

SEDRIS v. JUDRIS et al.

P. C., Balapitiya, 13,854.

1895.

July 10.

Penal Code, ss. 333, 314, and 208—Criminal Procedure Code, ss. 45 and 156—Irregularity—Duty of Magistrate on receiving complaint charging accused with offences triable summarily and by indictment—Procedure before summons is issued—Summons by whom to be signed.

It is the duty of a Police Magistrate to whom a written complaint is presented charging accused with two offences, one of which is triable by him summarily and the other not so triable, to examine the complainant thereon and reduce such examination to writing, which after being read over to the complainant, should be signed by him and the Magistrate. Such examination should be made at once, and the complainant's story should be tested by the Magistrate before he has had time to concoct a story or an opportunity of consulting with other persons who may, for reasons of their own, be desirous of getting him to make additions to his story.

If the Magistrate, after examining the complainant, is of opinion that there are no sufficient grounds for proceeding further with the case, he may refuse to issue process, or, if the accused is in custody, he may discharge him.

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Summons requiring the attendance of a person accused before a Police Magistrate could only be signed by the Magistrate or the chief clerk of his Court, and no person can sign a summons for the chief clerk, and no person is bound to obey a summons signed by another for the chief clerk.

A person who has reasonable grounds for believing another to have committed a burglary is justified in tying him up until he could be handed over to a police officer.

THE facts of this case are fully set forth in the following judgment.

Dornhorst, for appellants.

10th July, 1895. BONSER, C.J.—

In this case the defendants appeal from a conviction of Mr. Woutersz, Acting Police Magistrate of Balapitiya. He has convicted the appellants of having committed an offence under section 333 of the Penal Code, in wrongfully tying up and confining the complainant; and further, of an offence under section 314, in voluntarily causing hurt to him. He has sentenced the first and second appellants to undergo six months' rigorous imprisonment, and required the third and fourth appellants to give security for good behaviour.

There appears to have been considerable irregularity in the way in which this case was conducted. On the 21st March, 1895, the complainant presented a written complaint to the Magistrate at the Police Court complaining that the accused had on that day, at Peraliya, voluntarily caused hurt to him by beating and assaulting him and by tying his hands, an offence punishable under section 314 of the Penal Code; and further complaining that on the day and at the place aforesaid, and at the same time, the accused delivered the complainant into the custody of the Arachchi of Telwatta on a false charge of house-breaking by night, *i.e.*, an offence punishable under section 208 of the Penal Code.

The first offence is one which the Magistrate had jurisdiction to try summarily, the second offence is one which he has no jurisdiction to try summarily. Now, it was the duty of the Magistrate, on receiving the complaint, to examine the complainant. That duty is prescribed by section 156 of the Criminal Procedure Code.

The statement made by the complainant on such examination is to be reduced to writing, and, after being read over to the complainant, is to be signed by him and the Magistrate. If the Magistrate, after examining the complainant, is of opinion that there are no sufficient grounds for proceeding further with the case, he may refuse to issue process, or if the accused is in custody,

he may discharge him. In my opinion this preliminary evidence is almost the most important proceeding in the whole of the inquiry. It is obvious that it should be taken at once, and that the complainant's story should be tested by the Magistrate before he has had time to concoct a story or an opportunity of consulting with other persons who may, for reasons of their own, be desirous of getting him to make additions to his story. A few judicious questions put by the Magistrate at this stage would often suffice to dispose of the case.

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Unfortunately in the present case the course laid down by law was not taken. The Magistrate merely endorsed on the plaint "Summons on stamp, 27-3-95," which endorsement, I presume, was meant as an authority to the chief clerk of the Court to issue a summons requiring the attendance of the accused on the 27th March, 1895, to answer the matter charged in the complaint. I regret to see that the Penal Code allows summons to be signed by any one besides the Police Magistrate. Section 45 does allow them to be signed by the chief clerk.

At this stage another irregularity occurs. A summons is issued and signed, not by the chief clerk, but by somebody whose name is illegible, and who records that he signs "for the chief clerk." It is needless to say that no one was obliged to pay the slightest attention to it.

However, the parties did appear on the summons, but the summons, it should be noted, was not the summons directed by the Police Magistrate to be issued. He directed a summons to be issued on the complaint. The summons issued had reference only to one of the charges, that of voluntarily causing hurt. The parties were all present on the 27th March, but even then the Magistrate did not examine the complainant. He postponed the case to 23rd April, and on that day it was postponed again, and again postponed,—possibly necessarily postponed for want of time on the part of the Magistrate. The result was that the case was not heard for more than one month after the charge had been made, *i.e.*, on the 24th April.

On that occasion the complainant, for the first time, states the facts. The complaint did not, as it should, contain any statement of facts. It is merely a formal charge, on which the Magistrate ought never to have issued a summons.

[And on the merits of the case his Lordship reviewed the evidence at length, and concluded as follows :—]

Under all these circumstances I think that there are grave doubts as to the truth of the story told by the complainant, and that the Magistrate ought not to have convicted.