1964

March 16

HARIDAS DAS AND ANR.

v.

STATE OF WEST BENGAL AND ORS.

[A. K. SARKAR, M. HIDAYATULLAH AND J. R. MUDHOLKAR, JJ.]

Penal Code—Bringing a false charge of a commission of an offence—The offence charged need not be a criminal offence—It may be an offence under a special law like Contempt of Court Act—Whether a proceeding under Contempt Court Act a criminal proceeding—Indian Penal Code, 1860 (45 of 1860), *ss.* 40, 41 *and* 211.

The appellants were ordered to be proceeded against under ss. 193, 199 and 211 of the Indian Penal Code, 1860. They appealed to this Court against that order under certificate granted under Art. 134(1)(c) of the Constitution.

It was contended before this Court that for a person to be charged and tried under s. 211 Penal Code he must either have instituted a criminal proceeding or caused such proceeding to be instituted or he must have falsely charged a person with having committed a criminal offence and since what the appellants did was to initiate a proceeding for committal for contempt of court they cannot be proceeded against under s. 211 Penal Code.

Held: (*per* Sarkar, J.) Assuming that a proceeding for committal for contempt of court is not a criminal proceeding within the meaning of s. 211 Penal Code, falsely charging a person with commission of an offence would be an offence under that section. When that section says that an offence under it may be committed by falsely charging a person with the commission of an offence it does not intend that the offence must be one which gives rise to a criminal proceeding. Offence is defined by s. 40 of the Penal Code meaning an offence under the Code or under any special law and taking the definition of the special law contained in s. 41 as meaning a law applicable to particular subject it will be seen that an offence under Contempt of Court Act is an offence within the ambit of s. 211. The appellants have by falsely bring a charge of Contempt of Court made themselves liable to be proceeded against under s. 211 Penal Code.

Empress v. *Jamoona*, (1881) I.L.R. 6 Cal. 620, *Karim Buksh* v. *Queen Empress*, (1890) I.L.R. 17 Cal. 574 and *Queen Empress* v. *Karigowda*, (1895) I.L.R. 19 Bombay 51, distinguished.

(*per* Hidayatullah, J.): There can be no doubt that the institution of contempt of court proceedings is institution of criminal proceedings because a contempt of court can be punished by imprisonment and fine and that brings an accusation charging a man with contempt of court within the expression "criminal proceedngs" in s. 211 Penal Code. Such proceedings were described as quasi criminal proceedings by Privy Council because with proceedings are not tried under the Criminal Procedure Code. That Code is not exhaustive of criminal proceedings and punishments of contempt by summary procedure before the superior courts are special criminal proceedings which the Code of Criminal Procedure does

1964

Haridas Das and Anr. v. State of West Bengal and Others

not even regulate. The High Court has therefore acted with jurisdiction to order a prosecution under s. 211 Penal Code.

(*per* Mudholkar, J.): Making a false charge before any person, whosoever he may be is covered by s. 499 Indian Penal Code. Section 211 Indian Penal Code is applicable to a case where a false charge is made by the accused person against another before a person competent to enquire into it and either take proceedings himself or cause proceedings to be initiated. It is not limited to false charges made to a person who also has the power to try the accused or commit him for trial by other court.

(ii) It would not be right to read the words or "falsely charges" as being in any way restricted by the words "institute or causes to be instituted any criminal proceeding". The Legislature has clearly provided for two kinds of acts, one the institution of proceedings and the other of making a false charge and there is no compelling reason for reading the section as if it is limited to institution of a complaint upon a false charge.

(iii) The word offence under s. 211 would also include a thing punishable under a special law and the law of contempt being a special law an offence under Contempt of Court Act would be an offence under s. 211 and therefore the order of the High Court was right.

CRIMINAL APPELLATE JURISDICTION—Criminal Appeal No. 141 of 1961. Appeal from the judgment and order dated January 5, 1959 of the Calcutta High Court in Civil Revision No. 3 of 1957.

Sarjoo Prasad and *P. K. Chatterjee*, for the appellants.

Niharendu Dutt Majumdar, P. K. Chakravarty and *P. K. Bose*, for respondent No. 1.

