

Present : Schneider A.J.

1921.

THE KING v. CORNELIS.

675-676—P. C. Balapitiya, 49,463.

*Crown costs and compensation—Proceedings instituted on a written report of the Peace Officer—Magistrate must record and consider objections—Two charges—Causing police officer to arrest and false evidence—One sentence inappropriate—Prosecution fabrication—Summary punishment inappropriate—Contradictory statements by a witness in Police Court—Criminal Procedure Code, ss. 197, 434, 148.*

A Magistrate has no power to order payment of Crown costs or compensation when the proceedings are instituted by a written report made to the Magistrate by a Peace Officer.

The Magistrate must record and consider any objection the complainant may make before ordering him to pay Crown costs and compensation under section 197 of the Criminal Procedure Code.

Where a Magistrate charged the appellant (1) under section 437 with having caused a Peace Officer to arrest the first accused without sufficient grounds, and (2) with having given false evidence in the course of the case, and imposed a fine of Rs. 50 in respect of both offences,—

*Held*, that there should have been a separate sentence in respect of each offence.

Before a person is ordered to pay compensation under section 437, he must be asked to show cause against it.

Where a Magistrate is of opinion that a prosecution is a fabrication, proceedings under section 440 are not appropriate. The person giving false evidence should, under such circumstances, be dealt with under section 190 of the Penal Code.

A Magistrate cannot punish a witness under section 440 for making two contradictory statements.

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

*Ameresekera*, for appellant.

August 4, 1921. SCHNEIDER A.J.—

The first appellant, who is a watcher employed under the second appellant, charged two persons with the theft of some cinnamon. The second appellant was one of the witnesses for the prosecution. One of the persons charged was seized by the complainant and his master and given into the custody of the Police Officer of Polwatta, and was produced in police custody before the Court. After hearing

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the evidence of the complainant and his master and that of another witness, the Magistrate discharged the first accused. The second was reported to be absconding.

He then charged the complainant with having brought a false and vexatious charge, and, without recording or considering any objection the complainant might have urged, condemned him to pay Rs. 10 as compensation to the accused and Rs. 5 as Crown costs. This order is clearly wrong for two reasons; First, he failed to comply with the provisions of section 197 (3) of the Criminal Procedure Code. Besides that express provision of the law, I would direct his attention to the case of *Silva v. Joana*.<sup>1</sup> The second reason is even stronger. The proceedings in this case were instituted on a written report made to the Magistrate by a Peace Officer, that is, under section 148 (1) (b) of the Criminal Procedure Code. That being so, the provisions of section 197 (1) do not apply because they are restricted to cases instituted under section 148 (1) (a). But there is no appeal against an order to pay Crown costs (section 198), nor is there an appeal, except upon a matter of law, in regard to the order to pay compensation, the amount being Rs. 10. Both these orders are irregular in this case as I have pointed out. I would, therefore, act in revision and set them aside. The Magistrate then proceeded to charge both the appellants: (1) Under section 437 with having caused a Peace Officer to arrest the first accused without sufficient grounds; and (2) with having given false evidence in the course of this case, in that each of them made two statements contradictory the one of the other. The purport of these contradictory statements was the same in the case of each of the accused. Each of them at first denied having struck the first accused, but subsequently modified this by stating that when the accused stabbed back he was struck on the hand. In respect of both these offences, he condemned each of the accused to pay a fine of Rs. 50.

As the offences were distinct, the Magistrate should have imposed sentences in respect of each of the offences. It is not in order to impose one sentence, especially in this instance, as the sum which is imposed to be paid under section 437 is awarded as compensation to the person wrongfully arrested, and the Magistrate has not directed that any part of the sum of Rs. 50 is to be paid to the first accused. The order made under section 437 is not sustainable. It is not clear that the appellants were asked to show cause. It was necessary to do so. See the case of *The King v. Perera*.<sup>2</sup> But as the appellants have made some sort of a statement, I will assume that they have been called upon for their defence. However, I would set aside this order. The Magistrate does not appear to have noticed a statement in the Peace Officer's report that he questioned the accused, and that the latter stated that he and his uncle (meaning the second accused) cut the cinnamon, and that his uncle ran away, and

<sup>1</sup> 2 *Bal. Reports* 60.<sup>2</sup> (1915) 18 *N. L. R.* 215.

that he, the first accused, was seized. This admission, apart from anything stated by the appellants, is sufficient justification for the headman to arrest the accused, although it would not be evidence admissible in a trial of the accused, it is admissible upon the question whether the accused was given into arrest upon insufficient ground.

There remains the conviction under section 440. That too is bad. That section was not intended for a case such as this. The Magistrate appears to have taken the view that the case for the prosecution was an entire fabrication, and therefore the evidence produced in support of it false. False evidence given in such a case is punishable under section 190 of the Penal Code, and should be the subject matter of a prosecution. It cannot be adequately dealt with summarily under section 440 of the Criminal Procedure Code. Nor does the mere making of two contradictory statements render a witness punishable under that section, as has been pointed out in the case of *Theneris v. Syanoris*.<sup>1</sup>

I therefore acquit the appellants altogether.

*Set aside.*

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