

AMBALAM v. MAILU.

P. C., Mallakam, 14,246.

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June 29.

*Police Magistrate investigating case under chapter XVI. of the Criminal Procedure Code—Witness giving false evidence—Right of Magistrate to exercise powers under s. 440.*

A Police Magistrate, when inquiring into offences which he has no power to deal with summarily, under chapter XVI. of the Criminal Procedure Code, can summarily punish a witness for giving false evidence, as provided in section 440.

IN this case the accused were charged with robbery. At the completion of the inquiry they were discharged, and the complainant was called upon by the Police Magistrate “to shew cause why he should not be punished for giving false evidence in open Court in this judicial proceeding, in that he stated that the second accused snatched away his umbrella and the first accused snatched away his shawl with Rs. 25 tied to it; whereas, in point of fact, no umbrella and no money was snatched away from him by the accused on the 17th April last.”

The complainant had no cause to show. The Police Magistrate adjudged him guilty of contempt of Court under section 188 of the Penal Code and section 440 of the Criminal Procedure Code, and sentenced him to pay a fine of Rs. 25.

He appealed.

*Van Langenberg*, for appellant.—The order complained of is wrong, because a Magistrate holding an inquiry has no power to punish for contempt. *James v. Lewis* (Tambyah, 1). [BONSER, C.J.—See section 83 of Ordinance No. 1 of 1889, which empowers Police Courts to exercise all powers which they are empowered to exercise by virtue of the provisions in the Penal and Criminal Procedure Codes. Has not a Police Court power to inquire into a case?] Yes, it has. [BONSER, C.J.—Then, does

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a Police Court cease to be a Court when holding an inquiry?] Section 17 of the Penal Code defines judge to be not only every person who is designated as a judge, but also every person who is empowered by law to give in any legal proceeding a definitive judgment. And Mr. Justice Lawrie argued that, if a committing Magistrate was not a "judge," he was not a "Court," as defined by Ordinance No. 1 of 1889, and not being a "Court" he could not punish under section 12 of Ordinance No. 9 of 1895. [BONSER, C.J.—What does the new Criminal Procedure Code say?] It defines "judge" in section 3 to be a judge of the Supreme Court, and "judicial proceeding" to be any proceeding in the course of which evidence may be legally taken. [BONSER, C.J.—That definition of "judicial proceeding" applies to the present case. *James v. Lewis*, decided under a different law, does not apply.]

No appearance for respondent.

BONSER, C.J.—

This appeal raises the important question whether a Police Magistrate, who is investigating a case under chapter XVI. of the Criminal Procedure Code—a case which he has no jurisdiction to try—can exercise the powers given to a court by section 440 of that Code.

The appellant was a witness in a case which the Magistrate of Mallakam was investigating, and gave evidence in the course of the inquiry in open Court. That evidence the Magistrate considered to be false, and he accordingly ordered him to pay Rs. 25, or in default to suffer one month's rigorous imprisonment. He appeals against that order on the sole ground that the Magistrate had no jurisdiction to make it. Mr. Van Langenberg, who argued the appeal, relied upon the case of *James v. Lewis* decided by my brother LAWRIE and reported in Tambyah 1, where it was held that the Police Magistrate of Galle, who was inquiring into an offence over which he had no summary jurisdiction, was not entitled to exercise the powers given by section 12 of Ordinance No. 9 of 1895. As to whether that case was rightly or wrongly decided I express no opinion, since it does not govern the present case. The present case is under another Ordinance. Section 440 of the Criminal Procedure Code provides that "if any person giving evidence on any subject in "open Court in any judicial proceeding under this Code gives, "in the opinion of the Court before which the judicial proceeding "is held, false evidence within the meaning of section 188 of the "Penal Code," it shall be lawful for the Court to inflict the penalty prescribed. Now the Criminal Procedure Code defines the term

“ judicial proceeding ” as meaning “ proceeding in the course of which evidence is or may be legally taken.” There can be no question that this inquiry was a judicial proceeding, and that the appellant gave evidence in that judicial proceeding. Mr. Van Langenberg argued that the judicial proceeding was not held before a Court; but I am of opinion that that contention cannot be maintained in the face of the provisions of the Code. Chapter XV. is headed “ Of the Commencement of Proceedings before Police Courts.” Section 148 provides that “ proceedings in a Police Court shall be instituted in one of the following ways.” Then section 152 provides that “ where the offence appears to be one not triable “ summarily by a Police Court, the Magistrate shall follow the “ procedure laid down in chapter XVI.” Section 155 provides “ that “ where an accused is brought before a Police Court, i.e., “ in a case which is not summarily triable, the Magistrate is to “ proceed in the way prescribed.” Section 9 provides that “ every “ Police Court is to have jurisdiction to inquire into the commission “ of offences in the manner prescribed by the Code.” It seems to me clear beyond any doubt that a Police Magistrate, when inquiring into offences which he has no power to deal with summarily, can exercise the powers given to a Court by section 440. I see nothing in the policy of the law which would exclude these cases. That being so, I think this appeal should be dismissed.

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BONSER, C.J

