

Present: Akbar J.

1930

DIAS *v.* PEIRIS.

791—*P. C. Kalutara, 29,754.*

Powers of Solicitor-General—Non-summary inquiry—Discharge of accused—Right to reopen inquiry—Criminal Procedure Code, ss. 157 (3) and 391.

Where, in a non-summary inquiry, an accused person was discharged by the Police Magistrate after the examination and cross-examination of certain witnesses but before the close of the case for the prosecution,—

Held, that the Solicitor-General had power to direct the Magistrate to re-open the inquiry.

APPPLICATION to revise an order made by the Solicitor-General, directing the Police Magistrate of Kalutara to re-open a non-summary inquiry, in which the Magistrate had discharged the accused.

Hayley, K.C. (with *Rajapakse*), for accused, appellant.

Ilangakoon, C.C., for the Crown.

B. F. de Silva, for the complainant, respondent.

May 16, 1930. AKBAR J.—

The accused was charged non-summarily on February 8, 1929, with the offence of criminal breach of trust, under section 389 of the Penal Code. After the examination of two witnesses he was, on March 12, 1929, re-charged with committing an offence under

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section 466A of the Penal Code. These two witnesses were cross-examined and the Police Magistrate discharged the accused on April 27, 1929, because he was of opinion that the prosecution had rushed into Court prematurely, without questioning two persons of the name of Marimuttu and Appaswamy, and that there was no use in pursuing the inquiry further. On February 12, 1929, complainant's proctor filed a list of five witnesses, and on March 27, 1929, a list of documents. A further list was filed on April 3, containing the names of Marimuttu and Appaswamy. On September 16, 1929, the Solicitor-General reopened the inquiry under section 391 of the Criminal Procedure Code, and this appeal and the revision proceedings have been filed by the accused against this order of the Solicitor-General, reopening these proceedings. The point put forward by Mr. Hayley is that under section 391 of the Criminal Procedure Code an inquiry could only be reopened if an accused has been discharged under section 157 of the Criminal Procedure Code, and not when he has been discharged under section 156 of the Criminal Procedure Code. The short point I have to decide is whether the accused was discharged under section 156 or 157 of the Criminal Procedure Code. It will be seen that under section 156 (1) after the Magistrate has read over all the evidence, previously recorded, to the accused on his first appearance he is to record "all such further evidence as may be given in support of the prosecution, whether called by the prosecutor or the Magistrate." It is only after this has been done, when "such evidence does not establish a *prima facie* case of guilt" that the Magistrate is authorized to discharge an accused. Clearly this is not what happened in this case, for the Magistrate did not hear all the evidence which the prosecutor was prepared to tender, but cut the inquiry short as he thought that it was of no use to pursue the inquiry further. The order of discharge was therefore not made under section 156. Was it made under section 157? Section 157 (1) provides for the order to be made when the whole inquiry has been concluded, that is to say, the Magistrate may himself discharge the accused or forward the record to the Attorney-General for committal of the accused to stand his trial before a higher Court. And then by sub-section (3) of section 157 nothing is to prevent a Magistrate from discharging the accused "at any previous stage of the case if for reasons (to be recorded by him) he considers the complaint to be groundless." In my opinion the discharge in this case was made by the Magistrate under section 157 (3) and therefore the Solicitor-General had power under sections 391 and 393 to reopen the inquiry. The application is refused.

Refused.