

1969

Present : Alles, J., and de Kretser, J.

P. ARUMUGAM, Petitioner, and THE OFFICER-IN-CHARGE,
POLICE STATION, MIRIHANA, Respondent

*S. C. 633/68—Application for a Mandate in the nature of a
Writ of Mandamus*

*Criminal Procedure Code, as amended by Act No. 42 of 1961—Section 122A(1)—Right
of an accused person to obtain certified copies of “first information”—Meaning
of expression “first information”—Sections 121 (1), 121 (2), 148.*

Section 122 A (1) of the Criminal Procedure Code does not enable a person
accused of a cognizable offence to obtain certified copies of the “notes and
observations” made by a police officer concerning the offence, if the notes and
observations do not relate to any part of the first information in regard to the
offence.

A report under section 148 (1) (b) of the Criminal Procedure Code need not
always be preceded by information recorded under section 121 (1). Section 121 (2)
of the Criminal Procedure Code contemplates the institution of proceedings
without a first information being recorded under section 121 (1).

Panditaratne v. The Assistant Superintendent of Police, Kegalle (72 N. L. R. 273)
considered.

APPPLICATION for a writ of *mandamus* on the officer-in-charge
of the Mirihana Police Station.

Mark Fernando, for the petitioner.

K. Ratnesar, Crown Counsel, for the respondent

Cur adv. vult.

January 25, 1969. ALLES, J.—

This is an application for the issue of a mandate in the nature of a writ
of *mandamus* ordering and requiring the respondent, who is the Officer-in-
Charge of the Mirihana Police Station to furnish to the petitioner a
certified copy of the “notes and observations” of Sub-Inspector Silva
of the Mirihana Police made in the course of the investigation in M. C.
Colombo South Case No. 87875/B. The petitioner who was charged in
M.C. Colombo South Case No. 87875/B with having sold a pound of
Bombay onions above the controlled rate to Police Constable Siriwardene
of the Mirihana Police, maintained that under section 122A (1) of the
amendment to the Criminal Procedure Code introduced by Ordinance
No. 42 of 1961, the “notes and observations” of Sub-Inspector Silva
constituted a first information given under sub-section (1) to section 121
in consequence of which proceedings were instituted against him in the
Magistrate’s Court of Colombo South under section 148 of the Criminal

Procedure Code. The application for the certified copy of this information and the statement made by Police Constable Siriwardene in the course of this investigation was made to the Magistrate, who, by his order of the 4th of March 1968, stated that the petitioner was entitled to the first information given to the Officer-in-Charge of the Mirihana Police Station in consequence of which proceedings were instituted against the petitioner. He also stated in his order that the petitioner was entitled to obtain a certified copy of the statement of Police Constable Siriwardene to whom the accused is alleged to have sold the article in contravention of the Control of Prices Act. The latter statement has been furnished to the petitioner and the only matter presently in issue is whether the petitioner is entitled to the "notes and observations" of Sub-Inspector Silva under the provisions of the law.

It would appear from the proceedings furnished to Court and the submissions of Counsel that the prosecution launched against the petitioner for a contravention of the Control of Prices Act was the result of some information that was received by the Officer-in-Charge of the Mirihana Police Station that the petitioner was suspected to be profiteering in the sale of Bombay onions. This information it is conceded cannot be the first information recorded under section 121 (1) of the Criminal Procedure Code. In *Emperor v. Nazir Ahmad*¹ it was held that

"In the case of cognizable offences, receipt and recording of a first information report is not a condition precedent to the setting in motion of a criminal investigation. No doubt in the great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way, but there is no reason why the police, if in possession through their own knowledge or by means of credible though informal intelligence which genuinely leads them to the belief that a cognizable offence has been committed, should not of their own motion undertake an investigation into the truth of the matters alleged."

