

APPELLATE CRIMINAL. *

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Shephard.*

QUEEN-EMPRESS

v.

KANAPPA PILLAI.*

1897.
April 8.

Criminal Procedure Code—Act X of 1882, s. 202—Reference of cases to the Police for enquiry.

A Magistrate can send a case for enquiry by the Police under Criminal Procedure Code, section 202, only when for reasons stated by him he distrusts the truth of the complaint. In cases where the accused is a member of the Police force, it is generally better that the enquiry should be prosecuted by a Magistrate.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the proceedings of A. W. B. Higgins, District Magistrate of Tinnevely, in Calendar Case No. 11 of 1897.

The accused was an Inspector of Police and the District Magistrate, in the proceedings sought to be revised, sent the case for enquiry to the Superintendent of Police without himself expressing any opinion as to the truth of the complaint. This procedure was in accordance with a rule which had previously been issued by the District Magistrate for the guidance of the magistracy of the district in like cases.

The complainant preferred this petition.

Mr. Wedderburn for petitioner.

JUDGMENT.—The District Magistrate does not appear to have given any reasons for distrusting the truth of the complaint and sending the case for enquiry to the Superintendent of Police. We infer that he acted upon the view expressed in paragraph 4 of his own circular No. 557, dated 18th April 1895. We are of opinion that the rule there laid down is illegal, as section 202 of the Code directs the Magistrate to send a case for enquiry by the Police only when he distrusts the truth of the complaint, and it requires the Magistrate to give his reasons. The terms of the fourth paragraph of the District Magistrate's circular actually override the provisions of the Criminal Procedure Code, section 202.

* Criminal Revision Case No. 115 of 1897.

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The orders of the Police are not binding on the magistracy.

We are further of opinion that great caution should be shown in sending, for investigation by the Police, charges against members of that force. In such cases it would generally be better that the enquiry should be prosecuted by a Magistrate.

The District Magistrate is directed to proceed with the case according to law.

Ordered accordingly.

APPELLATE CRIMINAL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

QUEEN-EMPRESS

v.

SINNAI GOUNDAN AND OTHERS.*

Criminal Procedure Code—Act X of 1882, s. 203—Duty of Magistrate to examine witnesses for the complainant.

When a case has not been disposed of under Criminal Procedure Code, section 203, and the complainant's witnesses have been summoned, the Magistrate is bound to examine the witnesses tendered by the complainant, and is not entitled to acquit the accused on a consideration of the complainant's statement alone.

CASE reported for the orders of the High Court under section 438 of the Code of Criminal Procedure by H. Bradley, District Magistrate of Coimbatore.

In this case the accused were charged before the Sub-Magistrate of Palladam with the offences of forcible rescue of cattle being taken to the pound, assault, and criminal intimidation. The Sub-Magistrate summoned the witnesses named by the complainant, but examined the complainant alone and then acquitted the accused.

The Public Prosecutor (Mr. Powell) for the Crown.

Venkatasubbayyar for accused.

ORDER.—Inasmuch as the case was not disposed of under section 203, Criminal Procedure Code, but summonses were issued to the complainant's witnesses, the Magistrate was not at liberty, as he

* Criminal Revision Case No. 16 of 1897.