

1913.

Present: Pereira J.

LUSHINGTON v. MOHAMADU.

391—P. C. Chilaw, 37,297.

*Prosecution for an offence under s. 22 of the Forest Ordinance, 1907—
Special procedure prescribed in chapter VII. of the Ordinance
not intended to exclude the operation of s. 148 of the Criminal
Procedure Code.*

A prosecution of an offence under section 22 of the Forest Ordinance, 1907, may be commenced in the usual way in which prosecutions are instituted in Police Courts. In such a case, therefore, an information under section 148, sub-section (1) (b), of the Criminal Procedure Code would be in order. The special procedure prescribed in chapter VII. of the Ordinance was not intended to exclude, in the case of any offence under the Ordinance, the operation of section 148 of the Criminal Procedure Code.

THE facts appear from the judgment.

Wadsworth (with him *Balasingham*), for the accused-appellant.—The Assistant Conservator should have reported the matter to the Government Agent. It was for the Government Agent to report the matter to the Police Court. It was only then that the Court would have jurisdiction to inquire into the offence. It is not open to the Conservator of Forests to proceed under the Criminal Procedure Code, section 148 (1) (b). The procedure indicated by chapter VII. of the Forest Ordinance should be observed for a prosecution under this Ordinance. This is a technical offence, and the procedure indicated should be strictly followed, as was held in the case of prosecutions under the Labour Ordinance.

Garvin, Acting S.-G., for the respondent.—The accused has committed an "offence" within the meaning of the Penal Code. Proceedings may be commenced in the Police Court in the manner indicated in section 148 in the case of all offences, unless that section is expressly excluded by Ordinance. Counsel relied on *Mahawalattenne v. Mohitihamy*.¹

Cur. adv. vult.

July 4, 1913. PEREIRA J.—

In this case the accused has been convicted of cutting reserved trees in a forest contrary to the provisions of the Forest Ordinance, 1907—an offence punishable under section 22 of the Ordinance.

¹ (1910) 5 Bal. 85.

The complainant in the case describes himself as Assistant Conservator of Forests, and the information given by him to the Court is information under section 148 (1) (b) of the Criminal Procedure Code. Objection has been taken by the accused's counsel that the procedure prescribed by chapter VII. of the Ordinance is exclusive, and that it was not open to the complainant to file an information under the Criminal Procedure Code. The first question to be decided is whether the provisions of chapter VII. of the Ordinance exclude the application of the Criminal Procedure Code to a case like this. That Code applies to all offences, because the word "offence," as defined by it, means any act or omission made punishable by any law for the time being in force in this Island. The cutting of reserved trees contrary to the provisions of the Forest Ordinance is by the Ordinance declared to constitute an offence (see section 22), so that in the absence of some special provision of the law excluding in clear terms the application of the Criminal Procedure Code to an act such as that complained of in this case, that Code must be deemed to apply to it. Is chapter VII. of the Ordinance such a provision? That chapter provides (section 39) for a certain report being forwarded by the Government Agent to the Police Magistrate, and the Magistrate taking such measures as may be necessary for the trial of the accused named in the report and the disposal of property referred to in it. This report is a report that is required to be sent to the Government Agent or the Assistant Government Agent under section 38, and under that section a report can be sent only where timber or forest produce has been seized under section 37. In the present case no such property has been seized, and this is a sufficient answer to the contention put forward. But assuming property has been seized, I think that the procedure under section 39 is merely cumulative: it does not displace the procedure of the Code. Section 39 does no more than cast a certain duty on the Government Agent, under certain conditions, for the expeditious termination of proceedings commenced under section 37. What I have said above is very much in accordance with the view taken by Middleton J. in the case of *Mahawalatenne v. Mohitihamy*.¹

On the facts I need only say that I have considered the evidence carefully, and I see no reason to differ from the view taken by the Magistrate. There is, no doubt, a mass of evidence for the defence, but I think that the Magistrate has given good reason for preferring to it the evidence for the prosecution.

I affirm the conviction and sentence.

Affirmed.

1918.

PEREIRA J.

Lushington
v.
Mohamadu

¹ (1910) 5 Bal. 85.