

*Present:* De Sampayo J.

DASSANAYAKA *v.* WIJEWIKREME.

1920.

169—*P. C. Kandy, 2,715.*

*Police Ordinance, No. 16 of 1865, s. 54.—False information to police relating to an offence not triable summarily.*

Where a Police Magistrate inquires into an offence and takes non-summary proceedings, the same Magistrate cannot deal with the complainant under section 54 of the Police Ordinance. But the fact that the false information given to the police relates to an offence which was not triable summarily is by itself no bar to a prosecution under section 54 of the Police Ordinance, No. 16 of 1865, before the Police Court.

*Podi Appu v. Pedric Sinno* <sup>2</sup> explained.

**T**HE facts are set out in the judgment.

*Grenier, C.C.*, for appellant.

March 30, 1920. DE SAMPAYO J.—

In this case the Solicitor-General appeals from the order acquitting the accused. There is some confusion both in the report and in the judgment sheet as regards the charge which the Magistrate purported to deal with. The charge is "that the accused gave

<sup>1</sup> (1917) 20 N. L. B. 286.

<sup>2</sup> (1918) 20 N. L. B. 255.

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false information to the Galagedara police that he was threatened by one Babanis Mudalali and robbed of Rs. 3 by one Ukku Banda knowing the said information to be false, and with the intention of causing the said Galagedara police to use their lawful power to the injury and annoyance of the said men." One would have thought that the charge was intended to be made under section 180 of the Penal Code, which is in the same terms as those which I have quoted, but the report and the judgment sheet purport to lay the charge under section 54 of the Police Ordinance, No. 16 of 1865. This mistake has led to the Magistrate taking a wrong view of the case. He said that as the information given by the accused was as regards an offence with regard to which non-summary proceedings should have been taken, the accused could not be dealt with under section 54 of the Police Ordinance. Apparently the Magistrate had in view the decision of this Court in *Podi Appu v. Pedric Sinno*.<sup>1</sup> If that was so, he appears to have misunderstood the decision. The point decided in that case is that where a Police Magistrate inquires into an offence and takes non-summary proceedings, the same Magistrate should not deal with the complainant under section 54 of the Police Ordinance. The circumstances of this case entirely differ. It seems to me this is a case which comes under the second class of offences stated in section 54, namely, cases in which a person makes a false or frivolous charge to a police officer against another person. In such a case it appears to me immaterial whether the offence with regard to which the false information is given to a police officer is summarily triable or should be inquired into in non-summary proceedings. The Magistrate, being of the opinion which he expressed, stopped the proceedings at a certain stage, and entered the order of acquittal, from which this appeal is taken. I think he should have continued the proceedings and dealt with the case on the merits. The order of acquittal is set aside, and the case is remitted to the Police Court to be proceeded with.

*Sent back.*


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<sup>1</sup> (1918) 20 N. L. R. 255.