

Present: Jayewardene A.J.

1930

MARTHELIS APPU v. ANTONY FERNANDO.

283—P. C. Chilaw, 29,447.

Compensation for groundless charge—Arrest by peace officer—Evidence of complainant uncontradicted—Criminal Procedure Code, s. 253 C (1).

There must be an arrest by a peace officer before an order for compensation is made by a Police Magistrate under section 253 c (1) of the Criminal Procedure Code.

The mere fact that the Magistrate disbelieved the evidence for the prosecution is not sufficient to justify an order for compensation. The complainant must be contradicted by evidence given on oath.

A PPEAL from an order of the Police Magistrate of Chilaw.

Rajapakse, for complainant, appellant.

June 4, 1930. JAYEWARDENE A.J.—

The complainant charged the accused with the theft of fifteen coconuts. After trial the learned Police Magistrate acquitted the accused and ordered the complainant to pay Rs. 20 as compensation to the accused.

The complainant gave evidence stating that at about 3 A.M., Stephen, Siman Appu, and he were going their rounds when they heard the sound of coconuts being put into a bag. They approached in three different directions. Stephen said "Who's that" and Siman Appu cried out "Thief is running away." The thief started to run and Siman and Stephen ran after him. They could not catch him, but said that Antho Lokka, meaning the accused, ran away. Prompt information was given to the headman. In cross-examination the complainant denied that the accused had told him not to go past his house as he had grown-up daughters. Siman and Stephen were both called and corroborated the complainant. They said that they identified the accused and chased him up to his compound, which was close by. Siman said that accused jumped at him with a knife and that he struck accused with a club on his legs. The police headman had examined the trees and found that

1930

JAYEWAR-
DENE A.J.*Marthelis*
Appu v.
Antony
Fernando

nuts had been plucked from three trees. The Magistrate did not call upon the accused for his defence, and the evidence of the complainant and his witnesses stands uncontradicted. It is contended on behalf of the appellant that he should not have been called upon to pay compensation in this case.

The mere fact that the Magistrate disbelieved the evidence for the prosecution is not enough to justify an order awarding compensation under section 253 c of the Criminal Procedure Code. The evidence of the complainant must be contradicted by evidence given on oath. In the unreported cases *S. C. No. 541, P. C. Kalutara, No. 31,643, S. C. M. Sept. 20, 1929*, Lyall Grant J. held that evidence must be led contradicting the evidence for the prosecution, following * *S. C. No. 337, P. C. Kalutara No. 30,144, S. C. M. of August 28, 1929*, also unreported. These cases followed the principle underlying the decisions under section 54 of the Police Ordinance,

* MAARTENSZ J.—

The accused in this case was charged with and acquitted of the offence of stealing a bicycle, and the complainant was ordered to pay Rs. 25 as compensation to the accused under section 253c (1) of the Criminal Procedure Code. The complainant appeals from that order.

It is contended that as the accused was acquitted before the defence was called on, there is nothing on the record to show that there were no sufficient grounds for causing his arrest.

I am constrained to allow the appeal in view of the authorities cited in support of the contention. In the cases cited, the appellants were fined under section 54 of the Police Ordinance, No. 16 of 1865, on the ground that there was not sufficient ground for making the charge. In the case of *Labuna v. Suwada*¹ Pereira J. held that as the evidence is all one way and the accused not having contradicted on oath the charge against them the complainant could not be fined. He further held that the fact that the Magistrate was unable to place reliance on the evidence called is not a sufficient ground for inflicting a fine under section 54 for bringing a false and frivolous charge. He followed the decision of Ennis J. in the case of *Rajonis v. Peter*² in which Ennis J. came to the same conclusion.

Section 54, which has now been repealed, runs as follows:—I quote the material words "In every case in which it shall appear to the Magistrate by whom the case is heard that there were no sufficient grounds for making the charge such Magistrate shall have the power to award a fine not exceeding £5. Section 253c (1) enacts that whenever any person causes a peace officer to arrest another person, if it appears to the Magistrate who takes cognizance of the case, that there is no sufficient ground for causing such arrest, he may award such compensation not exceeding twenty-five rupees to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter as the Magistrate thinks fit."

The *ratio decidendi* in the cases cited apply to the section of the Code under which the appellant was ordered to pay compensation. The evidence in this case being uncontradicted there is nothing on the face of the proceedings to show that the evidence was false. I am unable to agree with the Magistrate that there were no sufficient grounds for causing the arrest of the accused.

I accordingly set aside the order and sentence appealed from.

¹ (1914) 4 C. A. C. 67.

² (1913) 1 (Wijewardene Reports) 43.

where words similar to section 253c occur. Pereira J. observed in *Labuna v. Suwada* ¹: "The evidence is all one way, the accused have not contradicted on oath the charge made against them by the appellant." The fact that the Magistrate was unable to place reliance on the evidence called is not a sufficient ground for condemning the complainant and pay compensation (*Rajonis v. Peter* ²).

Further, there must be an arrest by a peace officer before an award of compensation is made under section 253 c, and the Magistrate must be satisfied that there was no sufficient ground for causing such arrest. In the present case there was no arrest according to the record. The headman and Sub-Inspector have given evidence, but neither of them says that the accused was arrested. On the contrary the proceedings show that the accused appeared on summons.

The appeal is allowed, and the order condemning the complainant to pay Rs. 20 as compensation to the accused is quashed.

Appeal allowed.

1930

JAYEWAR-
DENE A.J.

Marthelis
Appu v.
Antony
Fernando

