Present: Mr. Justice Grenier.

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THE KING *v.* GIRIHAGAMA.

D. C. (Crim.), Kandy, 1,974.

Penal Code, ss. 180 and 208—Information to Superintendent of Police—"Institution of criminal proceedings."

Where the accused gave information to the Superintendent of Police that certain persons had set fire to a house belonging to him, and such information was found to be false,—

Held, that the accused was guilty of offences under sections 180 and 208 of the Penal Code, and that he was liable to punishment under both sections.

The giving of information to a police officer of a cognizable offence against a specified person amounts to 'the institution of criminal proceedings' within the meaning of section 208 of the Penal Code.

Queen Empress v. Nanjunda Rau[1] and *Karim Buksh v. Queen Empress*[2] followed.

THE accused was convicted of offences under sections 180 and 208 of the Penal Code, in that he gave information to the Superintendent of Police that certain persons had set fire to a house belonging to him knowing the same to be false, and he was sentenced to two years' rigorous imprisonment.

In appeal—

Bawa (with him *Tambayah*), for the accused, appellant.

Walter Pereira, K.C., S.-G., for the Crown.

Cur. adv. vult.

May 19, 1909. GRENIER A.J.—

The facts formed by the District Judge are, in my opinion, very clear, and point to the conclusion that the appellant knew that the information he gave the Superintendent of Police was false, and that there was no foundation for the charge of arson that he made against Etteriwatte and five others. The District Judge has given his reasons for holding that the information given by the appellant was false and false to his knowledge, and they appear to me satisfactory and reasonably conclusive. The fact that tells very strongly against the appellant is that he did not call in his defence the witnesses on whose information he professed to act in preferring the charge of arson. There are no grounds therefore on which I can interfere with the verdict of the District Judge on the facts.

It was urged by Mr. Bawa that the appellant should not have been convicted and punished on both counts of the indictment, as the facts are the same, and relate to the same transaction. I find that

[1] *I. L. R. 20 Mad. 79.* [2] *I. L. R. 17 Cal. 574.*

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the offence charged in the first count is quite distinct from that which forms the subject of the second count, and although they may have been committed in the course of one transaction, they are, in my opinion, separable and independent of each other. I am bound by the judgment of the Full Court in the case of the *King v. Arnolis Appu et al.*,[1] where it was held that theft and house-breaking by night with intent to commit theft are two distinct offences, and two separate sentences may be passed under section 17 of the Criminal Procedure Code.

In the present case the appellant gave false information to the Superintendent of Police, which constituted an offence under section 180, and in giving such information with intent to cause injury he instituted or caused to be instituted a criminal proceeding against the persons I have mentioned, which constituted quite a different offence under section 208. As regards the question whether the giving of information to a police officer is tantamount to the institution of a criminal proceeding, I find there are conflicting decisions of the High Court in India on the point. I am inclined to take the view of the Madras High Court in the case of *Queen Empress v. Nanjunda Rau*,[2] which followed the decision of a Full Bench of the Calcutta High Court in the case of *Karim Buksh v. Queen Empress*.[3] In the Madras case Collin C.J. said : " We are unable to find any warrant for holding that the words 'the institution of criminal proceedings' should be limited to the bringing of a charge before the Magistrate, or to action by the Magistrate or Police against the person charged. It seems to us that when, as in this case, a charge of a cognizable offence is made to the Police against a specified person, criminal proceedings within the meaning of the section have been instituted just as much as if the charge had been made before the Magistrate."

I have, therefore, little or no hesitation in holding that the second count of the indictment is sustainable in law. Here too, as in the Madras case, the offence was a cognizable one; and although, perhaps, the powers of the Indian Police are larger than those of Ceylon Police, the same principle or rule in regard to arrests without a warrant, in the case of cognizable offences, equally applies.

Another point raised by Mr. Bawa was that the Magistrate had wrongly excluded certain evidence relating to the information that the appellant had received from the person who professed to have seen the house being set fire to. The District Judge has I find recorded the material parts of the information so given, and I have considered the evidence in arriving at a conclusion on the whole case.

The conviction and sentence must be affirmed.

Appeal dismissed.

[1] *2 Balasingham 81.* [2] *I. L. R. 20 Mad. 79.*
[3] *I. L. R. 17 Cal. 574.*