S. C. Majumdar, for respondents Nos. 2 to 4.

March 16, 1964. The following judgments were delivered.

Sarkar, J.

SARKAR, J.—The High Court at Calcutta made an order directing the Registrar of the Court to file a complaint in the Court of a magistrate against the appellants under ss. 211, 199 and other appropriate sections of the Indian Penal Code. The Registrar thereupon filed a complaint against the appellants under ss. 193, 199 and 211 of the Code. The appellants have appealed against the order of the High Court under a certificate granted under Art. 134(1)(c) of the Constitution.

It appears that the appellants had moved the High Court for committal for contempt of court of certain respondents, whom I will call the Mondal respondents, for breach of an injunction issued in a suit. That injunction prohibited the respondents from disturbing the appellants' possession of some property. It was said by the appellants that the Mondal respondents attempted to enter forcibly into the properties in

breach of the injunction and "in the course of such attempt broke open the gate, cut down one tree and also broke down the gate". The High Court referred the matter to the Subordinate Judge for a report on the allegation about breach of injunction and on a consideration of that report came to the conclusion that the appellants "could not reasonably be believed" and expressed its agreement with the Subordinate Judge's view that "the allegations made by the petitioners are not true". The petitioners referred to are the appellants. The petition for committal for contempt of court was thereupon dismissed. Thereafter the Mondal respondents moved the High Court and obtained the order directing a complaint to be lodged as earlier mentioned. Their case was that deliberate false statements had been made in affidavits used by the appellants in connection with their application for the committal of the Mondal respondents for contempt of court.

Mr. Sarjoo Prasad appearing for the appellants has first said that the order in so far as it directed a complaint under ss. 193 and 199 of the Code could not be supported as there was no definite finding in the order dismissing the application for contempt of court that any false statement had been made. I have earlier set out the relevant parts of that order and I think that it contains such a finding. The High Court held that "the allegations.....are not true". It is unnecessary to pursue this question further for Mr. Sarjoo Prasad's contention is obviously unsustainable.

Another point made by Mr. Sarjoo Prasad was that there was no case for lodging a complaint under s. 211 of the Code. He said that in order that an offence under that section might be committed by a person, he must either have instituted a criminal proceeding or caused such proceeding to be instituted or he must have falsely charged a person with having committed an offence. It was said that the appellants could not be said to have done any of these things. His contention was that, what they had done was to start a proceeding for committal for contempt of court and such proceeding was not a criminal proceeding.

I will assume that a proceeding for committal for contempt of court is not a criminal proceeding within the meaning of that expression as used in s. 211. On this basis, no doubt, it cannot be said that the appellants had instituted or caused to be instituted any criminal proceeding. But the section also says that falsely charging a person with the commission of an offence would be an offence under it and it seems to me that the appellants did so charge the Mondal respondents. Mr. Sarjoo Prasad's answer was that the charge

1964

Haridas Das and Anr. v. State of West Bengal and Others

Sarkar, J.

contemplated by the section had to be a charge which would give rise to a criminal proceeding. I am unable to agree.

Mr. Sarjoo Prasad based his contention on three cases, none of which, in my opinion, supports him. The first case was of *Express* v. *Jamoona*(1). There it was held that the charge had to be made to a person competent to act upon it, a person having the power to investigate and send up for trial. The next case was *Karim Buksh* v. *The Queen Empress*(2) and it held that the making of a false complaint to the police of a cognizable offence was the instituting of a criminal proceeding within the meaning of that expression in the second paragraph in s. 211 which entailed a higher punishment. The last case referred to was *Queen Empress* v. *Karigowda*(3) where it was held that the words 'falsely charging' in s. 211 were used in a technical sense and the making of an imputation of the commission of an offence in evidence given in a departmental enquiry was not the making of a charge in that sense. Quite clearly we are not concerned with any of the questions discussed in these cases or the view there taken.

As, however, in all these cases the charge alleged to have been made related to an offence triable in a criminal proceeding, all the judgments incidentally referred to institution of criminal proceedings in connection with the charge. In none of them, however, was the question with which we are concerned, namely, whether a false charge can be made in respect of an offence which could be tried by a proceeding which was not a criminal proceeding, raised. It was not, and could not have been, intended in these cases to say that the offence in respect of which a false charge had been brought must be one which was triable by a criminal proceeding only. Therefore, I have said that these cases do not support the proposition for which Mr. Sarjoo Prasad contends.

