APPELLATE CRIMINAL—FULL BENCH.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, Mr. Justice Spencer and Mr. Justice Krishnan.*

THE PUBLIC PROSECUTOR, APPELLANT,

1926, February 24.

v.

RATNAVELU CHETTY, ACCUSED.*

Ss. 190 (1) (*b*) *and* 200 (*aa*), *Criminal Procedure Code* (*V of* 1908)—*Police report in writing in non-cognizable cases—Jurisdiction of Magistrates to take cognizance of such cases.*

By virtue of sections 190 (1) (*b*) and 200 (*aa*) of the Criminal Procedure Code, Magistrates mentioned in section 190 are entitled to take cognizance of even non-cognizable offences upon a report made in writing by a police officer without examining the officer upon oath. *Perumal Naick* v. *Emperor* (1925) M.W.N., 317, overruled.

APPEAL under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the accused by the Assistant Sessions Judge of Salem in Sessions Case No. 16 of 1925 on the file of the Court of Session of the Salem division.

The facts are given in the following Order of Reference of DEVADOSS and WALLER, JJ. :—

DEVADOSS, J.—This is an appeal by the Public Prosecutor against the order of acquittal of the Assistant Sessions Judge of Salem. The accused was committed to the Court of Session under section 211, Indian Penal Code. The Assistant Sessions Judge held that the proceedings were started on a police report before the Magistrate and the proceedings were void and therefore the committal to the Sessions Court was illegal and

* Criminal Appeal No. 551 of 1925.

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acquitted the accused. The contention of the Public Prosecutor is that the initiation of the proceedings was not illegal and the committal therefore was right.

The simple question for decision is whether the charge sheet in a non-cognizable case is a report or not. Section 190 of the Criminal Procedure Code empowers a Magistrate to take cognizance of a case "(*a*) upon receiving a complaint of facts which constitute such offence, (*b*) upon a report *in writing* of such facts *made by any police officer*, (*c*) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed." Does the report of a police officer come within clause (*b*) of section 190 of the Criminal Procedure Code? The police are empowered to investigate the commission of a cognizable offence. When information is given of the commission of a non-cognizable offence, the police should refer the informant to the Magistrate. Under section 155, clause (2), no police officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class, or a Presidency Magistrate. A police officer therefore is incompetent to investigate a non-cognizable case unless he is ordered to do so by a Magistrate of the first or second class, or a Presidency Magistrate. When a police officer does anything which he is not empowered to do, he cannot be said to act under the colour of his office. The investigation by a police officer of a non-cognizable case is no better than an investigation by a private individual. When a police officer investigates the commission of a cognizable offence, he has to send a report under section 173, which lays down what particulars it should contain. The police are also ordered to report under section 174 in cases of suicide, etc. A report under clause (*b*), therefore, is a report which a police officer is authorized to make. Any information given to a Magistrate by a police officer in a case which is not cognizable by the police cannot be said to be a report. The contention of the Public Prosecutor is that when any police officer reports about a non-cognizable case, he reports as a police officer and therefore it must be considered to be a report. Such an argument, if upheld, would mean that a police officer can report about any offence, cognizable or otherwise. Supposing a police officer reports about the commission of adultery or enticing away a married woman, though under section 199, the husband alone is competent to complain of such an offence, could it be said that the report is a proper report simply because the police officer

came to know of the commission of the offence in his official capacity ? The law requires that certain formalities should be gone through before criminal proceedings could be initiated. It would be doing violence to section 190 to hold that a Magistrate is entitled to initiate proceedings upon the report of a police officer as regards a non-cognizabe offence.

