

ISABEL v. PEDRU PILLAI.

1902.

September 25.

P. C., Mullaittivu, 1,429.

Maintenance case—False and frivolous charge of adultery against wife—Order on husband to pay Crown costs—Summary conviction of witnesses for giving false evidence under s. 190 of Penal Code—Illegality of orders.

In a case of maintenance, in which the proceedings are of a quasi civil nature, a Police Magistrate has no power to condemn the husband to pay Crown costs for bringing a false and frivolous charge of adultery against his wife.

Nor has the Magistrate jurisdiction to summarily try a witness upon a charge of giving false evidence under section 190 of the Penal Code.

THE complainant applied for maintenance on the ground that she, being the wife of the accused, and her child, being his child, were left destitute by him. The Police Magistrate (Mr. L. W. C. Schrader) ordered the accused to pay her Rs. 7.50 per month. After paying two monthly instalments the accused complained to the Court that since the date of the order for maintenance his wife had been living in adultery with another man. Evidence was heard, and the Magistrate called on the accused to show cause why he should not be punished by being ordered to pay Crown costs for bringing a false and frivolous charge. No cause was shown, and the Court ordered him "to pay Rs. 5 as Crown costs, with the alternative of fourteen days simple imprisonment."

The Court also framed a charge of giving false evidence, under section 190 of the Penal Code, against two of the accused's witnesses, and fined each of them "Rs. 10, with the alternative of one month's rigorous imprisonment."

The Magistrate, in due course of business, reported the fine to the Colonial Secretary as having been made under section 440 of the Criminal Procedure Code.

Rāmanāthan, S.G., on behalf of the Crown, moved the Supreme Court in revision, as no appeal lay against any order for payment of Crown costs. He cited section 198, Criminal Procedure Code, and P. C., Balapitiya, 20,220 (1 *Browne* 47); P. C., Point Pedro 2,210 (2 *N. L. R.* 60); and contended that the orders as to the payment of the fine were not justified by law.

Cur. adv. vult.

25th September, 1902. GRENIER, A.J.—

The Solicitor-General made an application to me to consider in revision certain proceedings heard by the Police Magistrate at Mullaittivu in P. C., Mullaittivu, 1,429. These proceedings began

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on the 28th August, 1902, and were founded upon a petition presented by the accused, who had been condemned to pay maintenance to his wife, in which he charged her with having committed adultery with one Kandar Vallipuram, and on that ground he asked to be relieved from further maintaining her. It was competent, of course, for the Magistrate to hold such an inquiry as the accused desired, under section 6 of the Maintenance Ordinance of 1889. Accordingly, several witnesses were examined by the Magistrate, and in the result he held the charge of adultery to be vexatious and frivolous, and called on the petitioner "to show cause why he should not be punished by being ordered to pay Crown costs for bringing a frivolous and vexatious charge." The accused showed cause in the following statement: "I am unable to pay the fine. I want to retain a proctor, or I want to appeal." Thereupon the accused was ordered to pay Rs. 5 Crown costs, or in the alternative to undergo fourteen days' simple imprisonment.

Then the Magistrate appears to have framed a charge against two of the witnesses, Swampulle Philipu and Antho Pedru, under section 190 of the Ceylon Penal Code, for intentionally giving false evidence, and to have fined each of them Rs. 10, with the alternative of one month's rigorous imprisonment.

Obviously all these proceedings were grossly irregular from beginning to end. The Magistrate had no right in this case, in which the proceedings are of a *quasi* civil nature, to impose Crown costs, and there is clear authority in a case reported in 2 N. L. R. 60, that Crown costs cannot be imposed in maintenance proceedings. That was a case in which it was held that an applicant for an order of maintenance cannot be condemned in Crown costs, and as a necessary corollary it follows that the accused, too, cannot be condemned.

As regards the fine imposed on the two witnesses, it is clear that the Magistrate had no jurisdiction at all in the matter. The charge he framed against them was a charge under section 190, and a Police Court has no jurisdiction to summarily try an offence under this section.

My order will be that all the proceedings beginning from the stage where the accused was called upon to show cause why he should not be punished, &c., be quashed, and the fine imposed on the accused as Crown costs, and on the two witnesses be remitted.

