

1945

Present : Wijewardene J.

THOMAS, Appellant, and INSPECTOR OF POLICE,
KOTTAWA, Respondent.

624—*M. C. Colombo, 30,603.*

Charge—Report against accused under section 148 (1) (b) of the Criminal Procedure Code—Accused already present in Court under Fiscal's custody—Charge framed without prior examination under section 151 (2) of the Criminal Procedure Code—Not a fatal irregularity—Criminal Procedure Code, ss. 126A, 148 (1) (b), 151 (2) and 187 (1).

Where a police officer filed a report under section 148 (1) (b) of the Criminal Procedure Code against the accused who was already present in Court in the custody of the Fiscal by virtue of an order made under section 126A of the Criminal Procedure Code—

Held, that the failure of the Magistrate to comply with the requirements of section 187 (1) of the Criminal Procedure Code before he framed a charge against the accused was not a fatal irregularity.

A PPEAL against a conviction by the Magistrate of Colombo.

H. W. Jayewardene, for the accused, appellant.

A. C. Ameer, C.C., for the Crown.

Cur. adv. vult.

September 11, 1945. WIJEWARDENE J.—

A Police Officer submitted a report to the Magistrate under Chapter 12 of the Criminal Procedure Code and at the same time produced the

accused before the Magistrate under section 126A (1). Acting under section 126A (2) the Magistrate authorised the detention of the accused till January 4, 1944. On January 4, the Police Officer instituted proceedings by filing a report under section 148 (1) (b) disclosing an offence under section 315 of the Penal Code and the Magistrate framed a charge and read it to the accused who was present. The accused pleaded not guilty and he was tried on a subsequent day.

Mr. H. W. Jayewardene contends that section 187 (1) empowers the Magistrate to frame a charge only "after the examination directed by section 151 (2)" and that the conviction in the present case is bad in the absence of such an examination. I am unable to uphold that contention. On the receipt of the written report under section 148 (1) (b) the Magistrate could have issued summons on the accused under section 151 (ii) without examining any witness, and when the accused appeared on such summons the Magistrate could have framed a charge forthwith under section 187 (ii). In such a case, therefore, there would have been no examination of any witness before the charge was framed. That is exactly what happened in the case though, of course, here no summons was issued because the accused was present at the time the report was filed. I do not think that the failure to comply with the requirements of section 187 (1) could be regarded in these circumstances as anything more than an irregularity which has not caused any prejudice to the accused. I note that the accused was defended in the Magistrate's Court by an Advocate and a Proctor and the point of law now argued in appeal has not been raised in the petition of appeal.

On the facts I have reached the same decision as the Magistrate with regard to the guilt of the accused and I see no reason for interfering with the sentence passed by the Magistrate.

I dismiss the appeal.

Appeal dismissed.
