

1937

Present : Soertsz J.

DHARMALINGAM CHETTY v. VADIVEL CHETTY et al.

355—P. C. Colombo, 6,873.

Order of discharge—Charge made without sanction of Attorney-General—Order not final—Giving false evidence in course of an investigation preliminary to proceedings in Court—Sanction not required—Order of discharge illegal—Penal Code, s. 190—Criminal Procedure Code, s. 147 (1) (b).

Where a person is charged with giving false evidence in the course of, or for the purpose of, an investigation directed by law preliminary to a proceeding in Court, the offence is not committed "in any Court or in relation to any proceeding in any Court" within the meaning of section 147 (1) (b) of the Criminal Procedure Code, and the previous sanction of the Attorney-General is not required before a Police Magistrate takes cognizance of the offence.

An order discharging an accused on the ground that the Magistrate is debarred from taking cognizance of the offence because the complainant had not obtained the sanction of the Attorney-General is not a final order and is not appealable. If the order of discharge is wrongly made, i.e., if the sanction of the Attorney-General was unnecessary the complainant is entitled to be relieved of the order.

A PPEAL from an order of the Police Magistrate of Colombo.

J. R. Jayawardene, for complainant, appellant.

C. E. S. Pereira (with him Dodwell Gunawardena), for accused, respondents.

¹ (1910) 13 N. L. R. 195.

July 28, 1937. SOERTSZ J.—

An interesting point arises for determination in this appeal. Respondent's Counsel takes the preliminary objection that the appellant has no right of appeal inasmuch as the order with which he says he is dissatisfied, is not a judgment or final order in terms of section 338 (1) of the Criminal Procedure Code.

The order from which this appeal is taken is an order made by the Police Magistrate of Colombo discharging the two accused on the ground that he is debarred by section 147 (1) (b) of the Criminal Procedure Code from taking cognizance of the offence alleged by the complainant against the accused, under section 190 of the Penal Code, because the complainant has not obtained the previous sanction of the Attorney-General. If this order is right, the respondent's objection is entitled to prevail, for in that event, it cannot be said that it is a final order. It is not an order disposing of the matter brought to the notice of the Court, but an order postponing consideration of it till a condition has been satisfied. If, however, the order was wrongly made, that is to say, if the sanction of the Attorney-General is not necessary, then the preliminary objection fails and the appellant is entitled to be relieved from the order.

The question, then, is whether in this case the previous sanction of the Attorney-General is necessary to entitle the complainant to ask the Court to take cognizance of his complaint. Section 147 (1) (b) of the Criminal Procedure Code enacts that 'no Court shall take cognizance of any offence punishable under section 190 . . . of the Penal Code *when such offence is committed in or in relation to any proceedings in any court except with the previous sanction of the Attorney-General*". The words in italics make it clear that it is not in respect of every offence against section 190 of the Penal Code that the previous sanction of the Attorney-General is required, but in respect only of such offences as are committed in any Court, or in relation to any proceeding pending in any Court. Section 190 of the Penal Code falls into two parts. The first part deals with (1) the giving of false evidence *in any stage of a judicial proceeding*; (2) the fabricating of false evidence for the purpose of being used *in any stage of a judicial proceeding*. The second part deals with (3) the giving of false evidence but *not in any stage of a judicial proceeding*; (4) the fabricating of false evidence for the purpose of being used *otherwise than in any stage of a judicial proceeding*.

The three 'explanations' appended to section 190 of the Penal Code extend the meaning of the words 'judicial proceeding' and bring within their scope—(1) a proceeding in a Court of Justice; (2) a trial before a Court Martial; (3) a trial before a Military Court of Request; (4) the investigation *directed by law* preliminary to a proceeding before a court of justice; (5) an investigation *directed by a court of justice* according to law. The giving of false evidence before any of these tribunals and the fabrication of false evidence for the purpose of being used in any stage of a proceeding before these tribunals are visited with heavier punishment than is meted out in respect of the giving of false evidence elsewhere, or the fabricating of false evidence to be used in any proceeding elsewhere. But when it comes to the matter of the previous sanction of the Attorney-General, the position is different. Section 147 of the Criminal Procedure

Code departs from the phraseology section 190 of the Penal Code employs to differentiate between offences committed in relation to a *judicial proceeding and other offences*, and uses the words *in or in relation to any proceeding in any court* for the purpose of stating the occasion on which the sanction of the Attorney-General is required.

It expressly states that it is required not in the cases of offences committed in any judicial proceeding or in relation to any judicial proceeding, but in the cases of offences committed in or in relation to any proceeding in any Court. The meaning of the word Court in section 147 has not been extended by explanation or otherwise in the way in which the words 'Judicial proceeding' have been extended in section 190. The Magistrate has overlooked this fact. He says, "A wider meaning has been given to the word 'Court' in the footnote by explanation 2 to section 190". That is not so. A wider meaning than the words usually bear has been given to "judicial proceeding".

The word 'Court' must be given the meaning it has in the Courts Ordinance, No. 1 of 1889.

It follows therefore that the previous sanction of the Attorney-General is not necessary in the case of an offence committed in the course of or for the purpose of an investigation directed by law preliminary to a proceeding in any Court, for such an offence is not committed in any Court or in relation to any proceeding in any Court, although it is committed in a stage of a judicial proceeding so far as section 190 of the Penal Code is concerned.

I set aside the order of the Police Magistrate and send the case back for inquiry.

Set aside.
