

offences.<sup>216</sup> The Court had no jurisdiction to take cognizance of offence under sections 193/ 209/34 [IPC, 1860](#) without having received any complaint under section 195 from the concerned civil Court.<sup>217</sup>

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : [\(2009\) 10 SCC 664](#) [[LNIND 2009 SC 1659](#)] : [\(2009\) 12 SCR 1215](#) [[LNIND 2009 SC 1659](#)] .

<sup>215</sup>. *Beegum Mahtoon*, (1869) 12 WR (Cr) 37; *Bismilla Khan v Rambhau*, (1946) Nag 686. Cognizance of an offence under this section can be taken on a complaint by the court concerned. See [section 195 Cr PC, 1973](#). *Sardul Singh v State of Haryana*, [1992 Cr LJ 354](#) P&H.

<sup>216</sup>. *Babu Lal v State*, [1998 Cr LJ 3595](#) (Raj). See also *Vinod Kumar v State*, [1997 Cr LJ 2893](#) (P&H).

<sup>217</sup>. *Kusum Sandhu v Sh Ved Prakash Narang*, [2009 Cr LJ 1078](#) (Chh); *Babu Lal v State of Rajasthan*, [2009 Cr LJ 3595](#) (Raj).

## THE INDIAN PENAL CODE

### CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.<sup>1</sup>

#### **[s 210] Fraudulently obtaining decree for sum not due.**

**Whoever fraudulently obtains <sup>1</sup> a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied <sup>2</sup> or for anything in respect of which it has been satisfied or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.**

#### **COMMENT.—**

This section is the counterpart to section 208 in respect of fraudulent decrees, just as section 207 is the counterpart to section 206 in respect of fraudulent transfers and conveyances, the object of the Code being to strike both parties alike with the same penalty. This section, taken together with section 208, will enable both plaintiff and defendant to a fraudulent or collusive suit or execution to be dealt with alike.

**1. 'Obtains'.—**The offence is committed when the decree is fraudulently obtained and the fact that the decree has not been set aside, though admissible to prove that there

was no fraud, is not a bar to a prosecution under the section.<sup>218</sup>.

**2. 'Causes a decree or order to be executed...after it has been satisfied'.—**The mere presentation of an application for the execution of a decree already executed will not be sufficient. The accused must have caused the decree to be executed against the opposite party after it had been satisfied,<sup>219</sup> or obtained an order for attachment for a sum already paid.<sup>220</sup> Where the decree-holder does not want to proceed with the execution and gets his execution application dismissed he cannot be convicted of an offence under this section.<sup>221</sup>.

The fact that the satisfaction is of such a nature that the Court executing the decree could not recognize it does not prevent the decree-holder from being convicted of an offence under this section.<sup>222</sup>.

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

218. *Molla Fuzla Karim*, (1905) 33 Cal 193 .

219. *Shama Charan Das v Kasi Naik*, (1896) 23 Cal 971 .

220. *Hikmat-ullah Khan v Sakina Begam*, (1930) 53 All 416 .

221. *Bismilla Khan v Rambhau*, (1946) Nag 686.

222. *Madhub Chunder Mozumdar v Novodeep Chunder Pandit*, (1888) 16 Cal 126 ; *Mutturaman Chetti*, (1881) 4 Mad 325; *Pillala*, (1885) 9 Mad 101.

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#### [s 211] False charge of offence made with intent to injure.

Whoever, with intent to cause injury<sup>1</sup> to any person, institutes or causes to be instituted any criminal proceedings<sup>2</sup> against that person, or falsely charges<sup>3</sup> any person with having committed an offence, knowing that there is no just or lawful ground<sup>4</sup> 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<sup>5</sup> on a false charge of an offence punishable with death, <sup>223.</sup>[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.

#### COMMENT.—

This section includes two distinct offences:—

(1) Actually instituting or causing to be instituted false criminal proceeding against a person. <sup>224.</sup>

- (2) Preferring a false charge against a person.

The first assumes the second, but the second may be committed where no criminal proceedings follow.

The necessary ingredients to constitute either of the above offences are—

- (1) the criminal proceedings must be instituted, or the false charge made with intent to injure;
- (2) the criminal proceedings must be instituted, or the false charge must be made, without just or lawful ground, in other words, it must be made maliciously.

Difference is made in punishment according as the charge relates to offences punishable with imprisonment which may extend to seven years or more or otherwise.

The mere making of a false charge is punishable under the first part of the section. If a case gets no further than a police inquiry, it falls within that part. But under the second part there should be an actual institution of criminal proceedings on a false charge.<sup>225</sup> Two conditions are necessary before the enhanced punishment provided in the second paragraph could be inflicted: (1) proceedings on the false charge should have been actually instituted, and (2) the false charge must be in respect of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards.

