

1967

*Present : Alles, J.*

K. S. PANDITARATNE, Petitioner, and THE ASSISTANT  
SUPERINTENDENT OF POLICE, KEGALLE, and another,  
Respondents

*S. C. 343/67—Application for the issue of a Mandate in the nature  
of a Writ of Mandamus*

*Criminal Procedure Code, as amended by Act No. 42 of 1961—Sections 121 (1), 122 (1),  
122 A, 148 (1) (b)—Cognizable offence committed against a police officer—  
Arrest of offender under Police Ordinance, s. 65—Information given or recorded,  
and statements made during investigation, in respect of the offence—Right of  
accused to obtain certified copies—First information—Different forms of it.*

When proceedings under section 148 (1) (b) of the Criminal Procedure Code have been instituted in a Magistrate's Court in respect of a cognizable offence committed against a police officer, the fact that the offence was committed

against a police officer does not exempt the "proper authority", when application is made to him under section 122A of the Criminal Procedure Code, from his duty to furnish to the accused or his proctor certified copies of information given or recorded and statements made in terms of sections 121 (1) and 122 (1) respectively of the Criminal Procedure Code.

The information under section 121 (1) of the Criminal Procedure Code may be obtained in several ways. It may be made orally and reduced to writing, or it may be made in writing in the first instance, or it may be communicated over the telephone. Although a police officer who is present at the time of the commission of a cognizable offence against him is entitled to arrest the offender under section 65 of the Police Ordinance, he would be giving information under section 121 (1) of the Criminal Procedure Code when he takes the offender to the Police Station and informs the authorities of the offence.

**A**PPPLICATION for a writ of *mandamus* against the Assistant Superintendent of Police, Kegalle, and the Officer-in-Charge of the Police Station, Kegalle.

*Nimal Senanayake*, with *Dharmasiri Senanayake* and *Gemunu Seneviratne*, for the petitioner.

*V. S. A. Pullenayegum*, Crown Counsel, with *Ranjit Abeysuriya*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

December 7, 1967. ALLES, J.—

This is an application for a mandate in the nature of a writ of *mandamus* by the petitioner against whom proceedings have been instituted under section 148 (1) (b) of the Criminal Procedure Code in the Magistrate's Court of Kegalle. The 1st respondent to the application is the Assistant Superintendent of Police, Kegalle, and the 2nd respondent the Officer in charge of the Kegalle Police Station. In his application, the petitioner prays for the intervention of this Court and seeks an order directing the respondents to furnish him or his proctor with certified copies of information given and statements made in terms of section 121 (1) and 122 (1) respectively of the Criminal Procedure Code in respect of cases Nos. 68125, 68267 and 68269 filed by the Inspector of Crimes, Kegalle, against the petitioner. In M. C. Kegalle 68125, the Police report under section 148 (1) (b) of the Code alleges that the petitioner intentionally insulted M. P. W. Munasinghe, Inspector of Police, Kegalle, an offence punishable under section 484 of the Penal Code; that he used criminal force on the said Munasinghe (section 344 of the Code); and that he offered resistance to the apprehension of himself by Munasinghe (section 220A). In M. C. Kegalle 68267, the report alleges that the petitioner caused annoyance to N. B. Cyril Gunadasa, while being in a state of intoxication (section 488 of the Code), insulted the said Gunadasa,

(section 484) and committed criminal intimidation on Gunadasa (section 488). In M. C. Kegalle 68269, the report alleges the commission of offences under section 314 of the Penal Code by the petitioner in respect of hurt caused to P. S. Pietersz and P. C. Karunadasa of the Kegalle Police. Except for the offence of Insult under section 484, the other offences are cognizable offences.

In order to appreciate the question of law that has been argued in this application it is necessary to briefly recount the circumstances that led to the institution of criminal proceedings against the petitioner.

According to the affidavit of the 2nd respondent between 8 and 8.30 p.m. on 15.6.67, several abusive telephone calls were received at the Kegalle Police Station from the petitioner. It is not known how the Police officers were aware that the calls originated from the petitioner, but according to the 2nd respondent the calls were traced to the Kegalle Rest House. A Police party, among whom were Inspector Munasinghe and P. S. Pietersz, was sent to the Rest House to make investigations. When the Police party arrived at the Rest House, the petitioner, who was the worse for liquor, abused the Police officers in obscene language and used criminal force on them. He also caused annoyance to Gunadasa who was apparently a visitor to the Rest House and insulted him. The petitioner was thereupon arrested and taken to the Kegalle Police Station and subsequently criminal proceedings were instituted against him.

