1965 *Present :* **Sansoni, C.J., H. N. G. Fernando, J., T. S. Fernando, J., L. B. de Silva, J., and Tambiah, J.**

A. C. PERERA, Appellant *and* THE SUB-INSPECTOR OF POLICE, KIRILLAPONA, Respondent

S. C. 1156—M. C. Colombo South, 50677/B

Criminal Procedure Code—Institution of proceedings under s. 148 (1) (b)—Accused brought before Court in custody without process—Evidence need not be recorded before charges are framed—Sections 126 (A), 131, 148 (1) (a) to (f), 151 (1) (2) (3), 151 (A), 187 (1).

Where proceedings in a Magistrate's Court are instituted on a written report made under section 148 (1) (b) of the Criminal Procedure Code, and the accused is at the same time brought before the Court in custody without process, it is not necessary for the Magistrate to record any evidence before he charges the accused.

Mohideen v. Inspector of Police, Pettah (59 N. L. R. 217) overruled.

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

M. M. Kumarakulasingham, with *W. G. Perera,* for the Accused-Appellant.

D. St. C. Budd Jansze, Q.C., Attorney-General, with *L. B. T. Premaratne,* Senior Crown Counsel, *V. S. A. Pullenayegum,* Crown Counsel, and *Wakeley Paul,* Crown Counsel, for the Complainant-Respondent.

Cur. adv. vult.

April 29, 1965. SANSONI, C.J.—

The question of law which we have to decide may be formulated thus :—" Where proceedings in a Magistrate's Court are instituted on a written report made under Section 148 (1) (b) of the Criminal Procedure Code,

and the accused is at the same time brought before the Court in custody without process, is it necessary for the Magistrate to record any evidence before he charges the accused ? "

Let me first consider the provisions of the Code itself, disregarding the numerous judgments which may have a bearing on the question.

Under Section 148 (1), proceedings shall be instituted in one of six ways :—

(*a*) on a complaint made orally or in writing. If in writing, the complaint must be drawn and countersigned by the pleader and signed by the complainant ; or

(*b*) on a written report by certain specified classes of public officers ; or

(*c*) upon the knowledge or suspicion of a Magistrate ; or

(*d*) on any person being brought before a Magistrate in custody without process ; or

(*e*) upon a warrant under the hand of the Attorney-General ; or

(*f*) on a written complaint made by a Court under Section 147.

Where the proceedings have been instituted under (*a*) or (*b*) or (*c*) or (*e*) or (*f*) mentioned above, Section 151 sub-sections (1) and (3) provide for the issue of a summons or a warrant to procure the attendance of the accused. Every summons or warrant must contain a statement of the particulars of the offence charged (Section 151A). Where proceedings have been instituted under (*d*) mentioned above, Section 151 (2) requires the Magistrate forthwith to examine on oath the person who has brought the accused before the Court and any other person who may be present in Court able to speak to the facts of the case.

When the accused appears before the Court, the next step is for the Magistrate to charge him ; and Section 187 provides how that is to be done.

Where the accused appears on summons or warrant a charge need not be framed, because the statement of the particulars of the offence contained in the summons or warrant shall be deemed to be the charge (Section 187 (2)).

Where the accused is brought before the Court otherwise than on a summons or warrant, the Magistrate must frame a charge against the accused if he is of opinion that there is sufficient ground for proceeding against the accused (Section 187 (1)).

Where a prosecution commenced under Section 148 (1) (*b*) in respect of an offence punishable with not more than 3 months' imprisonment or a fine of Rs. 50, the report serves as a charge (Section 187 (3)).

In each case the Magistrate must read the summons or warrant, or the charge, or the report, as the case may be, to the accused and ask him if he has any cause to show why he should not be convicted.

We now come to the question formulated at the beginning of this judgment. What is the position if proceedings were instituted on a written report under Section 148 (1) (*b*) against an accused who was brought before

the Court in custody without process ? It was argued for the accused-appellant that no charge should be framed in such a case until at least the evidence of the person who brought the accused before the Court has been recorded. It is sought to support this argument by Section 187 (1) which reads :—

> " Where the accused is brought before the court otherwise than on a summons or warrant the Magistrate shall after the examination directed by section 151 (2), if he is of opinion that there is sufficient ground for proceeding against the accused, frame a charge against the accused. "

The argument is that there must be an examination as directed by Section 151 (2) in such a case because the accused was brought before the Court without a summons or warrant.

