PETITIONER:
SANTOKH SINGH

Vs.

RESPONDENT:
IZHAR HUSSAIN AND ANR.

DATE OF JUDGMENT25/04/1973

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
MATHEW, KUTTYIL KURIEN

CITATION:
1973 AIR 2190 1974 SCR (1) 78
1973 SCC (2) 406

ACT:
Indian Penal Code, s. 211-Its scope.

HEADNOTE:
Pursuant to an F.I.R. the respondent, I and few others were tried before Addl. District Magistrate for offences under Ss. 147, 323/149 and 325/149, I.P.C.
The A.D.M. acquitted all the accused. Respondent lzhar, one of the accused was implicated and wrongly identified, although he was not one of the assailants present at the place of occurrence.
Later, respondent lzhar filed a petition before the A.D.M. under Ss. 476/479 Cr. P.C. praying that the appellant, one K and the sub-Inspector of Police, be prosecuted for the offence under Ss. 211/193 I.P.C. because the S.I. in collusion with K had submitted a wrong charge sheet whereas K had lodged a false report at the instance of one H and also these three persons had intentionally given false evidence during petitioner's trial and fabricated false evidence.
The Magistrate rejected the application of the respondent following the case of' Shabir Hussain Bholu v. State of Maharashtra, A.I.R. 1963 S.C. 816. The Sessions Court also dismissed the appeal. On a revision u/s. 435/439 Cr.P.C. the High Court recorded its opinion that it was a fit case in which the complaint under s. 211, I.P.C. should be filed against the persons responsible for lzhar's false prosecution and directed accordingly.
According to the respondents, when the appellant stated in the witness box that he had seen Izhar with others in 'marpit' and thereafter in the identification parade in the jail he had made a false charge against lzhar therefore, he was liable to be prosecuted under s. 211 I.P.C.
Allowing the appeal.
HELD : (i) The essential ingredient of an offence under s. 211 I.P.C. is to institute or cause to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings resume false charge but false charge may be

prepared even when no criminal proceedings result. In the present case, the appellant had not instituted any criminal proceedings against anybody; neither did he 'falsely charge' anybody. Giving false evidence against an accused person during the course of a criminal trial, may appropriately amount to an offence under Ss. 193, I.P.C.; but the statement in order to constitute the "charges" under sec. 211, I.P.C. should be made either in a complaint or in a report of a cognisable offence to a competent police officer with the intention of setting the criminal law in motion. Therefore, under the circumstances, no offence under s. 211, I.P.C. can be 'considered to have been committed. [64D]

(ii)In view of the appellant's statement that he did not see lzhar amongst the assailants, it was not possible to understand how it could be expedient in the interest of justice to direct the appellant's prosecution. Every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge. [65D-E]

(iii)Identification at test parades could by no stretch of imagination, be considered to amount to a false charge against the respondent lzhar as contemplated by s. 211 I.P.C. Such identification is not substantive evidence and it can only be used as corroborative of the statement in court. [65E]

79

(iv)It is doubtful if the High Court had at all jurisdiction to make an order of complaint because it was neither the court which tried the original offences nor a court to which the trial court was subordinate. The High Court, instead of directing the prosecution of the appellant, could have quashed the orders of the two courts below and send the case back to the trial court for reconsideration of the matter in accordance with law. [65H]

Kuldip Singh v. State of Punjab, [1956] S.C.R. 125 and Haridas v. State of West Bengal, [1964] 7 S.C.R. 237, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No,. 35 of 1970.

Appeal by special leave from the judgment and order dated May 22, 1969 of the Allahabad High Court, (Lucknow Bench) at Lucknow in Cr. A. No. 132 of 1967.

R. K. Jain and A. K. Gupta, for the appellant

K. L. Kohli, for the respondents.

The Judgment of the Court was delivered by

DUA, J. In this appeal by special leave, the appellant challenges the order of a learned single Judge of the Lucknow Bench of the Allahabad High Court dated May 22, 1969 allowing the revision of lzhar Hussain and after setting aside the order of the Sessions Judge, Barabanki dated March 15, 1967 as also that of the Additional District Magistrate (Judicial), Barabanki dated January 11, 1967, directing the Deputy Registrar of the- High Court to file a complaint under S. 21 1, I.P.C. against the appellant for falsely charging Izhar Hussain with offences under ss. 323 and 325 read with S. 149 and under S. 147, I.P.C. in the court of the Additional District Magistrate (Judicial), Barabanki.

