

1915.

Present: Wood Renton C.J. and Pereira J.

SAMARASINHE v. PONNIAH.

209—P. C. Colombo, 51,886.

Information to police against another—Failure to prosecute the charge farther—Police Ordinance No. 18 of 1865, s. 54.

Where a person gave information to the police against a specified person, and thereafter failed to further prosecute the charge,—

Held, that he was liable to be convicted under section 54 of the Police Ordinance.

WOOD RENTON C.J.—Section 54 of the Police Ordinance penalizes the bare laying of an information or making of a complaint which is not further prosecuted. The section is permissive, and the Courts may be depended upon not to put the law into motion except in cases where punishment is necessary.

PEREIRA J.—The giving by anybody of information to a police officer of the mere fact that an offence has been committed, and even that a particular individual is suspected as the offender, so as to invoke the aid of the police in making inquiry, and the omission thereafter to prosecute anybody in Court, can hardly be said to be a case falling within the purview of section 54.

THIS case was reserved for argument before a bench of two Judges by Ennis J. The facts appear from the judgment.

1915.

*Samara-
singhe v.
Ponniak*

Arulanandam, for accused, appellant.—The construction placed on section 54 of the Police Ordinance by the Police Magistrate will reduce the law to an absurdity. A man who lays information against a person may subsequently find out that his accusation was groundless. If he desists from prosecuting the man, is he to be fined under section 54 ?

Surely a man must be acquitted if he can establish that he had exercised reasonable care in making his charge to the police, or in other words, that he had sufficient grounds for laying the information.

Counsel also referred to 1 Br. 108, 13 N. L. R. 159, 3 N. L. R. 262.

Grenier, for respondent.—Section 54 is part of the living law of the Colony, and must be given effect to. According to the letter of the law, omitting to prosecute a case further is an offence under any circumstance.

Cur. adv. vult.

March 31, 1915. WOOD RENTON C.J.—

This case raises an interesting and a fresh point in the construction of an extremely difficult enactment, namely, section 54 of the Police Ordinance (No. 16 of 1865). The accused-appellant was charged under that section with having given information to the police against one Uduman, which he thereafter failed to further prosecute. The learned Police Magistrate convicted him and fined him Rs. 50. The petition of appeal alleges that the Police Magistrate had refused to permit the accused to cite witnesses to prove that he had sufficient grounds for making the charge. The learned Police Magistrate in a letter to the Registrar of this Court states that he had permitted the witnesses in the list tendered to him in Court by the accused's proctor to be summoned; that he refused summons on a subsequent list handed into the office by the accused because it did not bear his proctor's signature, and did not disclose how the evidence of the witnesses named was material to the case; and that at the trial the advocate for the accused did not wish to call any witnesses, but contented himself with the argument that the offence was a technical one. I see no reason to differ from the finding of the learned Police Magistrate on the evidence before him. The reason given by the accused for his failure to proceed with the prosecution, namely, that his witnesses had been intimidated, was not satisfactory one, and if the circumstances disclosed an offence at all, it deserves substantial punishment. The question remains, however whether the mere laying of an information or making of a complaint to a police officer without its further prosecution is an offence within the meaning of section 54 of the Police Ordinance, 1865 (No. 16 of 1865), or whether it is open to an informant or complainant,

1915.
 WOOD
 REXRON C.J.
 Samara-
 singhe v.
 Ponniah

against whom a charge under section 54 is brought, to show that he had sufficient grounds for laying the information or making the complaint as a justification, and not merely an extenuation of his conduct. The learned Police Magistrate has interpreted the section in the former sense, and after careful consideration I am of opinion that he has come to a right conclusion. The clear effect of the language of the section is to penalize the bare laying of an information or making of a complaint which is not further prosecuted, and I think that the Legislature must be taken to have meant what it said. The section is permissive, and the Courts may be depended upon not to put the law into motion except in cases where punishment is necessary. The learned Police Magistrate observes that the conduct of the accused in this case belongs to a type too frequently met with, "the object being to get the police to act in cases in which they would not otherwise interfere, and to get the person accused arrested and locked up for the night in the police station, after which the accused quietly drops the matter."

It is very desirable that such a tendency should be checked, and that formal complaints should not be made except upon materials which the complainant is prepared to submit to the judgment of a court of law. If the information at his disposal does not warrant him in doing this, his proper course is to communicate his suspicions to the police and ask them to make further inquiry.

I would dismiss the appeal.

PEREIRA J.—

The question in this case concerns the exact meaning to be assigned to the words "In every case in which any information or complaint shall be laid or made before a police officer and shall not be further prosecuted" in section 54 of the Police Ordinance. Is it intended by these words that the laying of any information, or the making of any complaint, however vague and indefinite, before a police officer, and the omission to prosecute it further, should be regarded as an offence? I do not think so. The laying of any information or the making of any complaint before any person connotes the fact of there being a particular individual against whom the information is laid or the complaint is made; indeed, the words "against any person" appearing in the section immediately before the words quoted above were, I think, intended to be read into those words. And, thus, what was intended by the section was that the omission to prosecute any specific information laid or any specific complaint made before a police officer against a particular individual should be regarded as an offence. The giving by anybody of information to a police officer of the mere fact that an offence has been committed, and even that a particular individual is suspected as the offender, so as to invoke the aid of the police in making inquiry,

and the omission thereafter to prosecute anybody in Court, can hardly be said to be a case falling within the purview of the words quoted above.

In the present case specific complaint was made by the accused to the police against one Uduman, and therefore, I think, that the conviction is right, and that the appeal should be dismissed.

1915.
PEREIRA J.
*Samara-
singhe v.
Ponniah*

Appeal dismissed.

