APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

1914. April 19 and May 1.

NACHIMUTHU CHETTI (COMPLAINANT), PETITIONER,

v.

MUTHUSAMI CHETTI (ACCUSED), RESPONDENT.*

Cr.P.C (Act V of 1898) Sec 250

Bailable offence—Information to village magistrate—Report to the police—Institution of complaint by Police thereon.

A man who complains to a village magistrate of a bailable offence knowing that the latter must in the ordinary course of his duty report the substance of the complaint to the police gives information to the police just as effectively as if he went in person to the police station and made a complaint; and if the police charge the case, it is a case instituted on information given to a police officer within the meaning of section 250, Criminal Procedure Code.

The Sessions Judge of Tinnevelly v. *Sivan Chetti* (1909) I.L.R., 32 Mad., 258 (F.B.), followed.

PETITION under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the judgment of J. W. GLASSON, the First-class Sub-Divisional Magistrate of Dindigul, in Criminal Appeal No. 84 of 1913 confirming the order passed by V. S. RAMASWAMI AYYAR, the Second-class Sub-Magistrate of Palni, in Calendar Case No. 630 of 1913.

The facts appear from the judgment of AYLING, J.

Dr. S. Swaminathan for the petitioner.

J. C. Adam for the *Public Prosecutor* for the Crown.

AYLING, J. AYLING, J.—The petitioner gave information to the village magistrate of Ayakudi to the effect that one Muthusami Chetti had stolen a load of cotton belonging to him. The village magistrate sent a report to the police under section 45 (*c*), Criminal Procedure Code. The police put in a charge sheet under section 379 of the Indian Penal Code before the Second-class Magistrate of Palni against Muthusami Chetti. The case ended in discharge and the petitioner was ordered to pay compensation under section 250 of the Criminal Procedure Code.

* Criminal Revision Case No. 71 of 1914 (Criminal Revision Petition No. 62 of 1914).

It is contended that the order is illegal inasmuch as the case was not "instituted by complaint as defined in this case or upon information given to a police officer or to a Magistrate"— vide section 250, Criminal Procedure Code.

This view is supported by some authority: *vide King Emperor* v. *Thammana Reddi*(1) and also two later cases—*In re Arulanandham*(2) and an unreported case *Re Sayyed Ambalam*(3).

On the other hand there is a Full Bench decision of this Court in *The Sessions Judge of Tinnevelly* v. *Sivan Chetti*(4) which seems to me to be conclusive on the matter. The first case quoted above was disposed of prior to this decision and with the greatest respect to the learned Judges who decided the second case, they do not seem to us to have given sufficient weight to it.

In the third case the attention of the learned Judge does not appear to have been drawn to it at all. I feel constrained to follow the Full Bench ruling: the more particularly as I feel strongly that the application of the principles therein enunciated to the question for our decision is in accordance with reason and equity, and the true intention of the section.

The question before the Full Bench in the case quoted was whether the complaint or information given to the village magistrate constituted the institution of criminal proceedings under section 211 of the Indian Penal Code but the reasoning of BENSON and MUNRO, JJ., in their judgment applies with undiminished force to the question before us; while the reasoning of the learned dissenting Judge, SANKARAN NAIR, J., however applicable in that case, has little or no bearing in the present case. I cannot do better than quote from the judgment of BENSON and MUNRO, JJ.: "He (i.e., the injured party) almost invariably gives information, or makes his complaint, to the village magistrate, well knowing that the latter will report the information on complaint to the Magistrate or the Station-house officer or to both, which latter is the regular course in this Presidency. He has, in fact, set the criminal law in motion just as effectually as if he had gone direct to the Station-house officer under section 154 or to the Magistrate under section 191, for the village headman is *bound* by law to pass on the information

(1) (1902) I.L.R., 25 Mad., 667. (2) (1912) 22 M.L.J., 138.
(3) Criminal Revision Case No. 627 of 1913.
(4) (1909) I.L.R., 32 Mad., 258 (F.B.).

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or complaint to those officers. The case would, of course, be different if the information or complaint was not a matter which the village headman was bound by law to pass on to the higher constituted authorities—*In the matter of the petition of Jumoona*(1). In that case it could not be said that the criminal law was in any way set in motion. But when the information or complaint is one that the village headman is bound by law to pass on, then the language of the Full Bench in the case referred to above, is just as applicable to it as to an information given direct to the Station-house officer or a complaint to the Magistrate."

In other words, a man who complains to a village magistrate of a bailable offence knowing that the latter must in the ordinary course of his duty report the substance of the complaint to the police gives information to the police just as effectively as if he went in person to the police station; and if the police charge the case, it is a case instituted on information given to a police officer within the meaning of section 250 of the Criminal Procedure Code.

