

APPELLATE CRIMINAL.

Before Mr. Justice Wallace.

MAHAMUD SHERIFF SAHIB (PETITIONER), COMPLAINANT,

1927,
August 19.

v.

MOULVI ABDUL KARIM SAHIB AND SEVEN
OTHERS (RESPONDENTS), ACCUSED.*

Criminal Procedure Code, sec. 253—“No case made out” if tantamount to “charge groundless”—Discharge of accused, as charge groundless, without examining witnesses cited by complainant or ascertaining from him the nature of their evidence—if legal.

Section 253 of the Code of Criminal Procedure does not evidently use “no case . . . made out” and “charge. . . groundless” in the same sense. To say that no case has been made out is not tantamount to saying the charge is groundless.

Where a complaint *prima facie* discloses an offence, a Magistrate cannot hold the charge to be groundless unless he knows what is the sort of evidence that is going to be adduced to prove it; and he can only judicially come to such a conclusion when he has at least ascertained from the complainant what is the nature of the evidence his witnesses are going to give.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of Session of East Tanjore Division at Negapatam in Criminal Revision Petition No. 7 of 1926, presented to revise the order of the Court of the Subdivisional First-class Magistrate of Mayavaram in C.C. No. 17 of 1925, discharging the accused.

K. S. Jayarama Ayyar and *S. Nagaraja Ayyar* for petitioner.

O. Narasimhachari for respondent No 4.

*Criminal Revision Case No. 974 of 1926.

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SAHIB.

K. Sankara Sastri for respondent Nos. 4, 5 and 8.
Public Prosecutor for the Crown.

JUDGMENT.

The Magistrate in this case has discharged the accused refusing to examine all of the witnesses cited by the complainant. Now, while section 253 authorizes the Magistrate to discharge an accused person before all the witnesses are examined, if, for reasons to be recorded by him, he considers the charge to be groundless, there are two reasons why his procedure cannot be supported by that section. First, he does not say he finds the charge to be groundless, and I do not agree with the Sessions Judge in his revision order that to say that no case is made out is tantamount to saying the charge is groundless. In fact, the section itself uses both phrases evidently not in the same sense.

Secondly, where a complaint *prima facie* discloses an offence, a Magistrate cannot hold the charge to be groundless unless he knows what is the sort of evidence that is going to be adduced to prove it, and he cannot for example examine one or two witnesses or, for the matter of that, no witnesses at all, and then without knowing what the other witnesses are going to say, hold that the charge is groundless. He can only judicially come to such a conclusion when he has at least ascertained from the complainant what is the nature of the evidence that the other witnesses are going to give. If he then finds that even if that evidence was given, the charge would be groundless, it is open to him to discharge the accused on that ground.

In the present case, the Magistrate has, so far as appears, made no attempt to find out what the other witnesses were going to say and it was not therefore open to him to discharge the accused. I am informed

that two of the witnesses not examined by him, compositors of the press, are prepared to give evidence of value against accused 4, 5 and 8. That evidence cannot be shut out by the arbitrary method of discharging the accused before these witnesses have been heard.

The discharge of accused 4, 5 and 8 therefore is not in accordance with law and is set aside. The case will be further enquired into and decided on the full evidence proffered by complainant, unless, for reasons to be recorded, the Magistrate refuses to examine any witnesses on the ground that his evidence, even, if taken, will not materially help the case of the complainant.

The further enquiry will be held by the present Sub-divisional Magistrate, Mayavaram.

B.C.S.

SHERIFF
SAHIB
v.
ABDUL
KARIM
SAHIB.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

THE CROWN PROSECUTOR (APPELLANT),

v.

KHADIR MOHIDEEN (ACCUSED), RESPONDENT.*

1927,
August 26.

*Motor Vehicles Act, VIII of 1914, sec. 6—Contravention of—
Driver without licence—Liability of Owner—Owner not
aware of expiry of driver's licence—if can be pleaded.*

The owner of a motor vehicle must assure himself that the driver to whom he entrusts his vehicle for being driven is licensed to drive a motor vehicle, and cannot plead by way of defence to a prosecution for the contravention of section 6 of the Motor Vehicles Act that he was not aware that the licence of the driver had expired.

* Criminal Appeal No. 241 of 1927.