Present: Maartensz A.J.

1929

In the Matter of an Application to transfer case to the Police Court of Jaffna.

P. C. Point Pedro, 8,011.

Transfer of case—Magistrate refuses process—Counter charge against complainant—Bais—Interests of justice.

Where a Police Magistrate after hearing a complainant and his witnesses refused to issue process; and where a similar charge had been brought by the accused person against the complainant,—

Held, that it would be expedient to have the case tried by another Magistrate.

APPLICATION to have a case pending before the Police Court of Point Pedro transferred for hearing before another Judge.

Subramaniam, in support.

Basnayake, C.C., contra.

August 30, 1929. MAARTENSZ A.J.—

The petitioner, the first accused in case No. 8,011 of the Police Court of Point Pedro, moves for an order that the case be transferred for trial by another Judge on the ground that he fears that the learned Police Magistrate has arrived at a premature conclusion in the case against him and that an impartial trial cannot be expected from him.

In this case the petitioner is charged by one Francis Alfred with causing hurt to him. On the same day the petitioner filed a plaint against Francis Alfred charging him with causing hurt to the petitioner. The learned Police Magistrate after examining the petitioner and his witnesses refused process. The petitioner therefore apprehends that he may not have a fair trial at the hands of the Judge in the case brought against him by Alfred.

The principle on which these applications are allowed is laid down in the case of *Lolit Mohan Moitra v. Surya Kanta Acharjee et al.*[1] thus: "If by reason of the words or conduct of a Magistrate or Judge, before whom a case is pending, any party reasonably apprehends that there is a bias against him in the mind of the officer concerned, it would be expedient for the ends of justice to transfer the case from his file to that of some other officer competent to try it, though there may not be any actual bias."

Here, the Magistrate having heard the petitioner's witnesses refused process and these witnesses would be in the ordinary course witnesses for the defence in the case brought against the petitioner by Alfred. There are therefore reasons why the accused should apprehend that he may not have an impartial trial.

[1] *I. L. R. (Calcutta Series), Vol. 28, p. 709.*

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MAARTENSZ A. J.

In the Matter of an Application to transfer Case

I accordingly order the transfer of the case for trial to the Police Court of Jaffna. In doing so, I would add that I have no doubt that the Magistrate has no real bias against the petitioner, and that the order of transfer is made without casting upon the Magistrate the slightest reflection. Let the order be telegraphed to the Police Magistrate of Point Pedro as I understand the case is fixed for trial on Monday.