But what does Section 151 (2) say ? It reads :—

> " Where proceedings have been instituted under paragraph (*d*) of section 148 (1), the Magistrate shall forthwith examine on oath the person who has brought the accused before the court and any other person who may be present in court able to speak to the facts of the case. "

It will be seen that Section 151 (2) applies only to proceedings which have been instituted under Section 148 (1) (*d*) and to no other ; consequently there is nothing in Section 151 (2) to support the argument that there must be a preliminary examination in the case we are considering.

Some previous decisions appear to have been influenced by the failure to take into account the purpose of Section 187. That purpose is to require a Magistrate, if he is of opinion that there is sufficient ground for proceeding against the accused, to read to the accused the charge against him. This the Magistrate must do, either from a charge framed by him or from a summons or warrant or report in which the charge was previously set out. No doubt Section 187 (1) contains the phrase " after the examination directed by Section 151 (2) ", but Section 187 (1) does not for this reason have, according to rules of grammar, the effect of requiring the examination to be held. That requirement is already imposed by Section 151 (2), and need not have been and is not again imposed in the subsequent provision. The phrase is only a reference to the examination under Section 151 (2), and since it is obvious that Section 151 (2) has not in terms any application in the case we are considering, the two Sections read together do not require such an examination in that case.

It has sometimes been argued that proceedings which have been instituted under Section 148 (1) (*b*) on a written report become, in some way, proceedings instituted under Section 148 (1) (*d*) merely because the accused was brought before the Magistrate without process. I think the only possible answer is that they do not. Proceedings which have been instituted in one of the six ways do not change their character merely because there is present some additional circumstance which might also be present in the case of proceedings instituted in another way.

Where proceedings have been instituted under Section 148 (1) (*b*) the Code no where requires the examination of any person before a charge is framed, and it is open to a Magistrate to frame a charge in such a case without recording evidence. The particulars of the charge in such a case could be taken from the report itself, though the Magistrate may record evidence in order to obtain further particulars before framing the charge.

I do not think it is necessary to refer to the earlier decisions except the judgments of three Judges in *Mohideen v. Inspector of Police, Pettah* [1] which have taken the opposite view. It was held in that case that where an accused is brought before the Court in custody without process, and a report under Section 148 (1) (*b*) is filed, the Magistrate must record evidence on oath as required by Sections 151 (2) and 187 (1), before he frames a charge.

The main judgment in that case was delivered by K. D. de Silva, J. who held that Section 187 (1) required that in every case where the accused is present otherwise than on summons or warrant, the Magistrate must hold the examination contemplated by Section 151 (2). With respect, it seems to me that the learned Judge read into Section 151 (2) (which refers to proceedings instituted under paragraph (*d*) of Section 148 (1) and no other) words which are not there ; he has read into the sub-section a reference to paragraph (*b*). But as I have pointed out earlier, the only examination contemplated by Section 187 (1) is the examination directed by Section 151 (2) and Section 151 (2) has no application where proceedings are instituted under Section 148 (1) (*b*). Basnayake C.J. agreed with K. D. de Silva, J. in a separate judgment. I prefer the views expressed in the dissenting judgment of Pulle, J. who said :—" Section 187 (1) speaks of an examination directed by Section 151 (2). The latter provision is limited by its very terms to Section 148 (1) (*d*) and cannot be extended to cover an institution of proceedings under Section 148 (1) (*b*). "

For the reasons I have set out I would answer the question formulated at the commencement of this judgment in the negative, and overrule the decision in *Mohideen v. Inspector of Police, Pettah.*

The appeal may now be listed before a single Judge for further argument on the facts.

H. N. G. Fernando, J.—I agree.

T. S. Fernando, J.—I agree.

L. B. de Silva, J.—I agree.

Tambiah, J.—

I am in agreement with the view expressed by My Lord, the Chief Justice. As this case is of some importance I wish to add a few comments. When this matter came up before me I requested My Lord, the Chief Justice to refer this case to a Bench of five judges as I had doubts regarding the view taken by the majority of the judges who heard the case of *Mohideen v. Inspector of Police, Pettah* [1].

