

1971 Present : Samerawickrame, J., and Thamotheram, J.

THE ATTORNEY-GENERAL, Petitioner, and
C. SUNTHARALINGAM *et al.*, Respondents

S. C. 583/70—Application in Revision in M. C. Mallakam, 9747

Criminal Procedure Code—Section 199—Trial before a Magistrate—Private prosecution—Right of Attorney-General to appear and conduct the prosecution.

The right granted to the Attorney-General by section 199 of the Criminal Procedure Code to appear and conduct the prosecution in any case triable summarily extends even to a case initiated by the filing of a private plaint, unless there is sufficient material to show that the Attorney-General is acting *mala fide* and for an improper purpose.

APPPLICATION to revise an order of the Magistrate's Court, Mallakam.

V. S. A. Pullenayegum, Senior Crown Counsel, with *Faisz Mustapha*, Crown Counsel, for the petitioner.

First respondent in person.

Cur. adv. vult.

November 16, 1971. SAMERAWICKRAME, J.—

The Attorney-General has made this application in respect of an order of the learned magistrate of Mallakam refusing to permit Crown Counsel to appear and conduct the prosecution in terms of Section 199 of the Criminal Procedure Code.

The Attorney-General had filed a civil action against the first respondent and another and had obtained an interim injunction restraining them from preventing certain classes of persons from entering the Kandasamy

Kovil, Maviddapuram. The injunction was served on 7th July, 1970. A few days later the first respondent instituted in the Magistrate's Court of Mallakam the proceedings in which the order sought to be revised was made and preferred charges of intimidation, criminal trespass and abetment against certain police officers.

The learned magistrate refused the application made to him by Crown Counsel on the ground that the Attorney-General was not free from bias.

Section 109 of the Criminal Procedure Code states :—

“ The Attorney-General, the Solicitor-General, a Crown Counsel, or a pleader generally or specially authorized by the Attorney-General shall be entitled to appear and conduct the prosecution in any case tried under this Chapter ”

The right granted to the Attorney-General extends to all cases tried under the Chapter including any initiated by the filing of a private plaint. The Section however is procedural and is intended to secure the proper administration of justice and it is therefore essential that it should be made to serve and be subordinate to that purpose. If therefore an attempt is made by the Attorney-General to exercise the right given to him by this provision *malà fide* and for an improper purpose in respect of a private prosecution, it is, in my view, open to a Court to refuse to permit it.

I am however satisfied that on the material before him the learned magistrate was not justified in arriving at a finding that the Attorney-General was biased. The first respondent who appeared in person stated that it was the same Crown Counsel who appeared and obtained the injunction in the civil action who made the application to the magistrate. Crown Counsel however act under the direction of the Attorney-General or Senior Officers of the Department. There is no reason to think that the same fair and careful consideration was not given to this matter as is usually given to all other matters touching the administration of justice by the Attorney-General and/or the officers of his Department.

It may be that in this case as in *Attorney-General v. Sivapragasam*¹—60 N. L. R. 468, no evidence will be offered. As Sansoni, J., remarked in his judgment in that case, “ conducting the prosecution does not necessarily mean leading evidence. It may happen that all the available evidence taken together will not establish the charge against the accused, and in such a case a fair-minded prosecutor will refrain from leading any evidence ”.

I set aside the order made by the learned magistrate on the 22nd of July, 1970, and I direct that Crown Counsel be permitted to appear and conduct the prosecution. I also direct that further proceedings in the case should be heard before another magistrate.

THAMOTHERAM, J.—I agree.

Order set aside.

¹ (1959) 60 N. L. R. 468.