A comparison of the opening words of section 250 with section 190, Criminal Procedure Code, will show that they closely correspond, and that the former are intended to cover all the three methods marked in section 190 as (*a*), (*b*) and (*c*) in which a Magistrate may take cognizance of a case, with the single exception of "his own knowledge or suspicion," which would in the nature of things be inappropriate to section 250. I find it difficult to understand why a person who chooses to institute a frivolous or vexatious charge in one way should be less liable to pay compensation than if he instituted it in another—seeing that all are equally effective methods of inducing the Criminal Courts to take action.

A consideration of the cases relied on by the petitioner will show that both in *King Emperor* v. *Thammana Reddi*(2) and *Re Sayyed Ambalam*(3) the Court confined itself to the consideration of whether the village headman to whom the complainant went to complain was a "Magistrate" within the meaning of section 250. The question of whether the information was not,

(1) (1881) I.L.R., 6 Calc., 620. (2) (1902) I.L.R., 25 Mad., 667.
(3) Criminal Revision Case No. 627 of 1913.

in effect, given to the police was not considered at all. It was, however, decided in the Full Bench case; and it is this decision which in my opinion destroys the authority of *King Emperor* v. *Thammana Reddi*(1) for the proposition that a case of this kind does not come within section 250. I would dismiss the petition.

AYLING, J.

SESHAGIRI AYYAR, J.—In this case, the petitioner complained to the village magistrate of theft against the accused. The complaint was forwarded to the police. The Sub-Magistrate before whom the police charged the accused discharged him and directed the complainant to pay compensation. This order was upheld in appeal. Dr. Swaminathan contends that section 250 of the Code of Criminal Procedure cannot apply as there was no "information given to a police officer or to a Magistrate." I am not satisfied that the term "Magistrate" does not include a village magistrate. Clause (2) (*b*) of section 1 only says that the Criminal Procedure Code does not apply to heads of villages in the Presidency of Fort St. George. It is true that section 6 of the Code does not recognize the Court of the village magistrate. But there is no definition of the term "Magistrate." Moreover, the High Court exercises jurisdiction over village magistrates under the transfer sections by transferring cases from one Magistrate to another; I have therefore doubts whether the term "Magistrate" in section 250 does not include a village magistrate as well. However that may be, I am satisfied that when the village magistrate transmits a complaint to the police, information is given to the police officer under section 250 by the complainant. The object of the complainant was that his complaint should be forwarded to the police, and it would be straining the language to hold that when he preferred the complaint with this obvious intention, he was not giving information to the police officer. I see no reason, on principle, why an accused person who goes direct to the police officer should be in a worse position than one who achieves the same object by placing his case before a village magistrate. With all respect to the learned Judges who decided *In re Arulanandham*(2) I am unable to agree with their conclusion. The Full Bench ruling of *The Sessions Judge of Tinnevelly Division* v. *Sivan Chetti*(3) is in point. The learned Judges say at pages 262 and 263: "In point of fact in this Presidency the complaint or

SESHAGIRI AYYAR, J.

(1) (1902) I.L.R., 25 Mad., 667.
(2) (1912) 22 M.L.J., 138. (3) (1909) I.L.R., 32 Mad., 258 (F.B.).

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information to the village magistrate is ordinarily the first step in setting the criminal law in motion . . . The injured person hardly ever gives information direct to the Station-house officer of police . . . He almost invariably gives information, or makes his complaint, to the village magistrate, well knowing that the latter will report the information or complaint to the Magistrate or the Station-house officer . . . The case would, of course, be different if the information or complaint was not a matter which the village headman was bound by law to pass on to the higher constituted authorities."

I agree with this view, and in the conclusion at which my learned colleague has arrived. The petition will be dismissed.

S.V.

APPELLATE CIVIL.

Before Mr. Justice Spencer and Mr. Justice Kumaraswami Sastriyar.

1915. August 3, 4 and 10.

HAKEEM PATTE MUHAMMAD (PLAINTIFF), APPELLANT,

v.

SHAIK DAVOOD (THIRD DEFENDANT), RESPONDENT.*

Transfer of Property Act (IV of 1882), ss. 58, 60 and 98—Possessory mortgage in 1894 for one year with a covenant to treat it as sale, in default of payment—Anomalous mortgage—No right to redeem after one year.

A document of 1894, which was described as a "Swadina Tanaka Meddatu Sharatu Pattiram" which may be translated as a possessory mortgage deed containing a condition for a period fixed, contained among others, the following terms: "within these limits a house-site together with a thatched house thereon we have mortgaged, that is, we have kept it as a possessory mortgage and have received Rs. 10 from you. So having paid the principal and interest pertaining to these Rs. 10 within the end of a year from the said date we shall take possession of our house and site. If we do not act according to the said condition we shall quit the land and house as if this is a sale."

In a suit for redemption brought after the date fixed for redemption,

Held, that the transaction was an anomalous mortgage as described in section 98 of the Transfer of Property Act (IV of 1882), that the rights of the parties were governed by the terms of the mortgage document and that

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* Second Appeal No. 2828 of 1913.