1912.

Present : Wood Renton J.

VELUPILLAI *v.* CASIPILLAI.

503—P. C. Jaffna, 6,705.

Frivolous and vexatious charge—Order to pay Crown costs and compensation—All the witnesses for the complainant not called—Criminal Procedure Code, s. 197.

There is nothing in section 197 of the Criminal Procedure Code which either expressly or by necessary implication requires a Police Magistrate to hear every witness whom a complainant may desire to call before exercising the powers with which the section has invested him.

A charge that is deliberately false is "vexatious" within the meaning of section 197.

THE facts are set out in the judgment.

Joseph, for complainant, appellant.—The order of the learned Police Magistrate is irregular. The complainant's case was not closed, and the Magistrate had no power to order him to pay Crown costs and compensation before all his witnesses were called. *Suppa Nayakka v. Kawwa;* P. C. Kurunegala, 10,764.[2]

The complaint is not a vexatious one. A vexatious complaint is one that is brought without cause or for a matter so trivial that no person of ordinary sense or temper would complain of it with intent to harass the person complained of (*De Silva v. Mammadu* [3]). Here the charge against the accused discloses serious offences.

July 22, 1912. WOOD RENTON J.—

This is an appeal against a conviction under section 197 of the Criminal Procedure Code. The appellant charged one Nannitamby Casipillai with having voluntarily caused hurt to him, an offence punishable under section 314 of the Penal Code. The appellant himself gave evidence, and at the close of his evidence called another witness, who was duly examined. The learned Police Magistrate regarded the evidence of both the appellant and this witness as entirely false. He convicted the witness, under section 440 of the Criminal Procedure Code, of having given false evidence, and fined him Rs. 50, sentencing him in default of payment of the fine to one month's rigorous imprisonment. The learned Magistrate then

[1] *(1899) 1 Tamb. 110.*

[2] *(1899) Koch 54.*

[3] *(1897) 3 N. L. R. 3.*

called upon the appellant to show cause why he should not be fined Rs. 5 Crown costs and Rs. 10 compensation for having brought a false charge against the accused. The appellant apparently had no special cause to show, and he was forthwith fined Rs. 5 and ordered to pay Rs. 10 compensation. There is no appeal from the fine of Rs. 5 by way of Crown costs. But the present appeal is brought against the order to pay compensation. The main point urged on the appellant's behalf is that the Police Magistrate had no right to make the order under appeal, inasmuch as the appellant had several other witnesses whose names were on his list of witnesses, and who were not, in fact, examined. I do not see anything in the record to show that an application was made to the Police Magistrate on the appellant's behalf for leave to call the additional witnesses. But I will decide the case on the basis that such an application had been made and had been refused. The procedure is defined by section 197 of the Criminal Procedure Code. There is nothing in that section which either expressly or by necessary implication requires a Police Magistrate to hear every witness whom a complainant may desire to call before exercising the powers with which the section has invested him. There are, however, two reported cases in which it was held by Lawrie J. that an order as to Crown costs and compensation is bad if made without examining all the witnesses that the complainant undertakes to produce. (*See Suppa Nayakka v. Kawwa* [1] and 483—P. C. Kurunegala, 10,764 [2]). With the utmost respect I am unable to follow those decisions, in view of the language of section 197 of the Criminal Procedure Code itself. They appear to me to amount not to a judicial interpretation of that section, but to its amendment by a species of legislation which the law of the Colony does not recognize. It is quite easy to put cases in which the application of the rule laid down by Lawrie J. in the two decisions above referred to would yield absurd results. Suppose that a complainant filed a list of ten or fifteen witnesses; that the complainant himself and three or four of his witnesses broke down completely in the course of cross-examination; and that it was obvious to the Judge and to every one who was present at the proceedings that, even although there might be other witnesses on the list who might give more reliable evidence on incidental points, not only would it be absolutely unjust to convict the accused in view of the character of the evidence already given, but the charge itself was false. Can it really be said to be a reasonable interpretation of the law that under such circumstances a Court should be bound to hear all the remaining witnesses before it could punish a complainant who had already made it abundantly clear that the charge that he came into Court to prefer was unfounded? It is only necessary to put the proposition in that way to show that the two above-mentioned decisions by Lawrie J. do not constitute a good

[1] (1899) *1 Tamb. 110.*

[2] (1899) *Koch 54.*

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working interpretation of section 197 of the Criminal Procedure Code. It is clear, I think, that each case should be decided on its own circumstances. In my opinion the circumstances here are sufficient to justify the action which the Police Magistrate has taken. He heard the evidence of both the complainant and his first witness; he was satisfied that the evidence of both was false, and that the charge itself was false too; and he has recorded an incident which strongly corroborates the conclusion at which he arrived. "If complainant's demeanour had not been enough, I should have been convinced when his witness came into the box and complainant deliberately prompted him before he could be stopped," to make a certain statement in support of the case for the prosecution. An incident of that kind occurring before a Judge and jury would in most cases have led to an immediate acquittal. It is entitled to great weight in considering whether or not the Police Magistrate has correctly exercised the powers conferred upon him by section 197 of the Code. The only other point taken by the appellant's counsel was that the charge had not been shown to be vexatious. In support of that contention he referred to the decision of Withers J. in *De Silva v. Mammadu.*[1] But that decision, in my opinion, does not in any way support the inference sought to be deduced from it. Withers J. expressly held in that case that a complaint is vexatious where it is brought without cause. We have here a finding by the Police Magistrate, based upon ample evidence, that the charge brought by the complainant in the Police Court was deliberately false, and that charge was, therefore, "vexatious" within the meaning of that term as defined in *De Silva v. Mammadu.*[1]

The appeal is dismissed.

Appeal dismissed.

[1] *(1897) 3 N. L. R. 3.*