilty of the misappropriation.

Held, that on these facts the charge under section 182 of the Code could not be legally sustained.

The offence made punishable by section 182 of the Indian Penal Code is a distinct offence from that described in section 211 of the Code, which relates to an attempt to put the Criminal Courts in motion against another person. The action which section 211 renders penal is action entailing very serious consequences, and therefore the more serious consideration is required on the part of the individual who takes it. It is sufficient in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in section 182. To bring a case within that section, it is necessary for the prosecution to prove, not merely absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given.

APPLICATION under section 435 of the Criminal Procedure Code (Act V of 1898), from conviction and sentence recorded by N. B. Diwatia, First Class Magistrate at Ratnagiri.

The accused was tried summarily by the Magistrate for an offence punishable under section 182 of the Indian Penal Code, in that he sent a telegram to the Collector of Ratnagiri in his capacity as head of the Vengurla Municipality. The telegram ran as follows: "Head Master, English School (Vengurla), misappropriated Rs. 168 of fees since October. Please investigate

* Criminal Application for Revision No. 218 of 1906.

yourself soon." The contents of this telegram were found to be false and probably the accused knew that they were false.

The accused was convicted of an offence under section 182 of the Indian Penal Code and was sentenced to pay a fine of Rs. 100.

The accused applied to the High Court as above stated.

S. S. Patkar, for the accused:—Before a charge under section 182 of the Indian Penal Code can be substantiated it must be shown by the prosecution that the information given was known or believed by the accused to be false. The section contains the expression "knows or believes to be false"; it is much stronger than the expression "knowing that there is no just or lawful ground for such proceeding and charge," used in section 211 of the Code. Under the former section it must be proved as a fact by the prosecution that the accused knew or believed the charge to be false. On the merits the prosecution has not succeeded in proving that the action of the accused comes within the purview of section 182.

The *Government Pleader* for the Crown:—The accused's action comes clearly within section 182. It has been proved by the Magistrate that the accused has given a false information. The Magistrate says that the accused must have known that the peon had confessed. Although the words occurring in section 211 "knowing that there is no just or lawful ground, &c." do not occur in section 182, the prosecution has proved facts from which the Court has drawn the inference that the accused knew the information to be false. As regards the intention required in clauses (*a*) and (*b*), the intention must be presumed from the act.

BATTY, J.:—In this case the accused was charged with having sent a telegram to the Collector, stating that the Head Master of the local school had misappropriated certain moneys, and prompt investigation was requested. The charge against the accused was under section 182, Indian Penal Code, and the accused has been convicted under that section, on the ground apparently, that the Court was convinced that the accused had no probable cause for making the assertion contained in the telegram to the Collector: and that probably accused knew that a peon had confessed that he was guilty of the misappropriation

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imputed by the accused to the Schoolmaster. Section 182 relates only to cases of information given to officials with the intention of causing or with knowledge that it is likely to cause that Official to do or omit to do something, which he ought not to do or omit to do, or to use his lawful power to the injury or annoyance of any person. This is a distinct offence from that described in section 211, Indian Penal Code, which relates to an attempt to put the Criminal Courts in motion against another person. The action which section 211, Indian Penal Code, renders penal, is action entailing very serious consequences, and therefore the more serious consideration is required of the individual who takes it. It is sufficient therefore in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in section 182, Indian Penal Code. To bring a case within that section, it is necessary for the prosecution to prove, not merely absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given. In the present instance we think that the Magistrate has misconceived the spirit of section 182, Indian Penal Code, and has given to it more of the effect which should be given to section 211, Indian Penal Code. The consequence has been that the onus has been placed on the accused and the Magistrate has not insisted upon proof by the prosecution of knowledge or belief on the part of the accused as to the falsity of the information given by him. The Magistrate states that the accused *probably* knew of the confession made by the peon, but there is nothing to bring home to the accused the actual personal knowledge of facts which the Magistrate can only say *may* have been known to other persons at the time. On the other hand, the Magistrate states in his judgment that there were rumours connecting the Head Master as well as others with the embezzlement that had undoubtedly taken place. In these circumstances it still lay upon the prosecution to show not merely that the accused had insufficient foundation for the knowledge or belief he professed to have, but that he positively knew or believed the information he gave, to be false. We would add that we do not wish it to be understood from the

remarks made above that the accused was morally justified in the step he took. He may have acted with most reprehensible rashness and recklessness in giving such information to the Collector. It is not enough however to show that. For the circumstances which are necessary to bring a case within section 182, Indian Penal Code, involve different considerations from those that arise from section 211, Indian Penal Code. Section 182, Indian Penal Code, does not necessarily impose upon the person giving information to the officer, criminal liability for mere want of caution before giving that information. There must be positive and conscious falsehood established.

Finding as we do that the charge has not been legally sustained, we reverse the conviction and direct the fine, if paid, to be refunded.

R. R.

APPELLATE CIVIL.

Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Beaman.

PITA VALAD MOTI (ORIGINAL JUDGMENT-DEBTOR), APPELLANT, *v.* CHUNILAL HARAKCHAND AND TWO OTHERS (ORIGINAL JUDGMENT-CREDITOR, AUCTION-PURCHASER AND APPLICANT FOR RATEABLE DISTRIBUTION), RESPONDENTS.*

1906. *November* 29.

Civil Procedure Code (Act XIV of 1882), sections 320, 310A and 244—Execution of decree—Sale by Collector—Application to Court by judgment-debtor to set aside sale—Refusal by the Court—Appeal—Collector's power—Rules 16 and 17(1) of the Local Rules and Orders made under enactments applying to Bombay.

* Second Appeal No. 354 of 1905.

(1) Rules 16 and 17 of the Local Rules and Orders made under Act XIV of 1882 run as under :—

(16) The following powers are conferred on Collectors or such of their Gazetted Subordinates to whom a decree has or may hereafter be referred under Rule 4 :—

(1) The power referred to in section 294 of the Code of Civil Procedure to grant express permission to the holder of a decree, in execution of which property is sold, to bid for or purchase the property : Provided that the Collector or other officer aforesaid, to whom an application for such permission may be made, shall not grant such permission unless the decree-holder (*a*) satisfies him that the application is made in good faith, and that the judgment-debtor is not a minor ; (*b*) under-