

1898.

February 14.

## IDROOS v. CASSIM.

P. C., Colombo, 50,397.

*False and frivolous charge—Complaint to the police—Further prosecution—Ordinance No. 16 of 1865, s. 54—Imprisonment in default of payment of fine—Penal Code, ss. 61 and 62.*

The provisions of section 54\* of the Police Ordinance, 1865, are not impliedly repealed by those of the Criminal Procedure Code which relate to condemning a complainant in Crown costs and compensation, or by section 180 of the Penal Code; nor is it necessary, to enable a Magistrate to punish a person under section 54 of the Police Ordinance, for making a false or frivolous charge to the police, that a separate complaint should be made by the police against such person under that section, or that the further prosecution of the false or frivolous charge should be at the instance of the police.

Where a person makes a false or frivolous charge to the police, and then carries the charge himself to Court, the Magistrate, in dismissing the charge, may deal with the complainant in the same case under section 54 of the Police Ordinance.

The period of imprisonment in default of payment of a fine imposed under section 54 of the Police Ordinance must be determined by the provisions of sections 61 and 62 of the Penal Code, and should not exceed one-fourth of the term which is the maximum fixed for the offence under section 54 of the Ordinance.

**I**N this case the complainant preferred to the police a charge of theft against the accused, and thereafter filed a plaint in the Police Court of Colombo against him for that offence. The Magistrate dismissed the charge, and found that the complaint to the police was false and frivolous. He sentenced the complainant to pay a fine of Rs. 50, or to undergo two months' imprisonment under section 54 of Ordinance No. 16 of 1865. The complainant appealed.

*W. Pereira*, for appellant.

*Cur. adv. vult.*

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\* Section 54 of Ordinance No. 16 of 1865: In every case in which any person shall be given in charge to a police officer on a false or frivolous charge, or in which a false or frivolous charge shall be made to a police officer against any person, or in which any information or complaint shall be laid or made before a police officer and shall not be further prosecuted, or in which if further prosecuted it shall appear to the magistrate by whom the case is heard that there were no sufficient grounds for making the charge, such magistrate shall have the power to award a fine not exceeding five pounds, or imprisonment for a period not exceeding one month, or both; or to award such amends not exceeding five pounds, to be paid by the informer or complainant to the party informed or complained against for his loss of time and expenses in the matter as to such magistrate shall seem fit; and such amends shall be recoverable in the manner provided for the levy of fines.

14th February, 1898. WITHERS, J.—

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Before addressing myself to the points of law, I must point out that the appellant did not attempt to show cause why he should not be punished for making a false charge. He called two new witnesses to support the charge, and they produced a very unfavourable impression on the Magistrate's mind. I must take the Magistrate's finding to be a correct one. Even so, Mr. Pereira argued the conviction was not in accordance with law. His client had been punished for an act made punishable by the 54th section of the Police Ordinance of 1865, but that section had been impliedly, if not expressly, repealed by the Penal Code and the Criminal Procedure Code. On that point I am against Mr. Pereira. The two Codes were passed together, and the schedule of the Procedure Code only contains a list of repealed laws, Ordinances, and rules of Court.

Several sections of the Police Ordinance of 1865 appear in the list, but not the 54th section, with which we are concerned.

Again, section 4 of the Penal Code enacts that nothing is intended to repeal, vary, suspend, or affect any of the provisions of any special local law. As section 54 has found no place in the repealing schedule of the Procedure Code, I must take it to be in force. It may be that its provisions were accidentally left to stand, for they are almost, if not quite, covered by section 180 of the Penal Code.

Then it was argued that, before any one can be convicted under the provisions of section 54 of the Police Ordinance, he must be a party defendant whom a police officer has prosecuted for making to him a false or frivolous charge. Here, however, it is the prosecutor of the alleged thief who is being punished for falsely accusing the defendant of theft before a police officer. That would be a sound argument if the false information had been carried no further, so to speak, than the police station; but the section in question enacts that if the false charge . . . . . shall be further prosecuted, and it shall then appear to the Magistrate by whom the case is heard that there were no sufficient grounds for making charge, such Magistrate shall have the power to award a fine not exceeding £5.

The case surely means the informant's case against the accused.

Here the case was further prosecuted, and it appeared to the Magistrate that there were no sufficient grounds for making the charge, or, to use his language, that the charge was a false one, and of course he means false to the knowledge of the complainant.

But, admitting all that for argument' sake, it was still further contended that the Magistrate could only impose a fine under

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section 54 when the case is further prosecuted by the police officer to whom the false charge was made. He, the Magistrate, did not act upon the police officer's report. He accepted the complainant's complaint, and on that issued summons to the accused. Hence he might punish him for a frivolous and vexatious complaint (*i.e.*, to himself) under section 216 of Ordinance No. 22 of 1890, but in that case he could impose no fine. He might award Crown costs or amends. Then I was reminded by counsel of the decision that this section 216 cannot be put in force when the Magistrate has tried the case on information or report. Hence the Magistrate was placed in a dilemma from which he could not escape. But section 54 of the Police Ordinance says nothing about the charge being further prosecuted by the police officer. It says, "if further prosecuted." If I am to chose between the accuser and the police officer, I should say the section pointed to the accuser as the prosecutor. I therefore affirm the conviction, but I must modify that part of the sentence which imposes two months' imprisonment in default of payment of the fine.

Section 61 of the Penal Code seems to me to apply to this case. An offence under section 54 of the Police Ordinance may be punished by fine as well as imprisonment, but the term of imprisonment is limited to one month. Section 61 of the Penal Code enacts that the term for which the Court directs an offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment, which is the maximum fixed for the offence if the offence is punishable with imprisonment as well as fine. Hence one week must be substituted for two months.