A Magistrate has power to initiate proceedings upon receiving a complaint, but when a person presents a complaint, certain formalities have to be gone through. A sworn statement has to be taken and if the Magistrate thinks that the police should be asked to enquire into it, he may act, under section 202, and he may dismiss the complaint after examining the complainant on oath under section 203 if in his opinion no offence has been committed. But in the case of a police report no such formality need be gone through. Though it is open to a Magistrate not to take any action upon a report of the police, I am yet to see a Magistrate who has the temerity to do so. When the police send a charge sheet, there is a presumption that the police have investigated the matter and that there is a case to be enquired into by the Court and no Magistrate would think of dismissing a charge sheet after perusal on the ground that no offence has been made out. In fact there is no provision in the Act for dismissing a charge sheet without enquiry, whereas a Magistrate can dismiss a complaint after examining the complainant and after satisfying himself that the complaint does not disclose a criminal offence, or that he does not believe the complainant. The charge sheet in a non-cognizable case does not come within the meaning of section 190, clause (*b*) of the Procedure Code.

The next question is whether a Magistrate can take action upon such a report. He can take action provided he treats it as a complaint under clause (1) (*a*) or clause (1) (*c*). If he treats it as a complaint then he must require the police officer who sends in the charge sheet to give a sworn statement before him, for he has to be satisfied that an offence has been committed and that there is a case to be enquired into. If he treats it as information under clause (*c*) then he must transfer the case to some other Magistrate under section 201. It is not competent to any Magistrate on receiving a charge sheet, or the report of a police officer, in a non-cognizable case, to proceed to enquiry without complying with the provisions of law with regard to a complaint under clause (*a*) or information under clause (*c*). This point was specifically decided by me and my

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brother WALLACE, J., in *Perumal Naick* v. *Emperor*(1). I held the same view in another case, Crl.R.C. No. 823 of 1924. Notwithstanding the able argument of the learned Public Prosecutor I do not see any ground for changing my opinion expressed in the two cases mentioned above.

I shall briefly deal with the cases referred to by him. In *Bhairab Chandra Barua* v. *Emperor*(2) it was held that a police report in a non-cognizable case is either a complaint under section 4, clause (*h*) or a police report under section 190, clause (1) (*b*) of the Criminal Procedure Code and the Magistrate had jurisdiction to take cognizance of an offence under section 211 of the Indian Penal Code disclosed therein. The learned Judges followed the decision in a previous case of their own and held that a police report in a non-cognizable case was either a complaint as defined in the Criminal Procedure Code or a report within the meaning of section 190, clause (1) (*b*). With great respect I am unable to see how the report in a non-cognizable case can be a complaint. A complaint is defined as "An allegation made orally or in writing to a Magistrate, with a view to his taking action, under the Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer." The argument is that the report of a police officer is a report which he is authorized to send in a cognizable case and that a report in a non-cognizable case being not a report in its strict sense, must be taken to be a complaint. If this argument is pushed to its logical conclusion, it would mean that whatever is not a report which a police officer is authorized to send is a complaint. A complaint as defined in the Criminal Procedure Code means an allegation made orally or in writing to a Magistrate of the commission of an offence. It takes the place of an indictment under the English Law. To treat any letter or any report by any officer as a complaint is doing violence to the plain meaning of the word "complaint" as defined in the Criminal Procedure Code. No Magistrate is entitled to take notice of a letter unless the person complaining of the commission of an offence appears before him and is prepared to support his statement on oath. If a police officer sends a report and is prepared to make a statement on oath, then it might be treated as a complaint, but not if he simply sends a letter to the Magistrate and asks him to take cognizance of a case and initiate proceedings. I have already discussed at some length the question whether a police

(1) (1925) M.W.N., 317. (2) (1919) I.L.R., 46 Calc., 807.