As a matter of construction, and that is all that we have to go by in the absence of any authority, I agree with the view of the High Court that when the section says that an offence under it may be committed by falsely charging a person with the commission of an offence, it does not intend that the offence must be one which gives rise to a criminal proceeding. There is no warrant for a contrary view. Indeed the definition of the word offence in s. 40 of the Code shows that such a contrary view would be wrong. Under that definition the word 'offence' in s. 211 means an offence punishable under the Code or under any special or local law

(1) (1881) I.L.R. 6 Cal. 620.
(2) (1890) I.L.R. 17 Cal. 574.
(3) (1895) I.L.R. 19 Bom. 51.

as defined in it. Section 41 defines a special law as a law applicable to a particular subject. Now the Contempt of Courts Act is an Act dealing with the subject of contempt of courts and is, therefore, a special law. It also provides for punishment for contempt of court by simple imprisonment up to six months, subject to certain conditions mentioned: see ss. 3 and 4. A charge of having committed a contempt of court is, therefore, a charge of having committed an offence within the meaning of s. 211. Such a charge was admittedly brought in this case and that charge was furthermore preferred to the only person who could act upon it, namely, the High Court, for without its sanction no complaint for lodging a false charge of contempt of court could have been made. The order to lodge the complaint in regard to an offence under s. 211 was unobjectionable.

I, therefore, think that there is no substance in this appeal and would dismiss it.

HIDAYATULLAH, J.—The High Court of Calcutta has ordered the Registrar of that Court to make a complaint in writing against the appellants for their prosecution under ss. 193, 199 and 211 of the Indian Penal Code. The High Court, however, certified the case as fit for appeal under Art. 134(1) (c) of the Constitution and the present appeal is the result.

Hidayatullah, J.

The appellants had obtained a temporary injunction from the High Court against respondents 2 to 4 restraining them from disturbing possession of the appellants over certain properties. The appellants made an application to the High Court alleging that the respondents in defiance of the order tresspassed on the property breaking down a gate and cutting down a tree. In that application they asked for action under the Contempt of Courts Act. The High Court remitted the case for enquiry. It was reported that the allegation was false. The High Court came to a like conclusion and ordered the Registrar to file a complaint for the prosecution of the appellants. At the hearing, preliminary objections were raised about the competency of the appeal, but were subsequently withdrawn when we intimated that we were not disposed to interfere with the order of the High Court on merits.

This Court will not ordinarily do more than examine in such cases whether the High Court has fairly considered a case to reach the conclusion that *prima facie* there is good reason to launch the prosecution, that there is reasonable prospect of conviction and that it is expedient in the interest of justice to order a prosecution. Judged from this angle, I am satisfied that the High Court correctly viewed the case.

It is, however, contended that s. 211 of the Indian Penal Code cannot apply because no offence under s. 211 can

1964

Haridas Das and Anr. v. State of West Bengal and Others

Hidayatullah, J.

prima facie be held to be committed by the appellants when they made the application which has led to their prosecution. S. 211 reads as follows:—

"211. False charge of offence made with intent to injure—

> 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; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

It is quite clear that *prima facie* the intention of the appellant would be to cause injury to the respondents if their report to the High Court was false. The only question really is whether they instituted a criminal proceeding. An application to take proceedings under the Contempt of Courts Act undoubtedly can be regarded as causing a criminal proceeding to be instituted. There is no substance in the contention that the application neither charged the respondents with any offence, nor instituted a criminal proceeding against them. There may be some dispute as to whether it charged the respondents with an offence and as to that I say nothing, but, in my judgment there can be no doubt that it amounted to the insitution of a criminal proceeding because a contempt of court can be punished by imprisonment and fine and that brings an accusation charging a man with contempt of court within the wide words 'criminal proceedings'. Such proceedings were described as quasi criminal proceedings by the Privy Council because such proceedings are not tried under the Criminal Procedure Code. That does not render it any the less a criminal proceeding because the Criminal Procedure Code is not exhaustive of criminal proceedings and punishments of contempts by summary procedure before the superior courts are special criminal proceedings which the Criminal Procedure Code does not even seek to regulate. If there was no just or lawful ground for commencing this proceeding for contempt in the High Court (and it is held by the High Court that there was none) then the requirements of

