

DE SILVA *v.* MAMMADU *et al.*1897.
August 30.*P. C., Badulla, 8,835.**Compensation—Vexatious complaint—Procedure before punishment therefor.*

The power given to Police Magistrates of punishing a person for making a vexatious complaint is a very wholesome one, but it must be exercised with great circumspection; and it is only right and fair that, before a person is condemned to pay compensation for instituting a vexatious prosecution, he should be called upon to show cause why he should not be so condemned.

A vexatious complaint is one that is brought without cause or for a matter so trivial that no person of ordinary sense or temper would complain of it, with intent to harass the person complained of.

THIS was an appeal by the complainant against an order condemning him to pay to the accused, as compensation for vexatious prosecution, Rs. 50. The facts of the case are fully set forth in the judgment.

De Vos, for appellant.

30th August, 1897. WITHERS, J.—

Under section 236 of the amending Criminal Procedure Code, No. 22 of 1890, the appellant has been fined Rs. 50 for instituting a vexatious complaint. There were five accused, so that each received Rs. 10. This was the extreme penalty, and the question is, Did the Magistrate exercise a sound discretion in imposing this fine? On the 20th July the appellant complained to the Court that a bull belonging to a firm of Moorish traders, which they had entrusted to him, had been stolen three days before. He charged two Moormen and three Sinhalese with the theft of the animal.

At the same time as the complaint was lodged, the Police Sergeant brought up four of the accused before the Court and produced the hide of the stolen bull. The complainant was examined, and his story was shortly this. He had been absent from his village, where the bull was in charge of his cattle-keeper Kaurala or Kiribanda, and on his return on the 20th July he was told that this bull had been stolen and slaughtered. His brother Kineris and the Police Sergeant gave him particulars, which he embodied in his complaint, and without the least delay he laid his complaint before the Court. The case was tried, and amongst other witnesses his two informants and the cattle-keeper Kiribanda were examined.

The Magistrate did not call upon the accused for their defence. He took a strong view against the case for the prosecution.

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He said that, except the fact of the theft and the slaughter of the bull, there was not a word of truth in the case. His reason for fining the complainant was this, to use his words: "The complainant should not have signed the plaint without assuring himself that there were reasonable grounds for charging the accused. As it now stands it appears to me a vexatious case, especially against the third, fourth, and fifth accused." There is no definition in the Code of the term vexatious, but I understand a vexatious complaint to mean one that is brought without cause or for a matter so trivial that no person of ordinary sense or temper (see section 88 of Penal Code) would complain of it, with intent to harass the person complained of. The fact of making a trumpery or a groundless charge would in many cases, without evidence of personal ill-will, raise a presumption of intent to harass. What Bacon wrote on this subject is noteworthy:—"Albeit the party grieved thereby may have some reason to complain of an untrue charge, yet that may be not well to call it an unjust vexation."

The power of punishing a person for making a vexatious complaint is a very wholesome one, but it must be exercised with great circumspection. If it is used indiscreetly no one will be found bold enough to prosecute for actual offences.

In the present case there was direct evidence of the theft of the bull by the two first accused, and after inquiry into the matter at the time the constable arrested the first two accused, and the sergeant the third and fourth accused.

It is only fair to assume that these officers had received information which they thought credible before making the arrest.

Having regard to the fact that four of the suspected characters had been arrested, that there were people prepared to swear to the first two accused being seen with the stolen animal, and that the constable who had inquired into the charge on the spot had furnished the plaintiff with the particulars in his plaint, can it be said that this charge was made recklessly and without cause?

It is not pretended that the complainant bore any malice towards any of the accused. In my opinion this was not a proper case for punishing the complainant. Then the Magistrate did not ask the complainant to show cause why he should not be fined for instituting a vexatious complaint. Surely it is only right and fair to do so. Liability to fine and imprisonment marks conduct of the kind as an offence.

An offender is not punished without being told of his offence, and asked what he has to say why he should not be punished.

This was a very important part of the old procedure in cases of this kind under Ordinance No. 11 of 1868, section 106. Section 236 of Ordinance No. 22 of 1890 is taken word for word from section 250 of the Indian Criminal Procedure Code as it was. Even then the High Court of Calcutta held that a Magistrate should call upon a complainant to show cause why he should not be fined. Whether to remove doubts or not I do not know, but it was afterwards enacted that the Magistrate before making a direction to pay compensation should record and consider any objection which the complainant or informant may urge against the direction, and if the Magistrate decides to direct compensation he must give his reasons for doing so.

Here the Magistrate did give his reasons, but I do not think them sufficient, and in my opinion the order directing complainant to pay compensation must be discharged.

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