report in a non-cognizable case comes within section 190, clause (1) (*b*) or not. In *Bhairab Chandra Barua* v. *Emperor*(1) the complaint was not made to the village officer but at the police station to the police officer. In the present case information was given to the village munsif. In *Sarfaraz Khan* v. *King-Emperor*(2) similar argument was advanced and accepted. In *King-Emperor* v. *Sada*(3) it was held that "there is no section in the Criminal Procedure Code, 1898, which empowers a police officer to make, of his own motion, any report to a Magistrate in a non-cognizable case; hence, where he files a formal complaint in such a case, he cannot be said to "make a report" and his complaint falls within the definition of "complaint" in section 4 (*h*) of the Criminal Procedure Code, 1898. It was further held in that case that the Magistrate could direct such police officer to pay compensation to the accused. The principle of this decision is that it is competent for police officer to make a complaint of a non-cognizable offence and if he does make a complaint, he becomes an ordinary complainant and if his complaint is false or frivolous, he can be ordered to pay compensation to the accused. If the report of a police officer of a non-cognizable case is to be treated as a complaint without the formality of the officer swearing to its truth, can such officer be made to pay compensation and can the accused, if the case is false, have a civil remedy? In the case of a police charge sheet, i.e., a report in a cognizable case, the police officer is protected, whereas a complainant is not. Therefore it is against the policy of the law to hold that a police officer who acts without jurisdiction should have the benefit of a police officer who acts within the limits allowed him by law. The case in *Chidambaram Pillai* v. *Emperor*(4) does not help either side. There it was held that it was competent for a police officer to file a complaint. In that case a complaint was filed by a police officer and he gave a sworn statement. When a police officer complains of the commission of a non-cognizable offence, he complains like any other private individual and if he wants to set the criminal law in motion, he must comply with the formalities for the purpose. A Magistrate is empowered to act under section 476. Can a Magistrate who loses his watch send a servant of his whom he suspects of theft under section 476 to the nearest Magistrate? The mere fact that a person is empowered in his official capacity to act in a particular way does not

(1) (1919) I.L.R., 46 Calc., 807.
(2) (1913) 11 A.L.J., 331.
(3) (1902) I.L.R., 26 Bom., 150 (F.B.).
(4) (1909) I.L.R., 32 Mad., 3.

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enable him to act in the same way in his private capacity. To treat the report of a police officer in a non-cognizable case as a complaint without the formalities required for the initiation of proceedings would lead to gross irregularity, if not injustice. Supposing a police officer sends a letter to a Magistrate about the commission of a non-cognizable offence, would the Magistrate be entitled to refer it to the police for enquiry under section 202 of the Criminal Procedure Code? Could he act without the security of a definite information being given him against the accused? These are some of the consequences that will ensue if an ordinary police report is treated as a complaint and the Magistrate is asked to take cognizance without the further formalities being gone through. Any person may complain of the commission of an offence, and it is open to a police officer as to any private individual to complain of the commission of an offence; and if he does so, he comes under section 190, clause (1) (*a*).

I therefore hold that a Magistrate is not competent to initiate proceedings against any person on a police charge sheet in a non-cognizable case. If he wants to take action he must treat it as a complaint and take a sworn statement from the police officer.

In this case information was given to the Village Magistrate and was forwarded by him to the police. The police considered the information to be false and sent in a charge sheet and asked the Magistrate to take action under section 211. The Magistrate enquired into the matter and committed the accused to the Court of Session. The proceedings before the Magistrate and the commitment were illegal. But the Sessions Judge was not justified in acquitting the accused. What he should have done was to have sent up the papers to the High Court for quashing the commitment.

I would therefore set aside the order of acquittal and remit the case to him for such action as he may think necessary in view of the observations above made.

WALLER, J.—This is an appeal by the Public Prosecutor. The accused in the case brought a charge of dacoity against a number of persons. It was investigated by the police, who reported it to be false and had it struck off the file. They then chargesheeted the accused under section 211, Indian Penal Code. The Magistrate committed him to the Sessions. The

Assistant Sessions Judge, following the decision in *Perumal Naick* v. *Emperor*(1) held that the commitment was illegal and acquitted the accused.

