

Present : Schneider J.

1928

BABY NONA v. MOHIDEEN.

624—P. C. Colombo, 42,632.

*Appeal—Complainant referred to civil remedy—Refusal to issue process—Criminal Procedure Code, s. 337.*

Where a Magistrate referred a complaint to the police for report and on receiving the report declined to issue process, referring the complainant to her civil remedy,—

*Held*, that complainant was not entitled to appeal without the previous sanction of the Attorney-General.

**A** PPEAL from an order of the Police Magistrate of Colombo

*N. E. Weerasooria*, for appellant.

*Tisseveresinghe*, for respondent.

November 5, 1928. SCHNEIDER J.—

In this case the complainant appears to have made a complaint to the Court, the only record of which is “Baby Nona, affirmed, 50 years, married.”

This record is followed by the following entry :—

“Police for report for 17th.”

“17.7.28.”

“Complainant Baby Nona.”

“Police report received.”

“I refer complainant to civil remedy.”

From this last order the complainant has preferred this appeal. In her petition of appeal she states that a Police Sergeant held an inquiry and “submitted a report stating in conclusion that it is a civil case.”

The appeal is not at the instance or with the written sanction of the Attorney-General. Objection has been raised to the hearing of the appeal upon the ground that the complainant has no right of appeal. There can be no doubt, upon the facts mentioned by me, that the Police Court had refused to issue process. I would regard the case therefore as one coming within section 337 of the Criminal Procedure Code, and not as one falling under section 336 or 338 (1) of that Code.

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The remedies provided by section 337 have been the subject of several decisions of this Court. I would mention the case of *Ratna-weera v. Goonesekera*<sup>1</sup> where the more important of the earlier cases are referred to. In that case and in the earlier cases it was indicated that the remedies mentioned under section 337 are alternative, and as regards the remedy by way of *mandamus* that it did not lie in a case where the Court had exercised jurisdiction. There is no doubt that the present is a case where it had exercised jurisdiction, in that some evidence of the complainant must have been taken, and the Police Magistrate appears to have adopted the report made to him by the police. It is to be regretted that he should delegate his function to the police in that way. It is a practice which was condemned in the case of *Gunawardene v. Samarakoon*<sup>2</sup> As this appeal is not with the sanction of the Attorney-General, it is wrongly constituted and must be dismissed. I, therefore, dismiss it.

There is an application by way of revision. This procedure has been adopted because the appellant had not been certain that her appeal was rightly constituted. I set aside the order appealed from in the exercise of my powers of revision, because it seems to me that there has been a denial of justice, in that the complainant's plaint was not investigated. If the Magistrate had himself heard her evidence and, if necessary, any other evidence she may have desired to produce and then made the order which he has actually made, I should not have interfered as I am now doing. The case is sent back for further hearing in due course.

*Set aside.*

<sup>1</sup> (1918) 5 C. W. R. 225.

<sup>2</sup> (1820) 21 N. J. R. 411.