[FULL BENCH] 1917.

Present: Wood Renton C.J. and Ennis and De Sampayo JJ.

SEARINNO *v.* MUTTUSAMY.

732—P. C. Negombo, 27,427.

False charge—Is it vexatious?—Quitting service without notice—Is the charge frivolous?—Criminal Procedure Code, ss. 197, 439, and 440.

Every false case is not necessarily vexatious. But if the facts constituting the charge are deposed to by the complainant as from his personal knowledge, and the charge turns out to be false, and to have been made with the deliberate intention, not merely of punishing the accused, but of harassing him, the proceedings are vexatious within the meaning of section 197 (1) of the Criminal Procedure Code.

ENNIS J.—That a false charge may be vexatious there can be no doubt, but it is not desirable that a Magistrate should use the provisions of section 197 (1) of the Criminal Procedure Code when he comes to the conclusion that a charge is false. The proper procedure where a charge is brought and particulars sworn to which are false to the knowldge of the complainant, is expressly provided in sections 439 and 440.

Where an employer charged a labourer, under section 11 of Ordinance No. 11 of 1865, with having quitted service without notice—

Held, that the charge was not a "frivolous" one within the meaning of section 197 (1) of the Criminal Procedure Code.

"The alleged offence is one for which the Legislature has provided a substantial punishment."

THE facts are set out in the judgment. This case was referred to a Bench of three Judges by De Sampayo J.

J. S. Jayawardene, for the appellant.—The charge against the appellant is clearly not frivolous. A frivolous charge is one which complains of a slight injury (*1 Tambyah 58*). The Legislature has

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provided a substantial punishment for a charge of quitting service without leave. The mere falsity of a charge is not sufficient to regard it as vexatious (*2 C. A. C. 173*). " Vexatious " must be read as *ejusdem generis* with " *frivolous* " (*9 Cr. L. J. 255*). In a false case there is a criminal action for perjury.

Counsel also relied on *5 N. L. R. 17, 1 Browne 34*, and *5 Bal. N. C. 94*.

Cur. adv. vult.

October 2, 1917. Wood Renton C.J.—

This case has been referred by my brother De Sampayo to a Bench of three Judges for the consideration of a point of law which arises on the following facts. The appellant charged the accused with having quitted his service without notice, in contravention of the provisions of section 11 of Ordinance No. 11 of 1865, as amended by section 2 of Ordinance No. 16 of 1905. The Police Magistrate heard the evidence of the complainant on the one side, and that of the accused on the other. He then acquitted the accused, and made an order, under section 197 (1) of the Criminal Procedure Code, requiring the complainant to pay Rs. 5 as Crown costs. The complainant appeals.

The view of the learned Police Magistrate was that the charge was a " frivolous " one within the meaning of section 197 (1) of the Code of Criminal Procedure. I entirely agree with the view taken, as I understand, by my brother De Sampayo at the original argument of the appeal before him, that the decision of the learned Police Magistrate cannot be supported on that ground. The charge was not frivolous. The alleged offence is one for which the Legislature has provided a substantial punishment. There remains, however, the question whether the charge might not fairly be held to have been " vexatious ", within the meaning of the same enactment. My brother has referred this question to a Bench of three Judges, in view of the fact that in certain local and Indian decisions the falsity of a charge has been held not to afford a good ground for the application of the summary remedy created by section 197 (1) of the Criminal Procedure Code and similar legislation. The *ratio decidendi* of these cases is that here, as elsewhere, the Legislature has made special and independent provision for the punishment of bringing a false and malicious charge. I do not propose to discuss these authorities in detail. It appears to me that the question must, in every case, resolve itself into one of fact. The mere circumstance that a charge is false might well afford no reason for regarding it as " vexatious ". The person who made the charge might believe it, and there might be nothing in the case to show any intention to harass the person accused. But, on the other hand, the circumstances might be quite different. Let us suppose that a man brings a charge which he knows to be false, and the collapse

of which at the hearing he must be aware is more than probable, against an old cripple living at a considerable distance from the Court by which that charge will have to be inquired into. Is it desirable that we should, by laying down hard and fast general rules, prevent a Police Magistrate in such circumstances as these from drawing the very reasonable inference that the complainant's object was not to secure the conviction of his opponent, but to put the latter to as much trouble as possible before he obtained his inevitable acquittal? To that question there can, in my opinion, be but one answer, and that is an answer in the negative. I have always been strongly averse from interpreting such wholesome provisions as are contained in sections 197 (1) and 440 of the Criminal Procedure Code in a narrow sense. It is well settled—see *Reg. v. Silva*[1] and 13, D. C. (Crim.) Chilaw, No. 3,200[2]—that the imposition of costs under the former of these sections is not a conviction of an " offence " so as to justify a plea of *autrefois convict* to a prosecution under section 208 of the Penal Code. The summary punishment of the bringing of false and vexatious charges is most salutary. It is immediate and certain. People of the type upon whom its infliction is necessary are never eager to part with even a few rupees. But what they resent most of all is the public exposure that has overtaken them.

