

1944 .

*Present: Keuneman J.*POPALAI, Appellant, and SULTAN *et al.*, Respondents.331—*M. C. Trincomalee, 9,277.**Criminal Procedure Code, ss. 148 (1) (a) and 151—Refusal to issue process—Complainant's witnesses not heard.*

A Magistrate would be acting too abruptly if he refuses to issue process after hearing the complainant alone and without hearing witnesses who are available to support the complaint.

A PPEAL from an order of the Magistrate, Trincomalee. On a complaint against the accused of house-trespass and theft the Magistrate refused to issue process, without calling upon the complainant to produce his witnesses. The complainant appealed with the sanction of the Attorney-General.

C. T. Olegasegarem, for the complainant, appellant.

No appearance for the accused, respondent.

June 27, 1944. KEUNEMAN J.—

In this case the Magistrate after hearing the complainant alone refused to issue process on the uncorroborated evidence of the complainant. It is not clear from the record that the complainant had no witnesses who could support him, nor does the Magistrate appear to have enquired as to whether such witnesses were available at the spot or could be procured at a later stage.

In the petition of appeal it is stated that there were six witnesses available to support the complaint. I think the Magistrate has perhaps acted too abruptly.

I set aside the order refusing process, and I send the case back to the Magistrate to hear the complainant, if necessary; again, and any witnesses whom the complainant may produce before the Magistrate. After hearing these witnesses the Magistrate will decide as to whether process should issue or not.

Order set aside.

