

1915.

Present: Wood Renton C.J.

MOHAMADU v. SINNIAH.

401—P. C. Kurunegala, 20,495.

Criminal Procedure Code, s. 437—Complainant should be asked to show cause before making order to pay compensation—Desirability of calling all witnesses for the prosecution if complainant wants them.

It is not essential that a complainant should be allowed to call all his witnesses before a charge under section 437 of the Criminal Procedure Code can be made against him. But the Judge should put to the complainant the fact that he is disposed to believe the case to be false, and his reasons for that impression. The complainant should be asked who the other witnesses are, and if he states that they are in a position to strengthen his case, they should be put into the witness box.

THE facts are set out in the judgment.

No appearance for the appellant.

May 27, 1915. WOOD RENTON C.J.—

This is an appeal by a complainant who has been sentenced by the Police Magistrate to pay a fine of Rs. 25 under section 437 of the Criminal Procedure Code. It is with great regret that, in this as in so many other cases of the same kind, I feel constrained to interfere, although I see no reason to doubt the soundness of the view

taken by the Police Magistrate of the evidence given by the complainant and his witnesses. The complainant states in his petition of appeal that no opportunity was given to him of showing cause against the charge under section 437 before the Police Magistrate took action upon it. That statement is borne out by the record so far as it goes. The irregularity is a fatal one. The provisions of section 437 and of the group of sections of which it forms part are most salutary, and I for one am very far from having any desire to impair their efficiency. But they must be applied in accordance with recognized principles of law. No order can be made against a complainant under the section with which we are here concerned till he has had the chance of showing cause against it. Any previous doubt that may have existed on that point is now removed by the recent decision of two Judges—pronounced since this case first came before me in appeal—in *Kiribanda v. Tiruambalam*.¹ The difficulties which cases of this kind so constantly present in appeal would be obviated if the Courts of first instance would deal with the matter on such lines as these. It has never seemed to me to be essential as a matter of law that a complainant should be allowed to call all his witnesses before a charge under section 437 can be made against him. But the Judge of trial would be well advised if, before taking action under section 437, he would put to the accused the fact that he is disposed to believe the case to be false, and his reasons for that impression. Although it may not strictly be necessary that every available witness should be examined before the provisions of section 437 can fairly be invoked, it is certainly highly desirable that the complainant should be asked who the other witnesses are, and that if he states that they are in a position to strengthen his case, they should be put into the witness box. *Abundans cautela* is the only safe line for the administration of such a drastic, although useful, enactment as section 437 of the Criminal Procedure Code. The complainant alleges in his petition of appeal that he had not the opportunity of calling all the evidence which he desired to place before the Court. It is impossible for me to say whether or not that allegation is well founded. But I have thought it right to make some observations as to the way in which Courts of first instance should approach the application of section 437 of the Criminal Procedure Code, if they desire, as we all desire, that it should be made effective. Apart altogether, however, from the question as to whether the complainant called the whole body of evidence at his disposal, the failure of the Police Magistrate to give him a distinct opportunity of showing cause against the charge under section 437 is fatal to the proceeding. I set aside the order under appeal.

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Set aside.

¹ (1915) 18 N. L. J. 142.