In the present case the learned Police Magistrate has recorded findings from which an inference that the false charge made by the complainant against the accused was vexatious is not unreasonable, and I would affirm his judgment on that ground.

ENNIS J.—

That a false charge may be vexatious there can be no doubt, but, in my opinion, it is not desirable that a Magistrate should use the provisions of section 197 (1) of the Criminal Procedure Code when he comes to the conclusion that a charge is " false ". The proper procedure, where a charge is brought and particulars sworn to which are false to the knowledge of the complainant, is expressly provided for in the Criminal Procedure Code, sections 439 and 440, respecting the giving of false evidence (in the absence of any evidence the Court is not in a position to say that a charge is " false "). The procedure under these sections is no less expeditious than the procedure under section 197 (1), and the fact that a special procedure has been provided to meet the case of a charge which is " false " as distinct from being merely " vexatious " indicates, in my opinion, an intention that this procedure should be followed rather than the procedure for the punishment of the lesser offence dealt with in section 197.

[1] *(1901) 5 N. L. R. 17.*

[2] *S. C. M., Jan. 25, 1916.*

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There is no appeal from an order under section 197 for the payment of Crown costs, and the fact that a right of appeal has been recognized shows that the order, where a case is found to be " false, " should have been made under another section.

In the circumstances of the present case I see no reason to interfere, and would dismiss the appeal.

DE SAMPAYO J.—

This is an appeal from an order of the Police Magistrate, under section 197 (1) of the Criminal Procedure Code, condemning the complainant to pay Rs. 5 as Crown costs. Section 198 expressly disallows any appeal from such an order. This Court, however, has recognized the right of appeal where the proceedings have been so irregular that the order cannot be said to have been duly made. *Nonis v. Tamel.*[1] In this case the complainant was called upon to show cause, and the proceedings are otherwise regular. The appeal may, however, be dealt with as a matter in revision.

The complainant, who is superintendent of Katukenda estate, charged the accused, a cooly employed on the estate, with having quitted service without notice and without reasonable cause. The Police Magistrate found on the evidence that the accused had given a month's notice, and, further, had good cause to leave, as his wages had not been paid, and he disbelieved the complainant on both these points. He held that the charge was wholly false, and acquitted the accused. The complainant was then dealt with under section 197 (1), on the ground that the charge was frivolous. It is clear, however, that the charge was not frivolous, though it might be vexatious. But as there was some difference of judicial opinion as to whether a false charge was vexatious within the meaning of section 197 (1) of the Criminal Procedure Code (see, for example, *Peris v. Valentine* [2] and *Velupillai v. Casipillai* [3]), and as cases involving the same point frequently came up, I thought it right to refer this case to a Bench of three Judges, in order that the question might be settled.

It is undoubtedly true that every false case is not necessarily vexatious. The complainant may prefer the charge on the information of others, and the falsity of the charge may not for that or some other reason be known to him, and the charge may be made, not with the intention of harassing the accused, but with a view to justice. In such cases the complainant will hardly be guilty of vexatious prosecution. But if the facts constituting the charge are deposed to by the complainant as from his personal knowledge, and the charge turns out to be false, and is shown to have been made with the deliberate intention, not merely of punishing the accused, but of harassing

[1] *(1914) 17 N. L. R. 265.* [2] *(1912) 2 C. A. C. 173.*
[3] *(1912) 15 N. L. R. 332.*

him, I think the proceedings are vexatious in every sense of the word, and are within the statutory provision of section 197 (1). In the present case the findings of the Police Magistrate on the main charge and the observations in his judgment show that this is a case of the latter class. It is desirable that when a Magistrate deals with a complainant in similar circumstances he should bear the above distinction in mind, and specifically find the facts necessary to support his order.

I would, therefore, affirm the order of the Magistrate as one made on the ground that the complaint was vexatious.

Appeal dismissed.