

Present : Garvin J.

1928.

KANNANGARA v. KANNANGARA.

567—P. C. Kalutara, 25,852.

Appeal—Order of discharge by Police Magistrate—Instructions of the Attorney-General—Criminal Procedure Code, s. 158.

No appeal lies from an order of discharge made by a Police Magistrate under section 158 of the Criminal Procedure Code on a direction by the Attorney-General.

A PPEAL by the complainant from an order of discharge entered by the Police Magistrate on instructions from the Attorney-General.

Soertsz, for complainant, appellant.

H. V. Perera (with *Rajakarier*), for accused, respondent.

Schokman, C.C., for the Attorney-General.

November 21, 1928. GARVIN J.—

The prosecution in this case was initiated with the sanction of the Attorney-General. That sanction was necessary inasmuch as the charges were of offences punishable under section 454, section 480, and section 180 of the Ceylon Penal Code. Non-summary proceedings were taken as required by law, and the record was forwarded to the Attorney-General in pursuance of the order made by the Police Magistrate under the provisions of section 157 of the Criminal Procedure Code. The Attorney-General, acting in pursuance of the powers vested in him by section 158, directed that the accused be discharged. In accordance with this direction he was forthwith discharged. From this discharge the complainant is appealing.

Counsel for the accused takes the objection that no appeal lies. But Counsel for the appellant urges that the discharge here is the result of a final order pronounced by the Police Magistrate, and is, therefore, an appealable order within the meaning of section 338.

It is to be noted that in the explanation to section 338 an order committing or discharging a prisoner made under section 157 is expressly stated not to be "a judgment or final order" within the meaning of section 338. It is urged that the omission to exclude an order of discharge under section 158 supports the contention that such an order is appealable. Section 158 enacts that when the Attorney-General "directs that the accused be discharged he shall be forthwith discharged." Unlike an order of discharge under

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section 157 which a Police Magistrate is empowered to make in the exercise of his own discretion a discharge under section 158 is in the discretion of the Attorney-General. In communicating the order of the Attorney-General to the accused and giving effect to it, the Police Magistrate is not giving judgment or making a final order within the meaning of section 338 any more than in the case where he is communicating and giving effect to an order made in appeal by the Supreme Court.

Having regard to Chapter XVI, as a whole and to the circumstance that the only section which expressly contemplates an order of discharge made by a Police Magistrate in his own discretion (section 157), is expressly excluded from the purview of section 338, my own opinion is that in discharging or committing a person under the discretions of the Attorney-General the Magistrate is not making final orders such as are contemplated by section 338. But even if one were to assume that the order of discharge made by the Police Magistrate is a final order of the Police Court within the meaning of section 338, then the order is clearly right ; for the law states that upon receipt of the direction from the Attorney-General that the accused be discharged he shall be forthwith discharged. In so far, therefore, as this discharge is an order of the Police Court, it is unimpeachable. What Counsel is endeavouring to do is to obtain a revision by this Court of the direction given by the Attorney-General to the Magistrate to discharge an accused. I am aware of no provision of law which enables that to be done. The appellant is, therefore, upon the horns of a dilemma. If the discharge amounts to a final order of the Police Court the order is correct ; if it does not, he has no remedy since the law has made no provision for the revision of a direction by the Attorney-General that the accused be discharged under section 158 of the Criminal Procedure Code.

The objection to this appeal is sound and must be upheld. The appeal is accordingly dismissed.

Appeal dismissed.