

1903.
September 10.

Present: Mr. Justice Middleton.

THE KING *v.* ALAHAKOON *et al.*

D. C. (Criminal), Kegalla, 1,308.

Magistrate initiating proceedings—Committal by such Magistrate—Validity—" Party "—" Personally interested "—Courts Ordinance (No. 1 of 1889), s. 90—Criminal Procedure Code, s. 148 (c)—Penal Code, s. 208.

Where a Police Magistrate institutes proceedings against an accused under section 148 (c) of the Criminal Procedure Code (No. 15 of 1898) such Magistrate cannot be said to be a party to, or to be personally interested in, the proceedings within the meaning of section 90 of the Courts Ordinance (No. 1 of 1889); and it is no objection to the validity of a committal that it was made by a Magistrate who had instituted proceedings as aforesaid.

THE accused charged one Kirala in P. C., Kegalla, 4,916, with committing mischief by fire. The Magistrate, who inquired into the charge, being of opinion that it was false, initiated proceedings against the accused under section 148 (c) of the Criminal Procedure Code and committed them for trial on an indictment charging them with an offence under section 208 of the Penal Code. At the trial it was objected, on behalf of the accused, that they were not properly committed for trial, inasmuch as the Magistrate, who committed them, was a party to the proceedings by reason of his having initiated proceedings against them; and that the committal was therefore bad. The District Judge upheld the objection to the committal and discharged the accused.

The Attorney-General appealed.

Walter Pereira, K.C., for the Crown.

Bawa, for the respondent.

Cur. adv. vult.

10th September, 1906. MIDDLETON J.—

This was an appeal by the Attorney-General from an order of the District Judge discharging the accused on an indictment laid before him, on the ground that the Magistrate who committed the case for trial was a party or personally interested in the case, and under section 90 of "The Courts Ordinance, 1889," was not competent to commit the case for trial.

The Magistrate, it appears, in the course of taking evidence in P.C., 4,916, was induced thereby to issue warrants against the present accused on the charge for which they are now indicted under section 208 of the Penal Code, and the learned District Judge holds that this makes the Magistrate a party or personally interested in the case.

1906
September 10.
MIDDLETON
J.

To my mind there is a very considerable difference between making a charge as prosecutor like a police officer or as complainant upon an offence touching one's personal interests and being induced as a Magistrate officially to issue process upon evidence which appears to show an offence has been committed. I take it that the words "a party or personally interested" mean that the Magistrate must be interested as an individual directly as a prosecutor or pecuniarily or affected personally by the offence and not interested as a Magistrate whose public duties render it obligatory on him to take care that when evidence discloses other co-offenders than those before him or that an offence has been committed by some one else, process should issue to compel them to face investigation alone or with the original accused.

The Magistrate here apparently acted under section 148 (c) of the Criminal Procedure Code and recorded a brief statement of his grounds for issuing process as required by section 149 (3), and the former sub-section (c) protects an accused person, if he requires it, from being tried by the Magistrate upon whose knowledge or suspicion he has been arrested. In the present case the District Judge about to try him was not the Magistrate who committed him.

Even if a Magistrate under such circumstances could be looked upon as a party, my view is that the later section 148 (c) must be regarded as modifying the terms of the earlier section 90 of the Courts Ordinance.

In the case of *Reg. v. Appuhamy* (1) the Magistrate formally made himself a party to a complaint for giving false evidence, and was no doubt rightly held to be a party by Clarence J.; but under the existing Criminal Procedure Code a Magistrate may now under section 440 deal summarily with such a case, and the procedure is varied in many particulars.

In my opinion the Magistrate did not make himself a party in this case by acting under section 148 (c), nor was he personally interested either directly or pecuniarily, and I allow the appeal and set aside the order of discharge and direct that the indictment laid by the Attorney-General be tried in due course.