

Present: Shaw J. and De Sampayo J.

PODI APPU *v.* PEDRIC SINNO.

*P. C. Balapitiya, 44,646.*

(*Special Case.*)

*Police Ordinance, s. 54—Power of Magistrate to punish complainant for bringing false charges—Non-summary inquiry.*

A Magistrate can punish a person, under section 54 of the Police Ordinance, 1865, for bringing a false charge only in cases which he has jurisdiction to try summarily. He cannot punish under this section a complainant in a non-summary case.

THIS case was referred to the Supreme Court by the learned Police Magistrate, under section 353 of the Criminal Procedure Code.

*E. T. de Silva*, for the accused.—In a non-summary case the order of the Magistrate is not final; the case may be re-opened. It would be anomalous for a Magistrate to punish, under the Police Ordinance, a witness for the prosecution for giving false evidence when the Attorney-General may re-open the case and commit the accused for trial.

“Hear” means to hear and determine (see *Stroud*). Hence section 54 has no application to non-summary cases.

*Garvin, S.-G.*, appeared on notice from the Supreme Court. He cited *P. C. Colombo, 3,707*,<sup>1</sup> and *P. C. Colombo, 1,888*.<sup>2</sup>

*Cur. adv. vult.*

January 25, 1918. SHAW J.—

This case raises a question of law, referred by the Magistrate for the opinion of the Supreme Court.

The complainant charged certain persons with robbery and causing hurt, under section 382 of the Ceylon Penal Code. The Magistrate having instituted non-summary proceedings against the accused persons, and having heard the evidence of the complainant and his witnesses, discharged the accused, being of opinion that the charge was a deliberately false one. He, thereupon, called upon the complainant to show cause why he should not be punished under the provisions of section 54 of the Police Ordinance, 1865.

The complainant showed no grounds on the merits, but it was contended on his behalf that the Magistrate had no power under that section to call upon him to show cause why he should not be

<sup>1</sup> *S. C. Min., Sept. 22, 1914.*

<sup>2</sup> *S. C. Min., Oct. 7, 1913.*

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convicted, because the charge before the Magistrate was not one which he could try summarily, and *Rex v. Jayawickrema*<sup>1</sup> was cited in support of the contention.

The Magistrate, nevertheless, convicted the complainant, and ordered him to pay a fine of Rs. 50, in default one week's simple imprisonment, being of opinion that the case referred to was wrongly decided, and referred the matter for the opinion of this Court.

I am of opinion that the conviction is wrong, and cannot be supported. The case referred to followed a decision of Bonser C.J. in *Gajoor v. Carolis*,<sup>2</sup> in which the point was carefully considered. The construction of the section is by no means clear from difficulties, but it would appear that the only person who can punish summarily under the section is "the Magistrate by whom the case is heard". These words do not seem to me to be applicable to non-summary proceedings, in which a Magistrate merely holds an inquiry and records evidence with a view of further proceedings in a higher Court, if such are directed by the Attorney-General. As was pointed out in the course of the argument at the time *Gajoor v. Carolis*<sup>2</sup> was decided, the inquiry in non-summary proceedings might have been before a Justice of the Peace, and, indeed, was only taken by a Magistrate in his capacity of Justice.

The Penal Code contains ample provisions for punishing offences of this nature under the ordinary procedure for the trial of offences, and I do not think that a summary procedure of the nature provided for by the section under consideration should be extended beyond the scope its language clearly justifies.

I would accordingly set aside the conviction, the question of the legality of which is referred to us.

DE SAMPAYO J.—I agree.

*Set aside.*