

1928.

Present : Garvin J.

SINNO' APPU *v.* RAJAPAKSE

723—P. C. Tangalla, 22,488

*Criminal procedure—Complaint to Assistant Government Agent—
Institution of proceedings—Trial of accused by Assistant Govern-
ment Agent in capacity as Additional Police Magistrate.*

Where criminal proceedings were instituted as the result of a complaint made to an Assistant Government Agent and of instructions issued by him, and the case was tried by him in his capacity as Additional Police Magistrate,—

Held, that the proceedings were irregular.

Garvin, for appellant.

Basnayake, C. C., as *amicus curiae*.

November 30, 1928. GARVIN J.—

When Mr. Coomaraswamy, the Assistant Government Agent, Tangalla, was on circuit, a complaint was made to him in his character of Assistant Government Agent that the present appellant had threatened to shoot one Singho Appu. The Assistant Government Agent appears to have directed a Headman to produce the accused before him, and on September 24, while he was at the village of Middeniya, the accused was produced. The Assistant Government Agent is also Additional Police Magistrate at the Police Court of Tangalla. He says that as all parties were present he thought it desirable to try the case at once. He, therefore, appears to have assumed the character of Police Magistrate, recorded the complaint of Singho Appu, framed the charge upon which he tried, and convicted the accused.

It is said that the Additional Police Magistrate was entitled to sit in any part of the District as the Police Magistrate did in this case, and that these proceedings must be regarded as instituted in accordance with the provisions of section 148 (1) (d). From the facts which I have enumerated it is quite clear that these proceedings came to be instituted as the result of a complaint made to Mr. Coomaraswamy in his capacity of Assistant Government Agent, and that the accused was brought up and the further proceedings taken as a result of instructions issued by him in his capacity of Assistant Government Agent. The case is almost on all fours with the case of *Kanapathipillai v. Meera Mohammodu*¹. It is in effect a case in which the accused had been tried by the very person at whose instance he was prosecuted.

It is hardly necessary to observe that if confidence in the administration of justice is to be preserved even the semblance of unfairness, to which procedure of this nature gives rise, should be avoided. I would set aside the proceedings and send the case back to be tried and disposed of in due course.

Set aside.

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GARVIN J,
Sinno Appu
v.
Rajapakse

¹ S. C. Minutes of September 13, 1928—S. C. No. 476, P. C. Mullaitivu, 10,083.