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KUTTALAM CHETTY v. INA MUTTU.

P. C., Colombo, 41,035.

Criminal Procedure Code, s. 236—False and vexatious case—Case “instituted on complaint”—Case instituted on formal police report—Duty of police officers as to complaints made to them—Compensation—Crown costs.

Where a Police Magistrate takes proceedings on a formal written report made to him by a police officer under sub-section 2 of section 152 of the Criminal Procedure Code, and finds the complaint frivolous or vexatious, it is not open to him to condemn the party on whose information such written report was made either in compensation to the accused or in Crown costs.

A case “instituted on complaint” (referred to in section 236 of the Criminal Procedure Code) is a case instituted on a complaint made by a person to a Police Magistrate in terms of section 152 (1) of that Code, and does not mean a case instituted on a “formal written report” made by a police officer to the Magistrate, in terms of section 152 (2).

The reason why the order to pay compensation to the accused is restricted to cases “instituted on complaint” is because the Legislature thought that the police would not institute cases without having previously made due inquiry and satisfied themselves that there was a real, substantial case which ought to be dealt with by a Police Court. If the result of the inquiry made by the police is to leave room for doubt whether the case is not a frivolous one, they should refer the informant to the Police Court, and not take upon themselves the responsibility of instituting a case of the *bona fides* and merits of which they are not satisfied.

ON the 8th February, 1896, Police Sergeant Jansen informed the Police Court on the complaint of one Kuttalam Chetty that Ina Muttu, on the 4th February, 1896, “dishonestly “misappropriated to his own use a double bullock cart and three “coast bulls, all of the value of Rs. 70, and thereby committed an “offence punishable under section 389 of the Ceylon Penal Code.” The Magistrate examined witnesses, including Kuttalam Chetty, and acquitted the accused and recorded as follows:—“The case “is false and vexatious. The complainant is ordered to pay Rs. 5 “Crown costs, in default fourteen days’ imprisonment; and “further to pay Rs. 10 compensation to accused, in default “fourteen days’ imprisonment (section 236, Ceylon Penal Code).” Kuttalam Chetty was treated as the party referred to as “complainant” in the above order, and the fines were recovered from him.

He appealed from the order condemning him in compensation and Crown costs.

Tirunavukkarasu, for respondent, submitted that no appeal lay from the order as to Crown costs.

Pereira, for appellant. The Code, it is true, enacts that from an order as to Crown costs there shall be no appeal. That means an order regularly made under sub-section 39, section 236. Where, however, a Magistrate, presuming to act under that sub-section, makes an order clearly *ultra vires*, such order is not protected by the provision against appeal. In the present case the Magistrate fined the wrong man. The Police Sergeant was liable to be condemned in Crown costs, and not the appellant. Then, as to the order for compensation, that order can only be made as a case instituted on complaint, meaning a case falling under sub-section 1 of section 152; but the present case came under sub-section 2.

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Tirunāvukkarasu heard contra.

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In this case the appellant was ordered to pay Rs. 5 as Crown costs, in default fourteen days' imprisonment; and he was further ordered to pay Rs. 10 compensation to the accused, and in default fourteen days' imprisonment. These orders were made under section 236 of the Criminal Procedure Code, on the ground that the case was false and vexatious. Now, section 236 only applies to cases "instituted on complaint," and therefore we have to find out what is the meaning of a case instituted on complaint.

If we refer to section 152 of the Code, it will be seen that there are several ways of instituting proceedings in a Police Court. The first is on a complaint being made by any person to a Police Court that an offence has been committed over which the Court has jurisdiction; the second is, on a formal written report being made to a Police Court by a police officer to the like effect. Complaint is defined in the interpretation clause (section 3 a) to mean "the allegation made orally or in writing to a Police Magistrate with a view to his taking action under the Code "that some person, whether known or unknown, has committed "an offence." Was this present case instituted on a complaint? The appellant did not go to the Police Court to make any allegation, either orally or in writing, to a Police Magistrate. What happened was this. He went to the Slave Island police station and told his story to the police sergeant on duty, charging the accused with an offence within the jurisdiction of the Police Court of Colombo. The sergeant did not refer him to the Police Court of Colombo, as he might have done, but he adopted the charge made by the appellant and made a formal written report to the Colombo Police Court. It is clear from this that the

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 BONSEE, C.J. prosecution is not one instituted on a complaint, but that it was a prosecution instituted on a formal written report by a police sergeant. That being so, the Police Magistrate had no jurisdiction to order the appellant to make compensation to the accused.

Then, as to Crown costs, the 3rd sub-section of section 236 provides that "if in any case inquired into or tried before a Police Magistrate under this chapter the complaint be not proceeded with within such time as the Police Magistrate may deem reasonable, or if the complaint is declared by the Police Magistrate to have been frivolous or vexatious, it shall be lawful for such Police Magistrate to make an order for the complainant to pay by way of Crown costs a sum not exceeding Rs. 5," &c.

Now, we have seen already that this appellant made no complaint but that the prosecution was commenced on the formal written report of the police officer. If anybody was the complainant, it was the police sergeant; and if anybody should have been called upon to pay costs, it was the police sergeant, who rushed into Court with a case which the Magistrate declared to be frivolous and vexatious. The reason why the order to pay compensation to accused is restricted to cases instituted on complaint, is obvious. It was not thought necessary to deal with cases instituted on formal police reports, because it was assumed that the police would not institute cases without having previously made due inquiry and satisfied themselves that there was a real, substantial case which ought to be dealt with by a Police Court. If the result of the inquiry made by the police is to leave room for doubt, whether the case is not a frivolous one, they should refer the informant to the Police Court, and not take upon themselves the responsibility of instituting a case of the *bona fides* and merits of which they are not satisfied.

The order must be discharged.