It appears that pursuant to the first information report (Ext. Ka-9) lodged by Kartar Singh s/o Shri Lachman Singh at police station Kotwali Sub-District Nawabganj, District Barabanki on February 7, 1966, lzhar Hussain respondent and some others were tried in the court of the Additional District Magistrate (Judicial), Barabanki for offences under ss. 147, 323/149 and 325/149, I.P.C. Several witnesses were examined in support of the prosecution case. Santokh Singh appellant appeared as P.W.4. In his examination in chief, so far as relevant for our purpose, he had deposed on September 3, 1966 as follows :-

> "I had gone to the jail for identifying the accused persons. By putting his hand on Mohd, Zahir, Usman, Shahnshah, Puttan and Izhar Husain the witness stated, I had seen them in the marpit and thereafter in the identification parade in the jail-"
>
> In cross-examination, he had stated, inter alia
>
> "I did not see among the assailants the accused lzhar Hussain present in Court. I did not happen to see this boy in that night. The men of the Octroi post said to me that Anwar's son Izhar was also present among the assailants. I identified this boy in the jail at the instance of the people of the Octroi post."

80

The Additional District Magistrate trying the cases acquitted all the accused of the offences charged on November 30, 1966. In the course of his judgment. the learned Magistrate observed inter alia

> "One of the accused lzhar Hussain is a boy aged about 13 years. It has been stated by Kartar Singh and- Santokh Singh that actually they had not seen him ;it the place of occurrence. Still Santokh Singh identified him before Shri A. P. Singh, Magistrate. He explains that this he did because the Octroi personnel told him so. Obviously on their mere telling it could not have been possible to identify this boy."

Earlier the learned Magistrate had observed that Kartar Singh and Santokh Singh were obviously the victims of the assault. It is noteworthy that the Additional District Magistrate while acquitting the accused persons did not hold that Santokh Singh had falsely charged lzhar Hussain or any other accused persons, nor did the learned Magistrate consider it to be expedient in the interest of justice to prosecute Santokh Singh for an offence under s. 21 1, I.P.C. In January, 1967, lzhar Hussain presented an application in the court of the Additional District Magistrate (Judicial), Barabanki under ss. 476/479-A, Cr-P.C. (in the application as printed in the paper book apparently these sections have wrongly been described to be of I.P.C.) praying that Kartar Singh, Santokh Singh and R. D. Chowdhry, S.I., police station Kotwali, be prosecuted for the offence under ss. 211/193, I.P.C. because Shri R. D. Chowdhry in collusion with Shri Kartar Singh had submitted a wrong charge sheet whereas Kartar Singh had lodged a false report at the insta nce of one Karnail Singh and also that these three persons had intentionally given false evidence during the petitioner's trial and had also intentionally fabricated false evidence for the purpose of being used as evidence in the case.

The Additional District Magistrate observed that after considering the evidence in the main case he had disbelieved the witnesses for the prosecution and had held lzhar Hussain's prosecution to be false but in spite of this conclusion he had not directed any proceedings to be taken under s. 479-A, Cr.P.C., nor had be ordered criminal prosecution of the three aforementioned witnesses. The proceedings under s. 476, Cr.P.C. were accordingly held incompetent. 'Ibis view was taken on the basis of the decision of this Court in Kuppa Goundan and another v. M. S. P. Rajesh(1) and two other decisions of the Madras High Court. In his order, however, the learned Magistrate also made a reference to Shabir Hussain Bholu v. State of Maharashtra (2). lzhar Hussain's application was considered by the Magistrate to be misconceived in view of the decision in Shabir Hussain's case (supra) and rejected.

lzhar Hussain took the matter on appeal to the court of the Sessions Judge but with no better fate. The Sessions Judge also

(1) A.J.R. 1966 S. C. 1863.

(2) A.T.R. 1963 S. C. 816.

81

referred to the aforesaid two decisions of this Court and observed as follows

> "Applying the said principle of law as laid down by their Lordships, it is obvious that the entire material was before the Court below and in spite of the fact that it arrived at the finding that the witness had perjured, it did not decide to proceed under Section 479-A, Code of Criminal Procedure. In these circumstances, it was not open to the Court below to have proceeded for perjury under Section 479-A, Code of Criminal Procedure, as prayed by the learned counsel appearing on behalf of the appellant, because upon the facts of the present case, out of which this appeal has arisen, the bar of clause (6) of Section 479-A clearly came into play. Thus, the Court below was correct in dismissing the application made by the appellant as misconceived.,,

The appeal of Izhar Hussain was accordingly dismissed.

lzhar. Hussain thereupon took the matter to the Lucknow Bench of the Allahabad High Court on revision under ss. 435/439, Cr.P.C. The learned single Judge observed that even accepting the view of the courts below that no complaint under S. 193, I.P.C. could be, filed because of the technical defect, the applicant's prayer for filing a complaint under S. 21 1, I.F.C. should have been considered. It was then observed that lzhar Hussain. a boy of 13 years had been falsely prosecuted in the case and that his participation in the crime was highly improbable, if not impossible. He further observed that Kartar Singh had not named Izhar Hussain as one of the assailants in the F.I.R. lodged by him, nor did Kartar Singh identify Izhar Hussain as a culprit in the test identification parade or in the trial court. Santokh Singh appellant, however, did identify lzhar Hussain as one of the participants in the crime in the test identification parade and also picked him up in the trial court stating that he had also taken part in the crime. In the cross-examination, as the High Court itself noticed, Santokh Singh expressly admitted that he had not seen lzhar Hussain amongst the assailants and indeed he had not seen lzhar Hussain that night. On this material, the