In his affidavit, the 2nd respondent maintains that no information under section 121 (1) of the Criminal Procedure Code was given to any Police officer nor recorded by any Police officer in respect of the offences which the petitioner is alleged to have committed and that no proceedings have been instituted in the Magistrate's Court in pursuance of any such information. Consequently it has been submitted by Crown Counsel that this is not a case to which the provisions of section 122A of the Criminal Procedure Code applied. This section, which was introduced as an amendment to the Code by Act No. 42 of 1961, enabled the accused or his proctor to obtain from the proper authority a certified copy of any information given under section 121 (1) of the Code consequent on which proceedings are instituted against any person and also any statement under section 122 (1) by the person against whom or in respect of whom the accused is alleged to have committed an offence.

Section 121 (1) contemplates the first information given orally or in writing to an officer in charge of a Police Station and is usually the basis for the commencement of proceedings under Chapter XII of the Code.

I am not prepared to accept the bare statement of the 2nd respondent that "no information under section 121 (1) of the Criminal Procedure Code was given to any police officer nor recorded by any police officer at the Kegalle Police Station in respect of the offences with which the petitioner had been charged and that no proceedings have been instituted

in the Magistrate's Court in pursuance of any such information". The 2nd respondent in his affidavit has admitted that the petitioner did make an application for certified extracts of the information under section 121 (1) and the statements recorded under section 121 (2) and that the certified copies applied for cannot be issued to the petitioner as he was not entitled to obtain them. One can only assume from the averments in the affidavits of the petitioner and the 2nd respondent that the position taken up by the 2nd respondent is that certain statements were recorded by the Police in the course of the investigation but that the petitioner was not entitled in law to obtain them in spite of the provisions of section 122A of the Criminal Procedure Code. Indeed, having regard to the nature of the charges preferred against the petitioner in the 148 (1) (b) reports one can reasonably assume that statements must have been made by the persons against whom or in respect of whom the petitioner is alleged to have committed the cognizable offences contained in the reports. It is idle to suggest that Inspector Munasinghe did not make a record of the manner in which the petitioner used criminal force on him and intentionally offered resistance or illegal obstruction to his lawful apprehension or that P. S. Pietersz and P. C. Karunadasa did not give an account of the commission of the cognizable offence of causing hurt of which they were the victims or that Gunadasa's statement of the manner in which the petitioner conducted himself to his annoyance while being in a state of intoxication was not a matter of record. Their statements may indeed be the first information of the commission of cognizable offences under section 121 (1). If they were not, then one must assume that they were statements recorded under section 122 (1) of the Code and under section 122A the petitioner would be legally entitled to obtain these statements, quite independent of whether information was given under section 121 (1) or not.

Unfortunately, this Court has been left completely in the dark as to what transpired at the Police Station after the petitioner was brought to the Station and one is left in the realm of speculative inquiry as to the steps taken by the Police before they filed the reports under section 148 (1) (b) of the Code. These reports are made entirely on the responsibility of the police officers and after due inquiry and investigation. The information under section 121 (1) may be obtained in several ways. It may be made orally and reduced to writing or it may be made in writing in the first instance, or the information may be communicated over the telephone. A Police officer who is present at the time of the commission of a cognizable offence has no doubt the right to arrest the offender under section 65 of the Police Ordinance, but when he takes the offender to the Station and informs the authorities of the offender's lapse, he would be giving information under section 121 (1) of the Code. Section 121 (1) does not make an exception in the case of Police officers. I cannot envisage any situation in which a report made under section 148 (1) (b) of the Code is not preceded by some information given in terms of section 121 (1) and after statements are recorded under section 122 (1) of the Criminal Procedure Code.

I am not prepared to act on the averment of the 2nd respondent in his affidavit that the petitioner is not entitled to the certified extracts called for by his letter of 4th August 1967 (marked 'C'). Whether he is entitled to them or not is a question of law which must be left for the determination of this Court.