The facts are almost exactly parallel to those of the case above cited. If the decision in it is right, the Public Prosecutor's appeal fails. What my brothers, DEVADOSS and WALLACE, JJ., held was that the police charge sheet was not a complaint within the meaning of section 190, Criminal Procedure Code, and that the offence under section 211, Indian Penal Code, being non-cognizable, the police had no power to investigate it and charge the accused of their own accord. There has, of course, been no investigation of the charge under section 211, Indian Penal Code, in this case nor was there in the other. What was investigated was the original charge of dacoity, which the police had the fullest power to investigate.

Mr. Adam relies on *Bhairab Chandra Barua* v. *Emperor*(2) where it was held that a police report in a non-cognizable case is either a complaint under section 4 (*h*) or a police report within section 190 (1) (*b*) of the Criminal Procedure Code. The Calcutta Bench refused to follow *King-Emperor* v. *Sada*(3) and *Chidambaram Pillai* v. *Emperor*(4). In the latter case it was decided that "where a police officer files a complaint in a non-cognizable case or regarding an offence which it was not his duty to report, such a complaint is a complaint within section 4 (*h*) of the Criminal Procedure Code and not a police report." In the former the decision was to the same effect. What, it seems to me, those cases decided was that a complaint is none the less a complaint because it is made by a police officer.

The real question to my mind is whether the "police report" referred to in section 190 (1) (*b*) of the Criminal Procedure Code is limited to reports made in cognizable cases. In an Allahabad case *Sarfaraz Khan* v. *King-Emperor*(5), KNOX, J., held that it was not. As he pointed out "the object of the Code appears to be that, before proceedings are taken against an accused person, such as would bring him to a Court of justice, a Magistrate must have before him knowledge, independent of his own knowledge, based either upon a complaint or upon a police report. If he chooses to take action without such independent report he is bound to inform an accused that he is entitled to have the case tried by some Court other than the

(1) (1925) M.W.N., 317.
(2) (1919) I.L.R., 46 Calc., 807.
(3) (1902) I.L.R., 26 Bom., 150 (F.B.).
(4) (1909) I.L.R., 32 Mad., 3.
(5) (1913) 11 A.L.J., 331.

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Court of such Magistrate." That is a perfectly correct statement of the law contained in sections 190 and 191 of the Criminal Procedure Code. Section 190 says that a Magistrate may take cognizance of an offence on a complaint, on a police report, on information from any person other than a police officer or on his own knowledge or suspicion. But if he acts on information from a person other than a police officer or on his own knowledge or suspicion, he must proceed under section 191 of the Criminal Procedure Code. It seems to me that sufficient attention has not been paid to the words I have above underlined. The Criminal Procedure Code obviously contemplates the possibility of information other than a formal report under section 173 being received by a Magistrate from the police. I cannot believe that the Legislature intended that a Magistrate, though empowered to take cognizance on information from any other person, must, when he receives information from a police officer of a non-cognizable offence, hold his hand and decline to take cognizance. In the case we are now considering, the police investigated a complaint of dacoity and found that it was false—that is, that an offence under section 211 of the Indian Penal Code had been committed. There was no informant whom under section 155 (1) of the Criminal Procedure Code they could refer to a Magistrate. There was nothing to investigate and they required no order to investigate. I can see nothing in the Code which would prohibit them from giving information direct to the Magistrate themselves or prevent the Magistrate from taking cognizance on that information.

I think that the correct view is laid down in *Sarfaraz Khan* v. *King-Emperor*(1), by KNOX, J., and also in *In re Asadulla Hussain Khan*(2). *Chidambaram Pillai* v. *Emperor*(3) was one in which a formal complaint had been preferred by a police officer and the decision was that a complaint presented by a police officer was not a police report but a complaint. If it be held that the police report referred to in section 190 (1) (*b*) of the Criminal Procedure Code is confined to reports in cognizable cases, I can see no reason why the report in this particular case should not be treated as a complaint. The fact that it was sent in a form designed for police reports under section 173 of the Criminal Procedure Code can make

(1) (1913) 11 A.L.J., 331. (2) (1913) 6 M.L.T., 259.
(3) (1909) I.L.R., 32 Mad., 3.

no real difference. The definition of complaint in the Criminal Procedure Code excludes reports of police officers. If by that is intended the exclusion merely of reports under section 173 of the Criminal Procedure Code, there seems to be no reason why other information furnished by the police should not be treated as a complaint.