High Court felt that it had been established beyond doubt that lzhar Hussain had been implicated falsely. On this premise, the High Court recorded its opinion that it was a fit case in which the complaint under S. 211, I.P.C. should be filed against the persons responsible for Izhar Hussain's false prosecution. After so observing, the High Court felt that since Kartar Singh had frankly stated that he had not seen lzhar Hussain at the spot on the night in question at all there was no cogent ground for prosecuting him. The cases of Santokh Singh appellant and of R. D. Chowdhry were considered to be different. Izhar Hussain's father who carried on transport business through trucks and lorries had, according to the MO Court, trade rivalry with Santokh Singh and his master. There was thus a "foul attempt" to wreak vengeance against Izhar Hussain's father by falsely implicating the minor boy and for this reason, it was directed that the complaint under s. 21 1, I.P.C. be filed against the appellant for falsely charging Izhar Hussain for the offences already mentioned.

7-L 944 Sup CI/73

82

In this Court,- Shri Gupta has very forcefully contended that on the material on the record this direction is wholly unjustified, if not positively illegal, being based on misreading of evidence and on ,erroneous view of law. According to the submission, the appellant had neither lodged the F.I.R. nor otherwise instituted any criminal proceeding or falsely charged Izhar Hussain within the contemplation of s. 21 1, I.P.C.Besides, there is absolutely no material on the record on which theHigh Court could have formed an opinion that it is expedient in the interest of justice that a complaint under s. 21 1, I.P.C. should be filedagainst the appellant.

Shri- Kohli on behalf of the respondents has tried to support the order of the HIgh Court and has submitted that, as observed by Madholkar, J. in Haridas v. State of West Bengal(1) the words "or :falsely charges" in s. 211, I.P.C. are not restricted by the words "institutes or causes to be instituted any criminal proceeding". The Legislature according to the submission has provided in this section for two kinds of acts : (i) the institution of proceeding and (ii) making a false charge. This section 'in the words of Mudholkar, J., added Shri Kohli, is not limited to the institution of a complaint upon a false charge as such an interpretation would completely shut out criminal proceedings in which no charge of an offence has been made. It is on this. observation that the learned counsel has tried to build and ,develop the contention that when the appellant stated in the witness box as P.W.4 that he had seen Mohd. Zahir, Usman, Shahanshah, Puttan and lzhar Hussain in the marpit and thereafter in the identification' parade in the jail, he had made a false charge against lzhar Hussain and was, therefore, liable to be prosecuted for an offence under s. 211, I.P.C. The counsel has in this connection expressly stated that he does not want to prosecute the appellant for any offence mentioned in s. 479-A, Cr.P.C. The bar resulting from non-complaince with that section would, therefore, be ineffective so far as prosecu-tion for other offences is concerned. In support of his case he has relied on ss. 195 (1) (b) and 476, I.P.C.Section 195 so far as relevant reads

Prosecution for contempt of lawful authority of public servants.	(1) No Court shall take cognizance

(a) x x x x x

Prosecution for certain offences against public justice.

(b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 2P6, 207- 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court, except on the complaint in writing of

(1) [1964] 7. C.R. 237.

83

such Court or of some other Court to which such Court is subordinate; or

(c) x x x x

Sub-section (3) of this section lays down that for the purposes of this section, a Court shall be deemed to be subordinate to the court to which appeals ordinarily lie from- the appealable decrees or sentences of such former court. According to the proviso, where- appeals lie to more, than one court, the Appellate Court of inferior jurisdiction shall be the court to which such Court shall be deemed to be subordinate Section 476 which provides for procedure in cases mentioned in g. 195 so far as relevant for our purpose lays down

"476. (1) When any Civil, Revenue or Criminal Court is, whether on application Procedure in cases made to it in this behalf or other mentioned in wise, of opinion that it is expedient in section 195. the interests of justice that an inquiry should be made into, any offence referred to in section 195, subsection (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate, of the first class having juris- diction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non- bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate

Provided that, where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint..

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class."

