MENDIS *v.* CARLINAHAMY.

P. C., Kandy, 13,767.

1900.
January 27

Criminal Procedure Code, s. 197—Order to pay compensation to accused—Legality of order—Information by police to Magistrate of complaint made to police—Procedure Code, s. 148 (a)

M having informed the police that one C had caused hurt to J by burning him with fire, the police sergeant without vouching for the truth of the case informed the Magistrate by means of a departmental form that M had made such a statement, and requested M to attend the Court. After the Magistrate had examined M and his witnesses he found the information to be frivolous or vexatious, and ordered him to pay Rs. 10 as compensation to C.

Held, that the Magistrate had jurisdiction to make this order, and that the proceeding was founded on section 148 (1 *a*), and not on section 148 (1 *b*).

Per BONSER, C.J.,—The reason of the distinction between the cases under section 148 (*a* and *b*) is obvious. In the first case the complainant is solely responsible for the case being brought before the Magistrate; in the latter case the police, after due inquiry, have taken the responsibility on their own shoulders, and it would be unjust where the police, after due investigation, came to the conclusion that it was a proper case to bring before the Court, to fine the informant on the ground that his conduct had been frivolous or vexatious.

If it should turn out that his information given to the police was untrue and he had deceived the police, he could be punished under the Penal Code for giving false information to a public officer.

THE facts of this case are fully set forth in the following judgment of his lordship the Chief Justice.

La Brooy appeared for the appellant.

BONSER, C.J.—

In this case one Mendis has been fined five rupees for Crown costs, and ordered to pay ten rupees by way of compensation, under section 197 of the Criminal Procedure Code. As regards the Crown costs there is no appeal, but the order for compensation is an appealable order. Mendis did not appeal till too late. His appeal, however, was sent up, and on reading it I thought there was a question as to whether the order had been rightly made, and so I directed the case to be heard in revision.

Mr. Labrooy appeared for Mendis, and contended that the order was wrongly made, on the ground that this was not a case instituted on a complaint under section 148 (1 *a*), which is the only case in which a Magistrate has power to make such an order as was made in the present case. Mr. Labrooy contended that Mendis was not the complainant, but that the case was instituted by the police.

1900.
January 27.
BONSER, C.J.

It seems that on ths 21st December Mendis went to the Kandy police station and informed the sergeant on duty that one Carlinahamy had two days before caused hurt to a boy named John by burning him with fire. On such a report as that being made it was the duty of the police sergeant to make inquiry into the truth of the statement, and if the result of the inquiry was to satisfy him that there was something in the complaint and that it was one which ought to be further investigated, his duty was to send a written report to the Court stating that he had reason to believe that an offence had been committed, and further stating the grounds which led him to form that opinion. It would then have been the duty of the Magistrate to entertain the case and to issue process as provided by the Code. That would have been the written report contemplated by section 148 (1 *b*) But if the police sergeant, after making inquiry, did not think that it was a case in which he ought to take the responsibility of informing the Magistrate and launching the case, his duty was to refer his informant to the Police Magistrate, and to tell him that he could make his complaint, if he so wished, under section 148 (1 *a*), and that is what in effect appears to have been done in the present case. The police sergeant did not take upon himself the responsibility of vouching for the truth of the case, but he filled up a form, which apparently is required departmentally, informing the Court that Mendis had made the statement to which I have referred, and he seems at the same time to have told Mendis to attend Court. Accordingly, on the next day Mendis appeared before the Court, and the woman against whom he had informed was also present, and Mendis then told his story to the Magistrate, and the Magistrate also examined other persons who had apparently been brought for that purpose before the Magistrate by Mendis. In the result, the Magistrate disbelieved the story told by Mendis and his witnesses, and, being of opinion that the complaint was frivolous or vexatious, he made the order which is now appealed against. In my opinion he had jurisdiction to make that order.

I decline to go into the merits of the order because this is not an appeal. The only question which I have before me is that of the Magistrate's jurisdiction to make the order.

It seems to me that this was a complaint made to a Magistrate by Mendis under section 148 (1 *a*), and that it was not a proceeding instituted on a written report of a police officer under section 148 (1 *b*), and that being so I decline to interfere.

The reason of the distinction between the cases under section 148 (1 *a* and *b*) is obvious. In the first case the complainant is solely responsible for the case being brought before the

Magistrate; in the latter case the police, after due inquiry, have taken the responsibility on their own shoulders, and it would be unjust where the police, after due investigation, came to the conclusion that it was a proper case to bring before the Court, to fine the informant, on the ground that his conduct had been frivolous or vexatious. If it should turn out that his information given to the police was untrue, and he had deceived the police, he could be punished under the Penal Code for giving false information to a public officer.

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