

[IN REVISION.]

1914.

Present: Wood Renton C.J. and De Sampayo A.J.

MEEGAHAWATTA v. LAZARUS.

P. C. Colombo, 3,715.

*Proceedings instituted on a report by the police—May "complainant" be punished for bringing false charge under s. 54 of the Police Ordinance?*

Where proceedings are instituted in a Police Court on a report by the police under section 148 (1) (b) of the Criminal Procedure Code, the Police Magistrate has no right to act under section 54 of the Police Ordinance, 1865, and sentence the "complainant" for having brought a false charge.

Section 54 of the Police Ordinance explained.

**T**HE facts appear from the judgment.

*van Langenberg, K.C., S.-G.*, for the Crown, referred to *Idroos v. Cassim*,<sup>1</sup> *Mendis v. Carlinahamy*,<sup>2</sup> *Uranceris v. Jandris et al.*,<sup>3</sup> *Abdul Caffer v. Carolis*,<sup>4</sup> *Mailvaganam v. Suwaris*,<sup>5</sup> P. C. Matara 300,<sup>6</sup> also (1877) *Ram. 405*, 3 *Tam. 72*.

*Cur. adv. vult.*

November 24, 1914. WOOD RENTON C.J.—

This is an application in revision by a complainant who has been sentenced under section 54 of the Police Ordinance, No. 16 of 1865, to one month's simple imprisonment and to pay a fine of Rs. 50, or in default to undergo one week's simple imprisonment, for having falsely charged a man, Don Lazarus, with having cut him with a katty. The proceedings were instituted on a report by a Sub-Inspector of Police under section 148 (1) (b) of the Criminal Procedure Code, and, therefore, the complainant could not have been dealt with under section 197 of that Code. It is, however, settled (*Idroos v. Cassim*<sup>1</sup>) that section 54 of the Police Ordinance, No. 16 of 1865, is not repealed by the Criminal Procedure Code, and the question for decision now is whether it is competent for the Police Magistrate to punish the complainant under that section. The Solicitor-General has, moreover, invited us to construe the scope of the section as a

<sup>1</sup> (1898) 3 N. L. R. 262.

<sup>2</sup> (1900) 4 N. L. R. 341.

<sup>3</sup> (1897) 3 N. L. R. 80.

<sup>4</sup> (1900) 1 Br. 107.

<sup>5</sup> (1898) 4 *Tamb. 10*.

<sup>6</sup> (1899) 4 *Tamb. 7*.

1914. whole. I would adopt in this connection the language of Bonser C.J. in *Cajoor v. Carolis*<sup>1</sup>:—

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This section is a section which it is not easy to understand. It seems to provide for four separate cases: (1) in which a person is given in charge to a police officer on a false or frivolous charge; (2) in which a false or frivolous charge is made to a police officer behind the back of the accused; (3) in which any information or complaint shall be laid or made before a police officer and shall not be further prosecuted; or (4) in which such an information or complaint as is last mentioned is further prosecuted, and it appears to the Magistrate by whom the case is heard that there were no sufficient grounds for making the charge.

In the first and second of these classes of cases independent proceedings are necessary, unless the false or frivolous charge reaches the Police Magistrate. In the third class independent action is always necessary, as the charge never gets beyond its original formulation. The word "prosecuted" in the third and fourth classes clearly means "proceeded with," and, with all deference to the *obiter dictum* of Withers J. to the contrary in *Idroos v. Cassim*,<sup>2</sup> contemplates, in my opinion, the charge being so "prosecuted," not by the police, but by the person making it.

In the present case the charge was "further prosecuted" by the police, and not by the author of the charge, and, therefore, the Police Magistrate had, in my opinion, no right to act under section 54 of the Police Ordinance, 1865, No. 16 of 1865. Acting in revision, I would set aside the conviction and the sentence and acquit the complainant.

DE SAMPAYO A.J.—I agree.

*Set aside.*

<sup>1</sup> (1900) 1 Br. 107.

<sup>2</sup> (1898) 3 N. L. R. 262.