### **[s 211.1] Sections 182 and 211.—**

According to the Bombay High Court there is a clear distinction between a false charge that falls under section 211 and false information given to the police, in which latter case the offence falls under section 182. A person prosecuting another under section 182 need not prove malice and want of reasonable and probable cause except so far as they are implied in the act of giving information known to be false, with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under section 211, on the other hand, proof of the absence of just and lawful ground for making the charge is an important element.<sup>226</sup> If the information conveyed to the police amounts to the institution of criminal proceedings against a defined person or amounts to the falsely charging of a defined person with an offence, then the person giving such information is guilty of an offence under section 211. In such a case, section 211 is, and section 182 is not, the appropriate section under which to frame a charge. Section 182, when read with section 211, must be understood as referring to cases where the information given to the public servant falls short of amounting to institution of criminal proceedings against a defined person and falls short of amounting to the falsely charging of a defined person with an offence as defined in the [Penal Code](#).<sup>227</sup>

The Calcutta, the Madras, the Allahabad and the Patna High Courts differ from this view of the Bombay High Court. The Calcutta High Court has ruled that a prosecution for a false charge may be under section 182 or section 211, but if the false charge was a serious one, the graver section 211 should be applied and the trial should be full and fair.<sup>228</sup> Where a false charge is made to the police of a cognizable offence the offence committed by the person making the charge falls within the meaning of section 211 and not section 182.<sup>229</sup>

The Madras High Court has held that there is no error in a conviction under section 182, when the false charge made before the police was punishable under the final clause of section 211. The High Court may quash the conviction and sentence for the minor offence and direct a trial before a tribunal having jurisdiction for the graver offence.

Whether it will do so, or not, is a question, not of law, but of expediency on the facts of the particular case.<sup>230</sup>

The Allahabad High Court had held that where a specific false charge is made, the proper section, for proceedings to be adopted under section 211.<sup>231</sup> Although it is difficult to see what case would arise under section 211 to which section 182 could not be applied yet section 182 would apply to a case that might not fall under section 211. The offence under section 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no steps towards the institution of such criminal proceedings. There is no restriction imposed by the [Penal Code](#) or by the [Criminal Procedure Code](#) upon the prosecution of an offence either under section 182 or section 211. It appears that it has been left to the discretion of the Court to determine when and under what circumstances prosecution should be proceeded with under sections 182 and 211.<sup>232</sup> The soundness of this view is doubted in subsequent cases.<sup>233</sup>

The Patna High Court has followed the view of the Calcutta High Court.<sup>234</sup>

The Lahore High Court has held that an offence under section 182 is included in the more serious offence under section 211 and a prosecution for a false charge may be either under section 182 or section 211, though clearly if section 211 does apply and the false charge is serious, the prosecution should be under section 211.<sup>235</sup>

**1. 'Intent to cause injury'.—**This is an essential part of the offence.<sup>236</sup>

**2. 'Institutes or causes to be instituted any criminal proceedings'.—**The word "proceedings" is used in this section in the ordinary sense of a prescribed mode of action for prosecuting a right or redressing a wrong. It is not used in the technical sense of a proceeding taken in a Court of law.<sup>237</sup> Neither the proceedings before the Disciplinary Committee of the Bar Council of India, is a criminal proceeding nor was the charge in the Disciplinary Proceedings in relation to an offence. Charge in the Disciplinary Proceedings before the Bar Council of India is only in respect of professional misconduct and not offence as such.<sup>238</sup> Under this section 'instituting a criminal proceeding' may be treated as an offence in itself apart from 'falsely charging' a person with having committed an offence. There are two modes in which a person aggrieved may seek to put the criminal law in motion: (1) by giving information to the police ([Criminal Procedure Code, section 154](#)) and (2) by lodging a complaint before a Magistrate ([Criminal Procedure Code, sections 190, 200](#)). A person who sets the criminal law in motion by making to the police a false charge in respect of a *cognizable offence* institutes criminal proceedings.<sup>239</sup> But as the police have no power to take any proceedings in *non-cognizable* cases without orders from a Magistrate, a false charge of such offence, made to the police, is not an institution of criminal proceedings, but merely a false charge.<sup>240</sup> The distinction between cognizable and non-cognizable offences relates to the powers of the police only, and it will, therefore, seem that the false charge of any offence, whether cognizable or non-cognizable, before a Magistrate is an institution of criminal proceedings.

