

1960

Present : Basnayake, C.J.

LAMANATISSA DE SILVA, Appellant, and S. I. POLICE, MATARA,
Respondent

S. C. 712—M. C. Matara, 55987

Criminal procedure—Accused produced before Magistrate by Police—Framing of charge—Necessity to record evidence previously—Criminal Procedure Code, ss. 148 (1) (b), 148(1) (d), 151 (2).

The procedure prescribed in the Criminal Procedure Code in section 151 (2) is confined to proceedings instituted under section 148 (1) (d) and need not be followed in a case in which the accused is produced by the Police before the Magistrate in proceedings instituted under section 148 (1) (b). Accordingly, in the latter case, evidence need not be taken in terms of section 151 (2) before the charge is framed against the accused.

APPEAL from a judgment of the Magistrate's Court, Matara.

B. J. Fernando, for Accused-Appellant.

K. M. M. B. Kulatunga, Crown Counsel, for Attorney-General.

March 14, 1960. BASNAYAKE, C.J.—

It is submitted by counsel for the appellant that on the authority of the case of *Tikiri Banda v. T. Perimpanayagam*¹ the failure of the Magistrate to examine the person who brought the accused before the court and a person able to speak to the facts of the case before the charge was framed against the accused is fatal to the conviction. It would appear that proceedings in the instant case were instituted under section 148(1) (b) of the Criminal Procedure Code. The procedure indicated in section 151(2) need be followed only in a case in which proceedings are instituted under paragraph (d) of section 148(1). Not only was a written report under section 148(1) (b) made but the accused was also produced by the Police. That circumstance does not convert proceedings instituted under section 148(1) (b) to proceedings instituted under section 148(1) (d). The procedure prescribed in section 151(2) is confined to proceedings instituted under section 148(1) (d).

The objection taken by learned counsel does not lie in the instant case and the case cited by him has no application to it. I see no reason to interfere with the conviction on the facts.

The appeal is dismissed.

Appeal dismissed.

¹ (1959) 61 N. L. R. 286.