

Present: Dalton J.

1926.

BABI NONA v. WIJEYSINGHE.

734—P. C. Balapitiya, 8,227.

*Appeal—Charge based on written report by Inspector of Police—Aggrieved party—Right of appeal—Criminal Procedure Code, s. 338.*

Where proceedings are instituted in the Police Court on a written report by a police officer the aggrieved party has no right of appeal.

**A**PPEAL from an order by the Police Magistrate of Balapitiya. The proceedings in the Police Court were instituted by the Sub-Inspector of Police, Kosgoda, under section 148 (1) (b) of the Criminal Procedure Code. The charge as set out in the report of the Sub-Inspector was voluntarily causing hurt to Babi Nona with a katty. After taking some evidence the Magistrate referred the injured party to the Village Tribunal.

N. E. Weerasooriya (with Batuwantudawa), for complainant, appellant.

December 2, 1926. DALTON J.—

The appellant in this case is, according to the petition of appeal, one Karavitavitauage Babi Nona, who is also stated in the petition to have been the complainant in the Court below. It is agreed, however, that the proceedings in the Police Court were instituted by the Sub-Inspector of Police, Kosgoda, under the provisions of section 148 (1) (b) of the Criminal Procedure Code. The charge set out in the written report signed by the Sub-Inspector is one of voluntarily causing hurt to Babi Nona with a katty. After taking some evidence the Magistrate made an order referring "the injured person" to the Village Tribunal. From that order the Sub-Inspector does not appeal; this appeal being lodged, as I have stated, by Babi Nona. In the course of his order he deals with objections raised before him against such an order being made.

In this Court there has been no appearance on behalf of the respondent, and therefore I have not had the benefit of any argument against the contentions put forward by Mr. Weerasooriya.

The first question to be decided is whether Babi Nona has any right of appeal; the parties to the proceedings in the lower Court being the Sub-Inspector, who instituted the proceedings, and the accused person, Don Oralias Wijesinghe. She may well be dissatisfied with the order of the Court, but is she a party in the case

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to whom the right of appeal is given within the meaning of section 338 of the Criminal Procedure Code. She did not institute the proceedings, although she could have done so, had she wished, under the provisions of sub-section (1) (a) of section 148 of the Criminal Procedure Code. I have heard nothing from Mr. Weerasooriya which satisfies me that Babi Nona is a party in the case as instituted. As I pointed out in *Nonis v. Appuhamy*,<sup>1</sup> it would appear that where section 148 provides for the institution of proceedings by complaint or written report, the person making the complaint or written report is regarded as the party instituting the proceedings against the accused person. This matter has been considered from another aspect in *Sedris v. Singh*,<sup>2</sup> but the Court there left it to await further elucidation. On the facts before me in this appeal, I have come to the conclusion that Babi Nona has no right of appeal, and therefore her appeal must be dismissed.

The further questions raised, first, as to whether the offence charged, which is laid under section 315 of the Penal Code, falls within the schedule of Ordinance No. 9 of 1924 (The Village Communities Ordinance) as held by the Magistrate, and second, whether Babi Nona can avail herself of the provisions of section 61 of that Ordinance by taking advantage of the fact that the proceedings were instituted by a public officer, thus ousting the exclusive jurisdiction of the Village Tribunal, therefore need not be decided. So far as these points were argued, I have very considerable doubts as to the soundness of the reasoning of the learned Magistrate upon which he arrives at his conclusion on the first and also as to the correctness of his order; on the second, it is difficult to see what assistance section 61 affords the present appellant.

The appeal must, for the reason I have stated, be dismissed.

*Appeal dismissed.*

<sup>1</sup> 27 N. L. R. 430.

<sup>2</sup> 23 N. L. R. 171.