**3. 'Falsely charges'.—**The word 'charges' means something different from 'gives information'. The true test seems to be, does the person who makes the statement that is alleged to constitute the 'charge' do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made.<sup>241</sup> The false charge must be made to a Court, or to an officer who has power to investigate and send it up for trial.<sup>242</sup> Where the tribunal

before whom the complaint is made is not competent to take any action direct or indirect to punish the persons complained against, it cannot be said that the accused 'charged' such persons with any offence or that his intention necessarily was that action should be taken against them.<sup>243</sup> A false petition to the Superintendent of Police, praying for the protection of the petitioners from the oppression of a Sub-Inspector, which may be effected by some departmental action, does not amount to such a false charge.<sup>244</sup> It is enough that a false charge is made though no prosecution is instituted thereon.<sup>245</sup> Where a person who gives false information as to the commission of an offence merely states that he suspected a certain other person to be the offender, it may be that he would not be liable under this section, but where it is clear that the informant's intention was not merely that the police should follow up a clue but that they should put the alleged offender on trial, the informant is guilty of an offence under this section.<sup>246</sup> The Calcutta High Court has held that the meaning of the expression 'falsely charges' is simply 'falsely accuses' and as the section stands there is no necessity of this false accusation being made in connection with a criminal proceeding.<sup>247</sup>

### **[s 211.2] Giving false Evidence: No false charge.—**

The words "falsely charges" in this section cannot mean giving false evidence against the accused as a prosecution witness during the course of a trial. To "falsely charge" must refer to the criminal 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 proceedings". 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. Giving false evidence in course of a trial amounts to an offence under sections 193 and 195 and not under [section 211, IPC, 1860](#).<sup>248</sup>

### **[s 211.3] Bare statement is not false charge.—**

A statement to the police of a suspicion that a particular person has committed an offence is not a charge within the meaning of this section, nor does it amount to institution of criminal proceedings; and a conviction cannot be had on proof that the suspicion was unfounded.<sup>249</sup> The accused made a report to the police that his buffalo had been poisoned and that he suspected two persons whom he named of having administered the poison. The police made an inquiry and reported that there was no case of poisoning and the charge was struck off. One of the persons then brought a complaint under this section against the accused. It was held that the report to the police did not amount to a charge of a criminal offence.<sup>250</sup>

### **[s 211.4] Statement under [section 162, Criminal Procedure Code](#).—**

A statement under [section 162, Criminal Procedure Code](#), in answer to questions put by a police-officer making an investigation under section 161 of the Code, cannot be made

the basis of a prosecution under this section.<sup>251</sup> False identification in a Test Identification Parade is not falsely charging.<sup>252</sup>

**4. 'Knowing that there is no just or lawful ground'.—**This expression is the equivalent of the English technical phrase "without reasonable or probable cause," which means an honest belief in the guilt of the accused based upon a full conviction, founded upon reasonable grounds, of the existence of a state of circumstances, which, assuming them to be true, would reasonably lead any ordinarily prudent and cautious man, placed in the position of the accuser, to the conclusion that the person charged was probably guilty of the crime imputed. There must be:

First, an honest belief of the accuser in the guilt of the accused;

Second, such belief must be based on an honest conviction of the existence of the circumstances which led the accuser to that conclusion;

Third, such belief must be based upon reasonable grounds; that is, such grounds as would lead any fairly cautious man in the defendant's situation so to believe;

Fourth, the circumstances so believed and relied on by the accuser must be such as amount to reasonable ground for belief in the guilt of the accused.<sup>253</sup>

A person may, in good faith, institute a charge that is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him, believing there are good grounds for them but in neither case has he committed an offence under this section. To constitute this offence it must be shown that the person instituting criminal proceedings knew there was no just or lawful ground for such proceedings.<sup>254</sup>

In the absence of any special circumstances to rebut it, the judgment of one competent tribunal against the complainant affords very strong evidence of reasonable and probable cause.<sup>255</sup>

**5. 'If such criminal proceeding be instituted'.—**There is a divergence of views between the Calcutta, the Madras and the Patna High Courts on the one hand, and the Allahabad and the Lahore High Courts on the other, on the question whether the latter part of the section applies to such cases of complaints to the police which are disposed of without a formal magisterial inquiry. A Full Bench of the Calcutta High Court has held that the latter part would apply to such cases where the charge related to the more serious offence.<sup>256</sup> This case is followed by the Madras<sup>257</sup> and the Patna<sup>258</sup> High Courts. The test to apply is,—did the person who made the charge intend to set the criminal law in motion against the person on whom the charge is made.<sup>259</sup>

The Allahabad High Court has, on the other hand, held that to constitute the offence defined in the second paragraph of this section, it is necessary that criminal proceedings should be instituted. Where the offence committed does not go further than the making of a false charge to the police, the making of such charge does not amount to institution of criminal proceedings, and the offence committed will fall within the first paragraph, notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph.<sup>260</sup> The former Chief Court of the Punjab held likewise.<sup>261</sup>