Whatever view is right, I think that the Appeal should be allowed. If section 190 (1) (*b*) does not exclude reports in non-cognizable cases, the Magistrate could take cognizance on the report in this case. If it does exclude such reports he could take cognizance on the report as a complaint. The non-examination of the complainant on oath is provided for by section 200 (*aa*) of the Criminal Procedure Code.

This Appeal having been set down for final orders on Monday, the 11th day of January 1926, the Court (DEVADOSS and WALLER, JJ.) made the following

ORDER OF REFERENCE TO A THIRD JUDGE :—

"Though we are agreed as to setting aside the order of acquittal, there is a difference of opinion as to any further proceedings that are to follow, viz., whether there should be a retrial on merits or not, and we direct that the case be placed before a third Judge under section 429 of the Criminal Procedure Code."

This Criminal Appeal coming on for hearing, the Honourable the CHIEF JUSTICE referred the case to a Full Bench.

ON THIS REFERENCE

The *Public Prosecutor* (*J. C. Adam*) for the Crown.—Section 190, Criminal Procedure Code, uses the words "*any* offence" which includes non-cognizable offences also. That section draws a distinction between a "complaint" which must be on oath and a "police report" which need not be on oath. Though a police officer cannot of his own accord investigate a non-cognizable offence yet there is nothing in section 190 (*b*) or in any other section which lays down that a police officer can report only in cognizable cases. If he is put on false scent, he is an aggrieved party and he can therefore himself be an informant. It is only if an information is given to him by a private person of a non-cognizable offence he must refer him to a Magistrate. Whether the report of a police officer is called a complaint or report, the Code as now amended provides by section 200 (*aa*) that the

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officer need not be examined on oath. *Perumal Naick* v. *Emperor*(1) is wrong. I rely on *Bhairab Chandra Barua* v. *Emperor*(2), *Sarafaraz Khan* v. *King-Emperor*(3). He referred to section 173 of the Criminal Procedure Code.

C. S. Venkatachari (with *D. Ramaswami Ayyangar*) for the accused.—The word "report" in section 190 does not include a police report of a non-cognizable offence. Neither section 155 nor any other section empowers a police officer to make a report in non-cognizable cases. So, when the Code uses the word "police report" it is in cases where he is *bound* to "report," i.e., in "cognizable offences" only. We must give the same meaning to the words "police report" wherever it occurs in the Code. See *King-Emperor* v. *Sada*(4), *Chidambaram Pillai* v. *Emperor*(5).

The JUDGMENT of the Court was delivered by

SPENCER, J.

SPENCER, J.—This is an appeal against an acquittal. Upon a charge sheet charging the accused with an offence of making a false charge of dacoity (section 211, Indian Penal Code) the Stationary Sub-Magistrate of Krishnagiri held a preliminary enquiry and committed the accused to the Sessions. The Assistant Sessions Judge of Salem being of opinion that the commitment on a charge of a non-cognizable offence upon a police report was illegal, acquitted the accused, instead of making a reference to the High Court, as he should have done if he held that opinion, to quash the commitment under section 215, Criminal Procedure Code. The learned Judges (DEVADOSS and WALLER, JJ.) who heard the appeal were agreed on the point that the Assistant Sessions Judge's procedure in acquitting the accused without a trial was wrong, but they differed on the question whether a retrial should be ordered; there followed a reference under section 429, Criminal Procedure Code, to a third Judge, and he being the CHIEF

(1) (1925) M.W.N., 317.
(2) (1919) I.L.R., 46 Cal., 807.
(3) (1913) 11 A.L.J., 331.
(4) (1902) I.L.R., 26 Bom., 150 (F.B.).
(5) (1909) I.L.R., 32 Mad., 3.