s. 211 of the Indian Penal Code must be taken to be *prima facie* satisfied. In my opinion, the High Court acted with jurisdiction to order a prosecution under s. 211 of the Indian Penal Code in the present case. Of course, the appellants will be entitled to raise any plea of law or fact in the case and I will only say that what has been said by the High Court or by this Court in relation to the facts, should not stand in their way of substantiating any plea or pleas. I agree for these reasons that the appeal be dismissed.

MUDHOLKAR, J.—The question raised before us in this appeal by a certificate granted by the Calcutta High Court is whether that Court was right in directing a complaint to be filed against the appellants for offences under ss. 199 and 211 of the Indian Penal Code.

Mudholkar, J

The matter arose like this. The respondents 2, 3 and 4 purchased at a sale held for the realization of rent, plot No. 365 of village Jagdispur, district 24 Parganas on or about April 7, 1951 and obtained delivery of possession through court. But apparently they were able to get only paper possession. On September 25, 1951 the appellant No. 1 Haridas Das instituted a suit in the court of Munsif at Sealdah for a declaration that his right, title and interest had not been effected by the sale, for confirmation of his possession over the land and for a permanent injunction restraining the respondents 2 to 4 from disturbing his possession. He also made an application for a temporary injunction restraining the respondents from disturbing his possession. The application was, however, dismissed by the Munsif and his order was affirmed in appeal by the Third Additional District Judge at Alipore. The appellant thereupon preferred an application for revision before the High Court from the order of the Additional District Judge. By order dated May 3, 1954 B. K. Guha, J., granted temporary injunction to the appellant No. 1 restraining the respondents 2 to 4 from disturbing his possession till the disposal of the suit and observed in his order that no serious inconvenience would be caused to them if they were asked in substance to possess the property jointly with the appellant No. 1.

On or about June 12, 1956 the appellant No. 1 filed an application in the High Court under the Contempt of Courts Act, 1926 alleging, *inter alia*, that on June 7, 1956 respondents 2 to 4, along with others, attempted to enter forcibly into the plot with respect to which an injunction had been granted by the High Court. In the course of that attempt they broke open the gate and cut down a tree standing on the plot. He further averred that the police then arrived on the scene and restored peace. According to him the respondents 2 to 4 had by this action committed a breach of the injunction

1964

Haridas Das and Anr. v. State of West Bengal and Others

Mudholkar, J.

granted by the High Court. This application was verified by an affidavit affirmed by the second appellant Jyotish Kumar Seal who said that the facts set out in all the paragraphs of the application were true to his knowledge. After the application was made the Court issued a rule calling upon the respondents 2 to 4 to show cause why they should not be committed and punished for contempt of court for violating the order of injunction. The parties were heard on July 25, 1956 and the Bench which heard it directed the Subordinate Judge, Alipore to make an enquiry and submit a report. In accordance with this direction the Subordinate Judge examined the witnesses named by the appellants and in addition examined as court witness the Officer-in-charge of the Police Station, Rajarhat, to whom a report of the incident had also been made by the appellants. The Subordinate Judge then submitted his report to the High Court. After its receipt the High Court heard the parties, considered the report on August 30, 1957 and made an order discharging the rule. In the course of the order the High Court observed as follows:—

> ".....in the opinion of the learned Subordinate Judge, the allegations made by the petitioner are not true. We have ourselves gone through the evidence and agree with the view obviously taken by the learned Subordinate Judge. It may be, as stated by Jyotish Kumar Seal, that some persons of the opposite parties did go to the garden and enquire who authorised him to construct the hut, which he was doing, but the story that the members of the opposite parties broke open the gate, and cut down the tree, cannot reasonably be believed. Inspite of what the witnesses have spoken, it is worth remembering, as pointed by the learned Subordinate Judge that in the report to the Officer-in-charge, Rajarhat, nothing was said about any golmal or any looting or any damage done to the garden or to the trees."

