

1950

*Present: Nagalingam J.*

THE ATTORNEY-GENERAL, Appellant, and SEEDIN, Respondent

*S. C. 882—M. C. Matara, 17,713**Criminal procedure—Non-cognizable offence—Power of police officer to institute criminal proceedings—Criminal Procedure Code, ss. 129, 148 (1) (b)—Police Ordinance, ss. 57, 71.*

A police officer or a peace officer may institute proceedings under Section 148 (1) (b) of the Criminal Procedure Code in respect of a non-cognizable offence without obtaining a prior order from a Magistrate under Section 129 to investigate the offence.

**A**PPEAL from a judgment of the Magistrate's Court, Matara.

*T. S. Fernando*, Crown Counsel, with *A. Mahendrarajah*, Crown Counsel, for the Attorney-General.

*A. L. Jayasuriya*, for the accused respondent.

October 12, 1950. NAGALINGAM J.—

The proceedings in this case commenced with a report under Section 148 (1) (b) of the Criminal Procedure Code by an Inspector of Police reporting to Court that the accused respondent had committed offences punishable under Sections 409 and 486 of the Penal Code. The Magistrate entertained the plaint and issued summons. The accused having pleaded not guilty, the case was set down for trial. On the date of trial, even before any evidence was led by the complainant, a preliminary objection was taken to the hearing of the charges. The objection was that the police officer who had made the report to Court had not obtained an order from the Magistrate to investigate the offences which were admittedly non-cognizable, and therefore could have neither investigated nor reported the matter to Court under Section 148 (1) (b). The learned Magistrate upheld the objection and has acquitted the respondent.

The Attorney-General appeals from that order. It seems to me, that the learned Magistrate has misconstrued the provisions of Section 129 of the Criminal Procedure Code, upon which he has based his order. That section does not require that before a police officer or a peace officer could report a non-cognizable offence to Court under Section 148 (1) (b), he should first have made investigations, and for that purpose received an order from the Magistrate to investigate the offence. What Section 129 does say is that where a police officer does receive an order from a Magistrate authorising him to investigate a non-cognizable offence, then by virtue of that authority he would become entitled to exercise the powers conferred upon a police officer by Chapter 16 of the Criminal Procedure Code, namely, powers of recording the first information, of requiring the attendance of persons able to give information with regard to an offence, to examine witnesses, to carry out searches, &c.

Section 57 of the Police Ordinance makes it imperative for a police officer to detect and bring offenders to justice. That section does not in any way limit the duties of a police officer either to cognizable or non-cognizable offences, but refers generally to offences, that is to say all types of offences.

Mr. Jayasuriya has referred me to Section 71 of the Police Ordinance in which a police officer is enjoined not to receive a complaint in respect of a petty offence, nor to take into his custody any person brought accused of such petty offences as trespass, assault, quarrelling, or the like.

The Police Ordinance is an Ordinance of 1865 while the Criminal Procedure Code is a later enactment. Under the Criminal Procedure Code the offence of criminal trespass, which I take it is the same as 'trespass' under the Police Ordinance, is made a cognizable offence. There would thus be a conflict between the two enactments. I think, in so far as Section

71 comes into conflict with the provisions of the Criminal Procedure Code, the provisions of the Code must prevail over that of the Police Ordinance. If a police officer is, therefore, required by Section 57 of the Police Ordinance to detect offences and bring the offenders to justice, I take it, it will be his proper duty to make first of all a complaint to the Magistrate, in order to bring the offender to justice. Section 148 (1) (b) requires a police officer to make a report to Court in respect of any offence and does not confine reports under it to cognizable offences and non-cognizable offences in respect of which a police officer has been authorised to investigate. Section 129 is merely an enabling section, but does not in any way detract, modify, or take away from police officers powers possessed by them either under the Code or the Police Ordinance. Besides, in this case there is no evidence whatsoever to show that the police officer did proceed to make an investigation of the complaint that was made to him. The record only discloses that the police officer made a complaint to the Magistrate of the commission of the offence, coupled with an application to the Magistrate that summons should issue on the accused. I do not therefore think that the learned Magistrate was justified in entertaining the objection.

The order of the learned Magistrate is set aside, and the case is remitted for further proceedings to be taken in due course.

*Order set aside.*

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