

1931

Present: Drieberg J.

INSPECTOR OF POLICE, GAMPAHA v. PERERA *et al.*

245—P. C. Gampaha, 17,057.

Information book—Extracts read by Magistrate before issuing process—Irregularity—Criminal Procedure Code, s. 122 (3).

Where, after examining the complainant and his witnesses, the Magistrate cited the Police to produce extracts from the information book for his perusal, before issuing process,—

Held, that the use of the information book was irregular.

A PPEAL from a conviction by the Police Magistrate of Gampaha.

Hayley, K.C. (with him *Bartholomeusz*), for appellant.

Deraniyagala, for respondent.

June 18, 1931. DRIEBERG J.—

The appellants were convicted of using criminal force and mischief; the 1st appellant was sentenced to one month's rigorous imprisonment and the 2nd appellant to rigorous imprisonment for one week. The petition of appeal states as a point of law that the conviction is bad as the learned Police Magistrate had throughout the trial made an improper use of the Police information book in which the statements of the complainant and the witnesses had been recorded. With the petition for revision is an affidavit in which the appellants depose to the manner in which the book was used during the trial. There has been no counter affidavit though the respondent was represented by a proctor.

I shall not deal with what is recorded there but with the Magistrate's own record on this point.

After recording the evidence of the respondent the Magistrate made the following note:—"I wish to have the evidence of all the witnesses in this case and to peruse the information book extracts of the Pugoda and Gampaha police stations, relating to this incident, before I issue process. Cite witnesses for January 29, 1931. Police to produce all information book extracts for my perusal on that day." There is nothing in the record to show what use was made of the information book, but as the Magistrate wished to see it before he issued process I can only assume it was for the purpose of judging the credit to be attached to the evidence of the prosecution witnesses by a comparison with their statements to the police; from the fact that he issued process I can only assume that his examination of the information book led in some degree to this acceptance of the evidence of the complainant and the three witnesses whom he examined before he issued process. This is not the use by a Magistrate of the statements to the police as an aid to the trial but the use of them as material which was to help him in the decision whether he should issue process or not and in the result this is the use of the statements as evidence. This is not a legitimate use of statements to the police. The necessity for a strict observance of the provisions of section 122 (3) of the Criminal Procedure Code has been frequently pointed out by this Court and I need only refer to the recent judgment of Akbar J. in *Paulis Appu v. Don Davith*¹.

¹ (1930) 32 N. L. R. 335.

There was a lengthy trial in the Police Court and I will not be justified in subjecting the appellants to a new trial.

I set aside the conviction and acquit the appellants.

Set aside.