The extracts called for by the petitioner have not been furnished to this Court in order that I may be satisfied that the assertion in the 2nd respondent's affidavit that the petitioner is not entitled to the extracts called for in his letter is a claim that can be justified. The amendment to the Criminal Procedure Code by section 122A has expressly provided that the accused is entitled in law to obtain the information given under section 121 (1) of the Code and the statements made under section 122 (1) by the persons against whom or in respect of whom the accused is alleged to have committed an offence. Justice requires that the Courts should be vigilant that the legal rights of an accused person are not circumvented by any mistaken view of the law by over zealous officials. I therefore direct the respondents to forward to the Registrar of this Court on or before 15th December the Information Book of the Kegalle Police Station containing all investigations made by the Police in regard to the reports made by them under section 148 (1) (b) of the Criminal Procedure Code in Cases Nos. 68125, 68267 and 68269 of the Magistrate's Court of Kegalle together with certified copies of all statements recorded by them in the course of their investigations.

After a perusal of the relevant documents, I will make a final order whether the application of the petitioner is one that is entitled to succeed or not.

December 20, 1967.—

When I delivered my order on 7th December 1967, I stated that I would make my final order on this application after a perusal of the relevant documents.

I have now perused the notes of the police investigation in relation to this application. According to these notes the Police party consisting of S. I. Munasinghe, P. S. Pietersz and P. C. Karunadasa went to the Kegalle Rest House at 9.40 p.m. to enquire into the non-cognizable offence of Insult alleged against the petitioner. On arrival at the Rest House the petitioner again commenced to abuse the Police officers and offered resistance to his arrest. He was then forcibly taken into the police land rover and while the vehicle was being driven to the police station he kicked Police officers Pietersz and Karunadasa causing hurt to them. S. I. Munasinghe, when he returned to the Station at 10.05 p.m., made his observations as to how the petitioner resisted arrest and kicked the police officers. These observations form the subject matter of the 148 (1) (b) report in Case No. 68125 and make mention of the cognizable offences under ss. 344 and 220A of the Penal Code. These observations

would constitute the information relating to the commission of the cognizable offences referred to in the report and recorded under s. 121 (1) of the Criminal Procedure Code. The petitioner would be entitled to this information.

At 10.55 p.m. after having the petitioner examined by the Doctor and brought back to the Station, S. I. Munasinghe sent P. S. Pietersz to the Rest House to conduct enquiries. On Pietersz's arrival at 11.10 p.m. he recorded the statement of Cyril Gunadasa. In his statement Gunadasa described the manner in which the petitioner caused annoyance to him while being in a state of intoxication (s. 488 of the Penal Code) and how he was criminally intimidated (s. 486). These offences form the subject of the 148 (1) (b) report in M. C. Kegalle 68267. The offence under s. 488 is a cognizable offence alleged to have been committed before the Police party arrived at the Rest House and would constitute the first information made under s. 121(1). The petitioner would be entitled to a certified copy of Gunadasa's statement.

P. S. Pietersz and P. C. Karunadasa, the victims of the kicking, have made statements as to the manner in which the petitioner is alleged to have caused hurt to them and which form the subject matter of the 148 (1) (b) report to Court in M. C. Kegalle 68269. The petitioner would be entitled to the statements of these two police officers in relation to the offences under s. 314 alleged against the petitioner.

I am therefore of the view that the petitioner is entitled to succeed in his application for the issue to him or his proctor certified copies of the following documents in the under-mentioned cases :—

- (a) The recorded observations of S. I. Munasinghe made at 10.05 p.m. on 15.6.67 commencing with the words, "At the Rest House with the Police party" and ending with the words, "Inside the Land Rover he violently struggled and started kicking the Police Sergeant and the party who were in the Land Rover".

(M. C. Kegalle 68125)

- (b) The statement of Naragala Vidanalage Cyril Gunadasa made to P. S. Pietersz at 11.10 p.m. at the Rest House commencing with the words, "He dialled on three or four occasions" and ending with the words, "His conduct in the Rest House was such that it caused annoyance to me as well as others and visitors to the Rest House".

(M. C. Kegalle 68267)

- (c) The statement of P. C. 2042 Karunadasa recorded by P. S. Pietersz on 16.6.67 commencing with the words, "On 15.6.67 I accompanied I. P. Munasinghe and P. S. Pietersz to the Rest House" and ending with the words, "I received several kicks all over my body".

(M. C. Kegalle 68269)

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(d) The statement of P. S. Pietersz recorded by S. I. Munasinghe commencing with the words, "At about 9.55 p.m. I accompanied I. P. Munasinghe and P. C. 2042 and arrived at the Rest House at 10 p.m." and ending with the words, "I received several kicks on my body".

(M. C. Kegalle 68269)

The application of the petitioner is allowed with costs which I fix at Rs. 105.

*Application allowed.*