**[s 211.5] Complaint by Court: when.—**



A complaint alleging commission of an offence punishable under [section 211 IPC, 1860](#), "in or in relation to any proceedings in any Court", is maintainable only at the instance of that Court or by an officer of that Court authorized in writing for that purpose or some other Court to which that Court is subordinate, is abundantly clear from the language employed in the provision.<sup>262</sup> When the offence under [section 211, IPC, 1860](#), is committed in relation to Court proceedings, cognizance without Court's complaint is barred by section 195 (1)(b)(i), [Cr PC, 1973](#).<sup>263</sup> Since an order of a Magistrate discharging an accused on submission of a police report under [section 173, Cr PC, 1973](#), is a judicial and not administrative order, a complaint by the Magistrate or his superior Court under section 195(1)(b)(i), [Cr PC, 1973](#), would be necessary to take cognizance of an offence under [section 211, IPC, 1860](#).<sup>264</sup> Similarly, remand and bail proceedings too have been held to be Court proceedings and as such a complaint by the Court would be necessary to take cognizance of the offence under [section 211, IPC, 1860](#).<sup>265</sup> This view of the law has now been affirmed by the Supreme Court as well.<sup>266</sup>

### **[s 211.6] Proceedings in any Court.—**

There are three situations that are likely to emerge while examining the question whether there is any proceedings in any Court, namely,

(a) there might not be any proceeding in any Court at all,

(b) proceeding in a Court might actually be pending at the relevant time when cognizance is sought to be taken of the offence punishable under [section 211, IPC, 1860](#) and

(c) there might have been proceedings which had already been concluded though there might not be any proceedings pending in any Court when cognizance of offence under [section 211, IPC, 1860](#) is taken. It is only in second and third situation that [section 195\(1\), Cr PC, 1973](#) would apply. The fact that proceedings had been concluded would not be material because section 195(1) does not require that proceedings in any Court must actually be pending at the time when the question of applying the bar arises if the offence under [section 211, IPC, 1860](#) is alleged to have been committed in relation to those proceedings.<sup>267</sup> A complaint by the concerned Executive Magistrate could be necessary under section 195(1)(a)(i), and there could be no sufficient reason for dispensing with the necessity for a complaint by him for prosecution of an offence under [section 211, IPC, 1860](#) committed in relation to a proceeding before him under [section 144, Cr PC, 1973](#).<sup>268</sup>

### **[s 211.7] Sections 211 and 500 IPC, 1860.—**

If we read [sections 211 and 500 of IPC, 1860](#) together, we would find a clear distinction. Section 211 imposes a punishment in case of a false charge or offence made with the intent to injure someone before any Court of law, whereas section 500 provides for punishment in case of a defamation of a person by any one. Defamation has been defined under section 499 which provides inter alia whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person. Making a false complaint before a Court of law would amount to committing fraud on Court. It is for

the Court to proceed against the erring person. The provision has been made to preserve the sanctity of the Court. Section 500 gives right to sue to a person who is defamed within the meaning of section 499 by the conduct of the accused. These two provisions are totally distinct and can be tried in absence of each other.<sup>269.</sup>

#### **[s 211.8] Civil remedy.—**

A person aggrieved by a false charge may, if he chooses, sue in a civil Court for damages for malicious prosecution, instead of taking criminal proceedings under this section.

#### **[s 211.9] CASES.—**

It was alleged that petitioner's son was kidnapped by opposite party, petitioner's son himself appeared and made his statement that he was not kidnapped, rather he had himself voluntarily gone to marry with a girl. The girl also had appeared and made her statement that petitioner's son and herself have married and for that reason the petitioner threatening to kill them. It was held that the order, taking cognizance of offences against petitioner for falsely implicating the opposite party, is proper.<sup>270.</sup>

#### **[s 211.10] False charge should be made to Court or officer having jurisdiction to investigate.—**

A woman appeared before the Station Staff Officer and accused a non-commissioned officer of rape, and, after a military inquiry, the military authority held that the charge was false and directed the complainant to be prosecuted under this section. The conviction was set aside, as the false charge was not made to a Court having jurisdiction.<sup>271.</sup> Where the accused laid a charge of mischief by fire at a police station, which was reported to be false, and the District Magistrate, upon the receipt of a report to the same effect from the Deputy Magistrate, to whom he had sent the case for a judicial inquiry, passed an order to prosecute the accused, it was held that the order of the District Magistrate was bad, as the matter of the false charge had not come before him in the course of judicial proceedings.<sup>272.</sup>

Where a letter falsely charging a person with having committed an offence was written and posted at Kumbakonam and was addressed to the Inspector-General of Police, Madras, an offence under this section could be said to be completed only when the letter reached the destination, i.e., the office of the Inspector-General of Police, Madras. The communication of the false accusation was, in fact, the laying of the false charge and, unless the matter was actually communicated to the superior officer, it could not be said that a false charge had been made. So, the Magistrate at Kumbakonam would have no territorial jurisdiction to try the case.<sup>273.</sup>