JUSTICE, ordered the matter to be placed before a Full Bench.

From Schedule 2, column 3 to the Code of Criminal Procedure, it is apparent that the offence of making a false charge with intent to injure a person is one for which the police may not arrest without a warrant, in other words, it is not a "cognizable offence" within the definition in section 4 (1) (*f*) of the Criminal Procedure Code.

Mr. Justice DEVADOSS agreed with the Assistant Sessions Judge that the proceedings in the committing Magistrate's Court were illegal because the Magistrate took cognizance of the offence under section 211, Indian Penal Code, upon a police report of a non-cognizable offence without taking a sworn statement from any one. He followed a reported case decided by himself and Mr. Justice WALLACE, *Perumal Naick* v. *Emperor*(1) and the case of *King-Emperor* v. *Sada*(2). Mr. Justice WALLER was averse to putting a narrow construction on the word "report" in section 190 (1) (*b*) as including only reports of cognizable offences. We consider the latter view to be the more correct. While the section itself speaks of "any offence," we think that an attempt to limit its application to one particular class of offences is not warranted by the language used. In *King-Emperor* v. *Sada*(2), the learned Judges were inclined to confine the expression "police report" to reports which the police were required by the Code of 1882 to make in the matter of cognizable offences and by certain other sections. CANDY, J., noticed that though under the Code of 1872 police reports of non-cognizable offences were to be regarded as complaints, the Code of 1882 did

(1) (1925) M.W.N., 317. (2) (1902) I.L.R., 26 Bom., 150 (F.B.).

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not empower a police officer to report at all about such offences without the order of a Magistrate. CHANDAVARKAR, J., observed that the expression "police report" did not occur in any section outside the chapter which deals with the investigation of cognizable offences, except sections 62 and 114. The first of these sections provides for reports being sent to District Magistrates and Subdivisional Magistrates whenever persons within their jurisdictions are arrested by the police without a warrant. The second provides for reports being sent in the case of threatened breaches of the peace when an immediate arrest is the only means by which peace may be preserved. The learned Judge might well have added to his list section 145 which provides for the police reporting disputes as to immovable property. It would be easy to conceive of other circumstances where police officers may find occasion to convey information to the magistracy or obtain their orders as to the course of action to be taken by them for the preservation of the peace and the prevention and detection of crime besides those specifically mentioned in the sections of the Code of Criminal Procedure. It should not be assumed that on all those occasions for which the Code does not specifically provide, a police officer is not acting in the discharge of his duty if he sends a report. It was held by this Court in *In re Asadulla Hussain Khan*(1), that a police officer's action was not *ultra vires* if instead of referring a person, who gave the police information of the commission of a non-cognizable offence, to the Magistrate as provided by section 155 (1) he reported the case to the Magistrate and asked for his orders under section 155 (2) to investigate it. In *Sarfaraz Khan* v. *King Emperor*(2), KNOX J., held that reports of

(1) (1909) 6 M.L.T., 259.

(2) (1913) 11 A. L.J., 331.

investigations made by the police into non-cognizable offences under orders of a Magistrate passed under section 155 (2) fell under section 173 and that Magistrates could take cognizance of the case upon receiving such a police report. The Bombay Full Bench which decided the case in *King-Emperor* v. *Sada*(1) were quite ready to take the view that information furnished by a police officer to a Magistrate, which did not come within the purview of a police report prescribed by some section of the Code, fell anyhow within the definition of a complaint in section 4 (1) (*h*) which is defined as an "allegation orally or in writing to a Magistrate with a view to his taking action, under this Code, that some person, whether known or unknown, has committed an offence but it does not include the report of a police officer."