[1] *(1957) 59 N. L R. 27.*

Section 148 (1) of the Criminal Procedure Code enacts that proceedings in a Magistrate's Court should be instituted in *one* of the following ways:

" (*a*) on a complaint being made orally or in writing to a Magistrate of such court that an offence has been committed which such court has jurisdiction either to inquire into or try :

Provided that such a complaint if in writing shall be drawn and countersigned by a pleader and signed by the complainant; or

(*b*) on a written report to the like effect being made to a Magistrate of such court by an inquirer under Chapter XII or by a peace officer or a public servant or a Municipal servant or a servant of an Urban Council or Town Council ;

(*c*) upon the knowledge or suspicion of a Magistrate or such court to the like effect :

Provided that when proceedings are instituted under this paragraph the accused or when there are several persons accused any one of them, shall be entitled to require that the case shall not be tried by the Magistrate upon whose knowledge or suspicion the proceedings are instituted, but shall either be tried by another Magistrate or committed for trial ; or

(*d*) on any person being brought before a Magistrate of such court in custody without process, accused having committed an offence which such court has jurisdiction either to inquire into or try ; or

(*e*) upon a warrant under the hand of the Attorney-General requiring a Magistrate of such court to hold an inquiry in respect of an offence which such court has jurisdiction to inquire into ; or

(*f*) on a written complaint made by a court under section 147. "

If it is imperative for the Magistrate to comply with section 152 (2) of the Criminal Procedure Code when proceedings are instituted under section 148 (1) (*b*) and when an accused is brought before him without process, then it follows that proceedings could be instituted in a particular case in more than one way under section 148 of the Criminal Procedure Code since in such a case the proceedings would have been instituted under section 148 (*d*) of the Criminal Procedure Code as well—a conclusion which is not warranted since proceedings can be instituted in only one of the ways set out in section 148 of the Criminal Procedure Code.

Section 187 (1) of the Criminal Procedure Code, on which much reliance had been placed by the majority of the judges who decided *Mohideen's Case*, and the other paragraphs of section 187 deal with framing of charges. Section 187 (1) merely states that where an accused is brought otherwise than on summons or warrant the Magistrate shall, after examination directed by section 151 (2), if he is of opinion that there is sufficient ground for proceedings against the accused, frame charges against him. Under this section the Magistrate is empowered to examine a witness who is brought to court only in a case where proceedings have been instituted under section 148 (*d*) of the Criminal Procedure Code. Therefore it

follows that section 187 (1) of the Criminal Procedure Code is only applicable to a case instituted under section 148 (*d*) and not to a case instituted under section 148 (*b*) of the Criminal Procedure Code.

In a case instituted under section 148 (*b*) of the Criminal Procedure Code, the officer concerned (usually a police officer), after inquiring into the case, sends a report. He would act with a due sense of responsibility after proper investigation if he is satisfied that there is a prima facie case. In most instances before filing his complaint under section 148 (1) (*b*), the officer would have furnished the Magistrate with a report of the investigation under section 126 (A) or section 131 of the Criminal Procedure Code. In proceedings instituted under section 148 (1) (*a*) the Magistrate either hears evidence or acts on a written complaint which is countersigned by a pleader. In proceedings instituted under sections 148 (1) (*c*) and 148 (1) (*f*) of the Criminal Procedure Code, the proceedings are commenced at the instance of the Magistrate or a court. Proceedings could be instituted under section 148 (1) (*e*) upon the Attorney-General requiring a Magistrate of such court to hold an inquiry in respect of an offence which such court has jurisdiction to inquire into. In all the above cases the Magistrate has information before him that there are reasonable grounds for initiating proceedings in his court.

When a person is brought before court otherwise than on summons or warrant and before proceedings are instituted under section 148 (1) (*d*) of the Criminal Procedure Code, the Magistrate has no such information about it. It is provided by section 151 (2) of the Criminal Procedure Code that the Magistrate should examine the person who has brought up accused before the court and any other person to speak to the facts of the case. The intention of the Legislature in enacting section 151 (2) of the Criminal Procedure Code is to enable a Magistrate to ascertain whether there are grounds for proceeding against a person brought up before him. It is not meant to furnish information to the accused, for, in whatever manner proceedings are instituted under section 148 of the Criminal Procedure code, the nature and particulars of a charge *must always* be explained to an accused person before he can be called upon to plead. If it is realised that section 148 (1) of the Criminal Procedure Code only deals with the different ways in which proceedings could be instituted in the Magistrate's Court, the solution to this problem becomes simple.

For these reasons, I agree with the dissenting view expressed by Pulle J. in *Mohideen's Case* and the views taken in *Cader v. Karunaratne* [1], *Ebert v. Perera* [2] and in *Lamantissa de Silva v. S. I. Police, Matara* [3]. I am of opinion that only in a case where proceedings are instituted under section 148 (1) (*d*) of the Criminal Procedure Code a duty is cast on the Magistrate to examine a person who brought the accused or any other person before the action is proceeded with but where proceedings are instituted under section 148 (1) (*b*) the procedure envisaged in section 151 (2) does not apply.

Ruling given on a question of law.

[1] *(1943) 45 N.L.R. 23.* [2] *(1922) 23 N.L.R. 362* [3] *(1960) 62 N.L.R. 92.*