

[IN REVISION.]

1941

Present : Keuneman J.

GRENIER v. EDWIN PERERA.

*M. C. Matara, 35,922.*

*Complainant—Report by Police Officer—Person giving information to Police Officer may be regarded as complainant—Applicant for revision—Criminal Procedure Code, s. 199.*

A person making an oral or written complaint under section 148 (1) (a) or a Police Officer making a report under section 148 (1) (b) may be regarded as a complainant within the meaning of section 199 of the Criminal Procedure Code.

A person giving information to a Police Officer may also be included in the category.

**A**PPPLICATION to revise an order of acquittal by the Magistrate of Matara.

*H. V. Perera, K.C. (with him E. B. Wikremanayake), for the petitioner.*

*L. A. Rajapakse, for accused, respondent.*

*H. W. R. Weerasooriya, C.C., on notice issued.*

*Cur. adv. vult.*

June 5, 1941. KEUNEMAN J.—

In this case the accused, a Police Constable, was charged with causing grievous hurt with a club to the petitioner. Proceedings in the case were instituted on a written report under section 148 (1) (b) by Sub-Inspector of Police Grenier. On the trial date Assistant Superintendent of Police Leembruggen with Sub-Inspector Grenier appeared for the prosecution. The accused was also represented.

Mr. Gunasekera with Mr. Amarasuriya appeared for the petitioner on that occasion, and desired to lead evidence for the prosecution. This the Magistrate did not allow him to do, but gave him permission to suggest any questions he wished to the Magistrate.

Thereafter, apparently the prosecution was conducted by the Assistant Superintendent of Police. After trial the accused was acquitted, and no appeal has been taken from this acquittal.

The petitioner, however, being dissatisfied with the conduct and the result of the case, now moves in revision, praying that the order of the Magistrate be set aside. The objection is taken that the petitioner has no status to make this application.

Section 199 of the Criminal Procedure Code sets out the persons by whom the prosecution before the Magistrate may be conducted. Under this section the Attorney-General, the Solicitor-General, a Crown Counsel, or a pleader generally or specially authorised by the Attorney-General are entitled to appear and conduct the prosecution to the exclusion of all others. In this case no one of these persons conducted the prosecution. The section goes on to say that in the absence of these persons I have

mentioned "the complainant or any officer of any Government department . . . may appear in person or by pleader to prosecute in any case in which such complainant or Government department . . . is interested."

What is meant by the word "complainant"? In section 3 of the Criminal Procedure Code it is laid down that "complaint" means the allegation made orally or in writing to a Magistrate with a view to his taking action, that some person has committed an offence. Section 148 (1) (a) mentions a "complaint" made orally or in writing to a Magistrate. Section 148 (1) (b) does not contain the word "complaint", but I am inclined to think that the definition in section 3 covers the written report under this sub-section also. The important point is that the allegation made to the Court constitutes the complaint. I am inclined to think that the person making an oral or written complaint under section 148 (1) (a), and a Police Officer making a report under section 148 (1) (b) may be regarded as a complainant.

At the same time, it is possible that the word complainant has a wider meaning, for example in section 127 (1) and (3), and may even include the person who gives information to a Police Officer or inquirer under Chapter XII. I am not certain that it is necessary to give this wide interpretation to the word "complainant" in that section. It is sufficient in this case to act on the footing that the person giving such information may be regarded as the complainant. I think the petitioner in this case falls within that category.

I am inclined to think that Sub-Inspector Grenier may be regarded as a complainant in this case. It is also possible that the petitioner may be so regarded.

As far as the Sub-Inspector is concerned, he would in addition be regarded as a "party" to the case for the purpose of appealing under section 338. (See *Nonis v. Appuhamy*; *Babi Nona v. Wijeyesinghe*<sup>2</sup>).

As far as the Assistant Superintendent of Police is concerned I think he comes within the words of section 199 "any officer of any Government department . . . in any case in which . . . the Government department . . . is interested."

I cannot see that Section 199 gives any preferent right to the complainant over the officer of the Government department. I take it that it is a matter for the Magistrate to decide in his discretion who should be permitted to conduct the prosecution in a case like the present.

It may be advisable in cases, where the person accused is a Police Officer, for the injured person if he wishes to do so to apply to the Attorney-General to give the necessary authority to a pleader nominated by the injured person. The pleader so authorised would have a preferent right to conduct the case. It is necessary in cases such as the present not to leave even the impression that the case has been conducted otherwise than impartially. But on a careful examination of the circumstances I am of opinion that in this case it cannot be said that the Magistrate exercised his discretion wrongly or unfairly. I am not unmindful in this respect of the observations of the Chief Justice in *Kalatunga v. Mudalihamy*<sup>3</sup>. But it is to be remembered that the defence decided to place

<sup>1</sup> 27 N. L. R. 430.

<sup>2</sup> 29 N. L. R. 43.

<sup>3</sup> 18 C. L. W. 86.

the name of the Assistant Superintendent of Police on the list of witnesses, after the Magistrate had entrusted the conduct of the case to him, and the only important evidence elicited by the defence was that none of the witnesses had stated to the Assistant Superintendent that the accused put the cycle on the stand and threw the club.

In my opinion there is no justification in this case for the suggestion that the Assistant Superintendent was not making any attempt to prove the case for the prosecution. The trial seems to have been conducted properly, and further Counsel for the petitioner was given the right to suggest any questions to the Court. In view of the fact that the accused was acquitted after proceedings conducted in my opinion fairly and efficiently, I do not think he should undergo the risk of a second trial.

The application is dismissed.

*Application refused.*

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