Now, in the present case, the Additional District Magistrate on November 30, 1966 acquitted all the accused of the offences charged. He did not hold that the appellant had falsely charged. Izhar Hussain with any offence, nor did he

consider it expedient in the interest of justice to prosecute him for an offence under s. 211, I.P.C. As already noticed when in January, 1967, Izhar Hussain applied to that court under ss. 476/479-A, Cr.P.C. for the prosecution of the appellant and two others, the court felt that in view of the decision in Kuppa Goundan's case (supra) the proceedings under S. 476, Cr-P.C. were incompetent. Section 479-A has not been relied upon by Shri Kohli and in our opinion rightly because on the admitted
84
facts in this case that section has not been complied with. In Kuppa Goundan's case (supra) it was observed that the scheme of S. 479-A, Cr.P.C. is to enact a special procedure for more expeditious and effective manner of dealing with certain cases of perjury and fabrication of false evidence of witness in the course of judicial proceedings. But the necessary condition for applying this section is that the court must form an opinion that a particular witness or witnesses is or are giving false evidence and at the time of delivering its judgment record a finding to that effect. This was not done in this case. Now, by virtue of s. 479-A(6) no proceeding can be taken against Santokh Singh under ss. 476 to 479 for giving false evidence. Shri Kohli's argument, as already noticed, is that the appellant is not being prosecuted for giving false evidence as indeed that is not permissible now, but only for falsely charging lzhar Hussain in his evidence in court. The short question posed, therefore, is, if by giving false evidence as a witness against Izhar Hussain the appellant can be said to have charged him within the contemplation of s-211, I.P.C. If this question is answered in the affirmative, then it will have to be determined whether there is in fact a false accusation and finally whether it is expedient in the, interest of justice on the facts and circumstances of the present case to direct a complaint to be filed under s. 21 1, I.P.C. This section as its marginal note indicates renders punishable false charge of offence with intent to injure. The essential ingredient of an offence under s. 211, I.P.C. is to institute or cause, to be instituted any criminal proceeding against a' person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. It is frankly conceded by Shri Kohli that the appellant cannot be said to have instituted any criminal proceeding against any person. So, that part of s. 211, I.P.C. is eliminated. Now, the expression "falsely charges'.' in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. "To falsely charge" must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words "falsely charges" have to be, read along with the expression "institution of criminal proceeding". Both these expressions, being susceptible of analogous meaning should be understood to have been. used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. The false charge must, therefore, be made initially to a person in authority

or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be' embodied either in a complaint or in a report of a cognizable offence to the police officer or to an officer having authority over the person against whom the allegations are made. The statement in order to constitute the "charges" should be made with the intention and object
85
of setting criminal law in motion. Statement on oath falsely supporting the prosecution case against an accused person more appropriately amounts to an offence under ss. 193 and 195, I.P.C. and not under s. 21 1, I.P.C. We do not think that the offences contemplated by ss. 193/195,I.P.C. on the one hand and S. 211, I.P.C. on the other were intended by the legislature, in this context, to overlap so as to make it optional whether to proceed under one or the other. The High Court was, therefore, in error in thinking that in the present case the appellant's statement as a witness in the trial court, could be construed as a charge against lzhar Hussain. Once it is held that no offence under s. 211, I.P.C. can be considered to have been committed, then no other question arises for, as conceded by Shri Kohli, Section 479-A would bar prosecution for giving false evidence.

The High Court also seems to have committed serious error in ignoring that in the appellant's statement he had clearly stated that he had not seen amongst the assailants the accused Izhar Hussain present in the court. In face of this statement, there was no question of the appellant having made any accusation against lzhar Hussain in his deposition. In any event, considering the entire statement of the appellant it is not understood how it can be considered expedient in the interest of justice to direct the appellant's prosecution. Every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely, that the court should direct prosecution. The High Court seems to have misunderstood the appellant's evidence and has also failed to apply its mind to the question of expediency. Reference by the High Court to identification parade is also somewhat inappropriate. Identification at test parades could by no stretch be considered to amount to a false charge against Izhar Hussain as contemplated by s. 211, I.P.C. Such identification is not substantive evidence and it can only be used as corroborative of the statement in court. The identification parade thus could not improve the prosecution case.

Besides, we entertain considerable doubt if the High Court had at all jurisdiction to make an order of complaint as it has done. It was either the court which tried the original offences or a court to which the trial court was subordinate, that could make such an order. The court of the Additional District Magistrate would not seem to be subordinate to the High Court as provided by section 195(3), Cr-P.C.' Kuldip Singh v. State of Punjab(1). Two courts below having in their judicial discretion declined to direct the prosecution of the appellant, on revision the High Court

was, in our view, not all justified in itself directing the filing of the complaint. At best, if it considered

(1) [1956] S.C.R. 125.

86

the orders of the two courts below tainted with a serious legal infirmity or manifest error resulting in grave miscarriage of justice, it could have, after quashing those orders, sent the case back to the trial court for reconsideration of the matter in accordance with law'

As a result of the foregoing discussion, we have no hesitation in allowing this appeal and setting aside the order of. the High Court.

S.C. Appeal alloWed.

87