This observation is in conformity with the provisions of section 121 (2) of the Criminal Procedure Code. That section contemplates that the report to the Magistrate's Court should be preceded by the information recorded under section 121 (1) or otherwise. Section 121 (2) therefore contemplates the institution of proceedings without a first information being recorded under section 121 (1). If, for instance, an offence is committed in the precincts of the Police Station, and in the presence of the Officer-in-Charge of the Police Station, it can hardly be said that any information was given in regard to the commission of a cognizable offence. In this connection, I must admit that I was in error when I made the observation in *Panditaratne v. The Assistant Superintendent of Police, Kegalle*² that the report under section 148 (1) (b) should be preceded by information recorded under section 121 (1) of the Code.

¹ A. I. R. (32) 1945 P. C. 18. ² (1967) 72 N. L. R. 273 at 276.; 75 C. L. W. 40 at 42..

In the instant case, can it be said that the "notes and observations" of Sub-Inspector Silva constituted the first information in regard to which the petitioner was charged with the offence of profiteering? The offence in respect of which proceedings were instituted against the petitioner presumably took place when the petitioner sold the article to Police Constable Siriwardene. It was after the completion of the sale that statements would have been recorded by the Police officers in connection with the detection. In *Mani Mohan Ghose v. Emperor*¹ the Calcutta High Court gave some useful directions as to what constituted a first information under section 154 of the Indian Criminal Procedure Code, which corresponds to section 121 (1) of our Code. According to Ghose, J., four conditions have to be satisfied before an information can be designated as a first information :

- (a) The information must relate to the commission of a cognizable offence ;---
- (b) It must be given to the Officer-in-Charge of a Police Station ;
- (c) It must be put into writing. If already written it must be signed by the person giving it ; if it is oral, it must be taken down in writing and read over to the informant ;
- (d) The substance of the information should be entered in the Information Book.

It does not appear to me that in the present case those conditions have been satisfied in regard to the "notes and observations" of Sub-Inspector Silva. It may be that these observations, even if they can be termed an information, were entered by Sub-Inspector Silva for his own guidance and to help him in the course of his investigation and probably made before the offence was committed by the petitioner. They were therefore not information in relation to the commission of a cognizable offence and cannot be termed a first information.

Learned Counsel for the petitioner strongly relied on my judgment in *Panditaratne v. The Assistant Superintendent of Police, Kegalle*², but in my view, the facts of that case can be distinguished from the facts of the present case. In that case, the Police officer went to the Kegalle Rest-house to investigate the non-cognizable offence of insult. When the Police party arrived at the Rest-house, the accused whom they sought to apprehend, commenced to insult the Police party, offered resistance to his arrest and kicked the Police officers while he was being taken to the Police Station. The events that transpired after the arrival of the Police party at the Rest-House and the offences committed by the accused subsequently, formed the subject matter of a separate report to the Magistrate. The Sub-Inspector who was in charge of the Police party, when he arrived at the Police Station, entered his observations in the Information Book and informed the Officer-in-Charge of the Police Station of the subsequent

¹ 33 Cr. L. J. 1932, 138 at 141. ² (1967) 72 N. L. R. at 273 ; 75 C. L. W. 40.

offences committed by the accused at the Rest-House. I held that in that case the Police being the victims of the attack by the accused and the complainants in the case, were the first informants in regard to the offences committed by the accused after the arrival of the Police party at the Rest House and that the observations of the Sub-Inspector in Charge which were contained in the Information Book constituted the first information in that case and that the accused under section 122A (1) was entitled to those "observations". In this case, the position is different. The notes and observations whether made before the offence was committed or after, did not constitute any part of the first information in regard to the charge of profiteering. Indeed, in my view, there was no first information in this case and therefore the petitioner is not entitled to the "notes and observations" of Sub-Inspector Silva under section 122A (1) of the Criminal Procedure Code. We therefore refuse the application of the petitioner with costs fixed at Rs. 52/50.

DE KRETZER, J.—I agree.

Application refused.