On September 17, 1957 the respondents 2 to 4 filed an application under s. 466 read with s. 195 of the Code of Criminal Procedure before the High Court for making a complaint against appellants under s. 211, I.P.C. and/or any other appropriate section in relation to the proceeding in the contempt matter before the High Court. The High Court issued a rule to the appellants, heard them in answer to the application and come to the conclusion that it was expedient in the interests of justice that a complaint should be made. The High Court, therefore, made the rule absolute and directed the Registrar, Appellate Side to file a com-

plaint against the appellants under ss. 211 and 199 I.P.C. and/or any other appropriate section to the Chief Presidency Magistrate, Calcutta. In pursuance of this direction the Registrar lodged a complaint on January 16, 1959 under ss. 193, 199 and 211, I.P.C. in the court of the Chief Presidency Magistrate, Calcutta. The appellants made an application before the High Court under Arts. 133(1)(c) and 134(1)(c) of the Constitution for grant of a certificate of fitness for appeal to this Court. By Order dated May 8, 1959 the High Court granted the certificate, overruling the objections made on behalf of the respondents. The ground on which the High Court granted the certificate was that the decision in *The Empress* v. *Jamoona*(1) where it was held that for a conviction under s. 211 of the Penal Code it was necessary that the false charge should have been made to a Court or an officer having jurisdiction to investigate and send it up for trial, was not noticed by the High Court. With regard to the objection raised on behalf of the respondents that the order of the High Court directing that a complaint be lodged was not a final order, the High Court held that whether it is a final order or not is not free from doubt and that the benefit of that doubt ought to be given to the appellants.

Before us Mr. Sarjoo Prasad has placed reliance upon the decision referred to in the order of the High Court granting certificate and also on the decision of Ranade, J., in *Queen Empress* v. *Karigowda*(2). In the first of these cases one Jamoona appeared before Captain Simpson, Adjutant, 11th M.N.I., and Station Staff Officer and charged a non-commissioned officer with rape. An enquiry was held by Captain Simpson and the charge was found to be false. The Commanding Officer caused the appellant to be prosecuted in a criminal court under s. 211 I.P.C. She was committed for trial and was convicted by the Judicial Commissioner with respect to that offence. On appeal the High Court held that the Station Staff Officer having neither magisterial nor police powers, s. 211 was not attracted. In the course of his judgment Mitter, J., observed:

> "We do not think it unduly refining the words to say that the false charge must be made to a Court or to an officer who has powers to investigate and send up for trial."

Section 211, I.P.C. reads thus:

> "Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely

(1) (1881) I.L.R. 6 Cal. 620. (2) (1895) I.L.R. 19 Bom. 51.

1964

Harilas Das and Anr.
v.
State of West Bengal and Others

Mudholkar, J.

charges any person with having committed an office, 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;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Breaking up the section, it is clear that before it can be invoked three things have to be proved: (a) that the accused had intended to cause injury to any person; (b) that with that object he instituted or caused to be instituted a criminal proceeding against that person or in the alternative falsely charged him with having committed an offence and (c) that he did so with the knowedge that there may be no just or lawful ground for such proceeding or charge against that person. Does the section mean that a false charge made before any person is punishable thereunder or is it restricted to such charge being made to a person holding a particular position? It seems to me that since making of a false charge before any person, whosoever he may be, is covered by s. 499, I.P.C., it would be appropriate to construe this section as being applicabe only to a case where a false charge is made by the accused person against another before a person who is competent to enquire into it and either take proceedings himself or cause proceedings to be initiated. I do not, however, think that it is limited to false charges made to a person who also has the power to try the accused or commit him for trial by another court. Such an interpretation is sufficient to prevent any overlapping of the provisions of this section with those of s. 500 and it is not necessary to go further than this.

