

1914.

Present: Pereira J.

In the Matter of an Application for a Mandamus on the
Police Magistrate of Colombo.

47,511—P. C. Colombo.

*Complaint to police—Report to Court under s. 148 (1) (b) by the police—
Acquittal of accused by the Police Court—Application by complainant for a certified copy of the proceedings—“Person affected by the order”—Criminal Procedure Code, s. 434.*

A person on whose complaint or information the police make a report to the Court under section 148 (1) (b) of the Criminal Procedure Code is a person “affected by the judgment or final order” in the case in terms of section 434, and he is, under that section, and subject to the conditions therein specified, entitled to have a copy of any deposition or other part of the record.

THE facts appear from the judgment.

J. S. Jayewardene, for applicant.—Section 434 of the Criminal Procedure Code requires the Magistrate to furnish a copy of the depositions to any party “affected” by the order in the case. The applicant is a party “affected.” He has the right of appeal with the sanction of the Attorney-General. It is also a rule of the Attorney-General’s Department that applications for sanction to appeal must be accompanied by a copy of the proceedings. Technically no doubt the Police Inspector is the prosecutor. But the applicant is the party “affected” by the Magistrate’s order. The case of *The Bank of Bengal v. Dinonath Roy*¹ is on all fours with the present case. The acquittal of an accused may be a serious reflection on the character of the complainant.

*Cur. adv. vult.*¹ *I. L. R. 8 Cal. 166.*

August 10, 1914. PEREIRA J.—

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This is an application for a mandamus on the Police Magistrate of Colombo to compel him to issue to the applicant a copy of the depositions recorded in case No. 47,711 of his Court on payment of the fees prescribed by section 434 of the Criminal Procedure Code. There is, I regret to observe, a misleading statement in the petition presented to this Court, which the Police Magistrate in a letter to the Registrar points out as a statement that is "not true." It may be argued that whether the statement is true or false is rather a matter of opinion; but that it is, to say the least, misleading is beyond question. The statement is that the appellant prosecuted the accused in the case. The truth is that the applicant gave information to the police charging the accused with having voluntarily caused grievous hurt to him, and the police thereupon made the usual written report to the Police Court under section 148 (1) (b) of the Criminal Procedure Code. These facts should have been clearly disclosed in the application without any equivocation whatever. The Police Magistrate appears to have regarded the police officer who made the report to him, and not the applicant, as the prosecutor in the case, and refused to issue a copy of the proceedings, except to the accused or the prosecutor. The applicant, on the other hand, maintains that he is a party "affected" by the order in the case, and that he has a right of appeal from that order with the sanction of the Attorney-General, and in order to satisfy the Attorney-General that he has good grounds of appeal he requires, according to rule in the Attorney-General's Department, a copy of the proceedings. Whether the applicant is prosecutor in the case or not, I think there is little doubt that it is open to him to appeal from the order in the case with the sanction of the Attorney-General. Section 336 of the Criminal Procedure Code provides that an appeal from an acquittal may be taken at the instance of the Attorney-General or with his written sanction, but it does not specify who, in the latter case, should be the party appellant. I think it is open to the Attorney-General to issue his sanction to any person interested, and thus enable him to appeal. However that may be, the real question for determination is whether the applicant can be said to be a person "affected" by the order in the case in the sense in which that expression is used in section 434 of the Criminal Procedure Code. I had my doubts on the point. It seemed to me that the party "affected" by the order in a criminal case was either the accused or the Crown, and that the private individual who gave information to the Court or the police could hardly be said to be affected by the order any more than any other member of the general public; but the authority cited to me by the applicant's counsel is so much in point that I do not think that I shall be justified in refusing to follow it. It is the decision of Justices Tottenham and Broughton in the Indian case of *The Bank of*

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*Bengal v. Dinonath Roy.*¹ That was a decision under section 170 of the Presidency Magistrate's Act, which in effect and in substance is very much the same as section 434 of our Criminal Procedure Code. It is as follows: "If any person affected by an order passed under this Act desires to have a copy of such order, or of any deposition or other grant of the record, he shall, on applying for such copy, be furnished therewith, provided that he pay for the same." "It is contended," observed the Court in its judgment, "that this does not apply to a prosecutor, because the Crown is the prosecutor and not the private individual. There is no doubt that, technically, the Crown is the prosecutor. But supposing we were to say that on that ground the private individual cannot apply for copies of depositions, the consequences may be very serious. It is said it would be very inconvenient if the Magistrate were to be called upon to furnish those copies in any case. However great the inconvenience may be, it would be a much more serious thing if he were justified in refusing an application for copies A prosecutor who charges a person with dishonesty, as in this case, if he cannot sustain the charge, might suffer an unjust imputation, unless by producing a true record of the proceedings he could show that his action was *bona fide*. No distinction ought to be made between the prosecutor in one case and in another."

No doubt the above observations are made with reference to the right of a prosecutor generally to apply for and obtain copies, but in my view they apply with even greater force to a case like the present, where the applicant was the informant to the police and chief witness, and he was the person on whom, according to his complaint, the offence of voluntarily causing grievous hurt was committed by the accused.

I think that the applicant is a person "affected" by the Magistrate's order in this case, and that he is therefore, under section 434 of the Criminal Procedure Code, entitled to a copy of the record.

I do not think that I need do more than place this expression of opinion on record, as I have no doubt that the Magistrate will act in accordance with it in the event of another application being made by the applicant.