In Calcutta also it was held that it must be either a report or a complaint [vide *Bhairab Chandra Barua* v. *Emperor*(2)]. The learned Judges of the Calcutta Court went on to say that if a Magistrate upon receiving a report from the police recommending the prosecution of a person who had lodged false information with the police as to the commission (as here) of a dacoity omitted to examine the complainant under section 200 before issuing a summons to the accused, the omission was a mere irregularity which did not affect his jurisdiction. Upon this point they probably had in their minds the provision of section 529 (*e*), Criminal Procedure Code, as that section is quoted in *Harihar Roy* v. *Emperor*(3) printed as a foot-note to their judgment. DEVADOSS, J., does not in his judgment consider the effect of this provision. His comment upon this point is "to treat the report of a police officer in a non-cognizable case as

(1) (1902) I.L.R., 26 Bom., 150 (F.B.). (2) (1919) I.L.R., 46 Calc. 807.
(3) (1918) I.L.R., 46 Calc., 810.

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a complaint without the formalities required for the initiation of proceedings would lead to gross irregularity, if not injustice." The law only requires that the Magistrate, who takes cognizance of an offence under section 190, sub-section (1), clause (*a*) or (*b*) without having jurisdiction, should act in good faith though erroneously, to make his proceedings valid. The learned Judge proceeds to consider the case of *Chidambaram Pillai* v. *Emperor*(1), and the effect of some other sections in the same Chapter XV in which section 190 occurs, notably sections 196 and 196-A and 198, and he puts the questions (1) whether a Magistrate could take cognizance of an offence of adultery or enticing away a married woman upon a police report and (2) whether if a police officer sent a letter to a Magistrate about the commission of a non-cognizable offence, could the Magistrate refer it to the police for investigation under section 202. The answers to these questions are contained in the Code itself; sections 196, 196-A, 198 and 199 clearly contain mandatory provisions as they declare "No Court shall take cognizance of" (here follow the description of certain definite offences) "except" or "unless," etc. The amended Criminal Procedure Code of 1923, which was in force when the Sub-Magistrate took cognizance of the offence under section 211, Indian Penal Code, as well as when DEVADOSS, J., delivered his judgment in this case and that reported in *Perumal Naick* v. *Emperor*(1) has made the question of the jurisdiction of Magistrates to take cognizance of non-cognizable offences upon a report made in writing made by any police officer without examining the police officer upon oath perfectly clear and free from all possible ambiguity. For section 190 (1) (*b*) authorizes certain Magistrates to take cognizance of

(1) (1925) M.W.N., 317.

any offence upon a *report in writing* of facts which constitute such offence *made by any police officer*, and section 200 (*aa*) provides that where a public servant acting or purporting to act in the discharge of his official duties makes a complaint of an offence, nothing shall require the Magistrate to examine him before taking cognizance of the offence. We overrule *Perumal Naick* v. *Emperor*(1) and we set aside the acquittal of the accused in this case, and direct him to be tried according to law for the offence under section 211, Indian Penal Code, at the Sessions of the Salem Division on the first available date.

N.R.

APPELLATE CIVIL.

Before Sir Murray Coutts Trotter, Kt., *Chief Justice, and Mr. Justice Ramesam.*

THE OFFICIAL ASSIGNEE OF MADRAS (RESPONDENT—1ST DEFENDANT), APPELLANT,

1925, December 16.

v.

A. RAMALINGAPPA AND ANOTHER (APPLICANTS—5TH AND 6TH DEFENDANTS), RESPONDENTS.*

Letters Patent (Madras High Court), cl. 15—*Order transposing some defendants as plaintiffs, whether a "judgment"—Appeal, maintainability of.*

An order of a Judge on the Original Side of the High Court transposing certain defendants as plaintiffs and allowing the suit to proceed is not a "judgment" within clause 15 of the

(1) (1925) M.W.N., 317.

* Original Side Appeal No. 108 of 1925.