In the other case the facts were these:

One Karigowda was tried for an offence under s. 211. Indian Penal Code for having falsely deposed in an enquiry into bribery by a District Magistrate that he had paid bribe of Rs. 300 to a Magistrate in the District of Bijapur, named Jehangir. After the conclusion of the enquiry Jehangir obtained permission from the Government to prosecute Karigowda for an offence under s. 500, I.P.C. A complaint was also made against him of an offence under s. 211, I.P.C. The trying magistrate, at the end of the trial, struck out the

charge under s. 500 and convicted him of an offence under s. 211 only. On appeal the Joint Sessions Judge reversed the conviction under s. 211. The Government then preferred an appeal before the High Court. The High Court reversed the acquittal of Karigowda under s. 500 and maintained the conviction under s. 211, I.P.C. Jardine, J., one of the two Judges who heard the case, referring to *Jamoona's* case(1) said that that case was inapplicable and then observed:

> "The present case, however, seems to me to be taken out of section 211 by the fact that Karigowda did not apparently intend to set the criminal law in motion. He had been produced before Mr. Monteath against his will; and though what he said is 'information' under section 191, clause c. of the Procedure Code, and 'defamation' under the Penal Code, I am of opinion, after considering the Full Bench case(2) that the imputations do not make up a 'false charge'." (p. 61-62).

Ranade J., however, has made certain observations upon which Mr. Sarjoo Prasad has placed strong reliance. Those observations are:

> "The words 'falsely charging' used in that section must be construed along with the words which speak of the 'institution of proceedings'. These latter words are obviously used in a technical and exclusive sense, and by parity of reasoning, the same restricted sense must be given to the words which relate to a false charge." (p. 69).

He also agreed with Jardine, J., that Karigowda had not made a complaint of his own accord and what he said was simply in answer to certain question put to him at the departmental enquiry. In my judgment it would not be right to read the words "or falsely charges" as being in any way restricted by the words "institutes or causes to be instituted any criminal proceeding". The legislature has clearly provided for two kinds of acts: one the institution of proceedings and the other of making a false charge and I see no compelling reason for reading the section as if it is limited to the institution of a complaint upon a false charge. Such an interpretation would completely shut out criminal proceedings in which no charge of an offence has been made. I, therefore, agree with the view taken by the Full Bench in *Karim Bux's* case(3), to which Jardine, J., had referred.

---

(1) (1881) I.L.R. 6 Cal. 620. (2) I.L.R. 17 Cal. 574.

1964

Haridas Das and Anr. v. State of West Bengal and Other

Mudholkar, J.

With regard to the interpretation to be placed upon the two phrases used in s. 211 Wilson, J., who delivered judgment of the court in that case observed, *inter alia*:

> "I agree that we must take it that the legislature did not regard the two phrases (that is, 'institutes criminal proceedings' and 'falsely charges') as co-extensive in meaning but considered that there were or might be cases to which one would apply and not the other." (p. 578).

As illustrations of proceedings in which no charge of an offence is made Wilson, J., has referred to proceedings under s. 107 and s. 109 of the Code of Criminal Procedure. As an illustration of a false charge which does not amount to institution of a criminal proceeding, he has referred to a charge made to a judge of civil court in order to obtain sanction to prosecute another (which was a prerequisite for prosecution before the amendment by Act 18 of 1923) and pointed out that this would not be the institution of a criminal proceeding. In my opinion, therefore, the point raised by Mr. Sarjoo Prasad must fail.

Apart from the offence under s. 211, the complaint against the appellants embraces two more offences: one is for giving false evidence which is punishable under s. 193 and the other of making a false statement in a declaration which is by law receivable as evidence under s. 199, I.P.C. There could be no impediment to a complaint being made with regard to these two offences. Mr. Sarjoo Prasad, however, says that the High Court, after it received the report of the Subordinate Judge, did not find that it was wholly false but found that it was partly false and in this connection draws our attention to the following observations of the High Court:

> "It may be, as stated by Jyotish Kumar Seal, that some persons of the opposite parties did go to the garden and enquire who authorised him to construct the hut, which he was doing, but the story that the members of the opposite parties broke open the gate, and cut down the tree, cannot reasonably be believed."

