

1943

Present: de Kretzer J.

CADER, Appellant, and KARUNARATNE, Respondent.

331—M. C. Colombo, 9,415.

*Criminal Procedure—Proceedings against accused on Police report—Accused appears in Court—Magistrate not bound to examine complainant before framing charge—Criminal Procedure Code, s. 151 (3).*

Where proceedings are initiated against an accused person under section 148 (1) (b) of the Criminal Procedure Code on a report by the Police and the accused appears in Court without a warrant or summons the Magistrate is not bound to examine the complainant before framing a charge.

*Varghese v. Perera* (43 N. L. R. 564) distinguished.

**A** PPEAL from a conviction by the Magistrate of Colombo.

*H. W. Jayewardene* (with him *S. Ahmed*), for appellant.

*H. A. Wijemanne, C.C.*, for complainant, respondent.

June 21, 1943. DE KRETZER J.—

The accused was charged on a report made by the Police under section 148 (1) (b) of the Criminal Procedure Code. He had been arrested the previous night and then he had given bail to appear in Court. At the time the report was received by the Court, the accused appeared before Court. The Magistrate thereupon framed a charge to which the accused pleaded not guilty and in due course the accused was tried and convicted on evidence which the Magistrate characterised as clear evidence. There is no reason to interfere with the conviction on the facts. For the accused it is urged that the accused had not been properly charged in terms of section 187 (1) of the Criminal Procedure Code and consequently there was no charge whatever and therefore the whole trial was bad. I was referred to a decision of Soertsz J. in *Varghese v. Perera*<sup>1</sup>. In that case, however, the accused was produced in custody by the

<sup>1</sup> 43 N. L. R. 564.

prosecuting officer. The result was that under section 151 (2) it was obligatory on the Magistrate to forthwith examine on oath the person who brought the accused before the Court and it was only after such examination that the charge could be framed in terms of section 187 (1) of the Criminal Procedure Code. In the present case accused was not before the Court in the manner contemplated under section 148 (1) (d) to which alone the provisions of section 151 (2) applies. This is a case governed by section 148 (1) (b) and section 151 (3) which applies to such a case states that the Magistrate shall issue a summons or warrant as the case may be. This proviso states that before issuing a warrant the Magistrate shall examine the complainant on oath or some material witness and may do so before issuing a summons. So that in a case where summons should issue it is not obligatory on the Magistrate to examine on oath the complainant. In the present case the accused appeared without warrant or summons. It was a preliminary to the issue of either of these that any examination would take place, but when it was unnecessary to issue a summons or warrant because of the appearance of the accused then the resulting position was that the Magistrate had before him a report by the Police on which some action had to be taken. If it had been a type of case provided for in the proviso 187 (1) then the Magistrate without framing a charge might have read that report but, since the proviso did not apply to this case, it seems to me that the obvious course for the Magistrate to pursue was to frame a charge unless for some reason he desired to have evidence before framing the charge. That is exactly what the Magistrate did in this case. It is said that he merely transcribed the report. I do not see any objection to a report being transcribed if it states the charge in perfect terms. It would be rather absurd if the report is excellently worded for the Magistrate to have to mutilate the charge in some way in order to produce a difference in wording. The charge as framed is quite clear and good. The accused and his legal advisers quite understood it and they were given ample opportunity not only to take objection to it at once but to do it after careful perusal. I cannot therefore see any substance in the objection. The legal objection fails. The appeal is dismissed.

*Affirmed.*