It is true that the High Court has not said that the respondents 2 to 4 did not visit the plot at all; but the injunction did not restrain them from visiting the plot. What they were restrained from doing was to disturb the possession of the appellant No. 1 and, therefore, there was no question of their rendering themselves liable for contempt, because they visited the plot. Indeed that was not the gravamen of the charge against him in the contempt application made by

the appellant No. 1. The gravamen of the charge was that they in fact disturbed his possession and caused damage to property. This was the crucial allegation and this allegation has not been found to be true by the High Court. In the circumstances there was clearly a *prima facie* case for proceeding against the appellants not only under s. 211 but also under ss. 193 and 199, I.P.C.

Mr. Sarjoo Prasad, however, said that he would be able to show by reference to the evidence recorded by the Subordinate Judge during the enquiry made by him that the statement of the Station Officer upon which the High Court has placed reliance is not correct and that his statement to the effect that in the report made to him nothing was said about "any golmal or any looting or any damage done to the garden or to the trees." It is sufficient to say that we are not sitting in judgment over the order of the High Court by which the rule for committing the respondents 2 to 4 for contempt was discharged. The appeal before us is against another order and that is the order directing a complaint to be filed against the appellants.

Mr. Sarjoo Prasad then contended that the false charge referred to in s. 211 must be with respect to an offence under the Indian Penal Code and that by making an application of the kind which the appellant No. 1 made he had not charged the respondents 2 to 4 with any offence under the Penal Code. The word 'offence' is described in s. 40 of the Indian Penal Code. The relevant part of the definition runs thus:

> "Except in the chapters and sections mentioned in clauses 2 and 3 of this section, the word 'offence' denotes a thing made punishable by this Code.
>
> In chapter IV, chapter VA and in the following sections, namely, sections 64, 65 ...., 211, 213, ... the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined. ...."

It will thus be clear that the word offence used in s. 211 would also include a thing punishable under a special law. Special law is defined in s. 41 as a law applicable to a particular subject. The law of contempt is a particular subject and the High Court has inherent power to punish a person for the offence of contempt committed by him by disobeying an injunction issued against him. Disobedience of an injunction issued by the High Court is not something with respect to which action under s. 24 or s. 95 of the Code of Civil Procedure could alone be taken but being contempt of the

1964

Hari·las Das and Anr. v. State of West Bengal and Others

Mudholkar, J.

High Court's order, is punishable by it in its discretion in exercise of its inherent powers. The only limitation which the statute has placed is with regard to the punishment that the High Court can meet out to the contemner. I am, therefore, satisfied that the Order of the High Court was right and, accordingly, I dismiss the appeal.

Upon the view which I have taken, it is not necessary to consider whether the proceeding before the High Court was a criminal proceeding. In support of the contention that it is not a criminal proceeding, Mr. Sarjoo Prasad has placed reliance upon the decision of the Privy Council in *S. N. Bannerjee* v. *Kuchwar Lime and Stone Co., Ltd.*(1). In that case, their Lordships held that a committal for contempt for breach of an injunction was not criminal in its nature, and referred to the decisions in *Radha Krishna Das* v. *Rai Krishn Chand*(2) and *Scott* v. *Scott*(3). Since we did not hear full arguments upon this question, I do not feel called upon to express any opinion on the point.

Before parting with the appeal, I would like to point out that two preliminary objections were raised before us—one by Mr. Niharendu Dutt Majumdar on behalf of respondent No. 1 and the other by Mr. S. C. Majumdar on behalf of respondents 2 to 4. Mr. Dutt Majumdar's preliminary objection was that the order of the High Court was not a final order and he addressed a long argument in support of it. The objection of Mr. S. C. Majumdar was that the appellants had failed to prefer their appeal within the time allowed by the rules of the Court and that they had made false allegations in support of their application for condoning the delay and, therefore, the condonation be revoked. We have heard both at considerable length on these points. At the conclusion of Mr. Sarjoo Prasad's arguments we made it clear to the respondents that we did not want to call upon them to reply on merits and enquired whether in the circumstances they pressed their preliminary objections. Both of them said that in the circumstances they did not want to press those objections. No order on these two preliminary objections is, therefore, necessary.

Appeal dismissed.

(1) I.L.R. 17 Pat. 770. (2) 28 I.A. 182.
(3) (1913) A.C. 417 at 456.