

APPA RAO
2.
SECRETARY
OF STATE FOR
INDIA.

a necessity of giving notice under section 80 even in respect of the second defendant, and, in the present case, there was no necessity to issue any such notice to the other defendants. But I do not think the observation of their Lordships as to the non-maintainability of the action against the second defendant depended on this circumstance, namely, the necessity of a notice even to the second defendant.

The defect pointed out above being fatal to the maintainability of the suits, either the suits are liable to dismissal, or the plaints are liable to rejection. In either view, the order of the lower appellate Court seems to be correct. I therefore dismiss these second appeals with costs (two sets).

A.S.V.

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan Pandalai.

In re THOMULUR ANANTAPADMANABHIAH
(ACCUSED), PETITIONER.*

1930,
September 2.

Code of Criminal Procedure (Act V of 1898), ss. 107, 112 and 548—Order on a person under sec. 112 to keep peace under sec. 107—Right of such person to grant of copy of Police information—Whether information part of the record within meaning of sec. 548.

A person against whom a Magistrate has drawn up an order under section 112 of the Code of Criminal Procedure, calling on him to show cause why he should not be bound over to keep the peace under section 107 of the Code, is not entitled to the grant of a copy of the written information given by the Police and on which the order is based, as such information is not part of the record within the meaning of section 548 of the Code.

* Criminal Revision Case No. 518 of 1930.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Subdivisional Magistrate of Nellore in Miscellaneous Case No. 39 of 1930.

C. Rama Rao Sahib for *G. Sivaramakrishna Sastri* for petitioner.

N. S. Mami for *Public Prosecutor (L. H. Bewes)* for the Crown.

JUDGMENT.

The question raised in this case is whether a person against whom a Magistrate has drawn up an order under section 112 of the Code of Criminal Procedure, asking him to show cause why he should not be bound over to keep the peace under section 107, is entitled to obtain a copy of the written information given by the Police on which the order is based. The Magistrate refused to grant the copy holding that it is not a charge-sheet, as the petitioner described it in his application. That it is not a report under section 173 of the Code of Criminal Procedure, a copy of which should under clause 4 of that section be furnished on application and payment to the accused, is clear enough, because the section is in terms confined to reports made on investigation under Chapter XIV of the Code. But this does not dispose of the matter. Section 548 (leaving out the immaterial words) provides that, if any person affected by an order passed by a Criminal Court desires to have a copy of " . . . other part of the record ", he shall, on applying for such copy, be furnished therewith. The petitioner was clearly affected by the order under section 112 requiring him to show cause. If the information by the Police on which the Magistrate founded his order can be brought within the words " part of the record ", he is entitled to a copy. No direct decision on the point has been brought

ANANTA-
PADMANA-
BRIAH,
In re.

to my notice. But there are observations of more or less indirect application. In *Ranga Reddi v. King-Emperor* (1), where the point for decision was whether and to what extent the order under section 112 should set out particulars of the information and whether evidence of repute was admissible on a charge under section 110, clause (f), SESHAGIRI IYER J., after pointing out that it is of the utmost importance that the information communicated to the accused under section 112 should be clear and specific, says at page 451 :—

“The accused is to be put on his trial on information received behind his back. In the case of a complaint the accused may be entitled to a copy, if he applies for it, but in the case of an information of this kind, which *ex necessitate* is a confidential one, the accused is entitled to be told the nature and extent of the information on which the Magistrate intends to take the action against him.”

This passage is cited by MADHAVAN NAIR J. in *Kutti Goundan, In re* (2), another similar case where the question for decision was whether the order under section 112 contained sufficient particulars to enable the accused to prepare for his defence and to summon witnesses on his side before the actual enquiry commences. In both cases, the learned Judges assumed that the accused is not entitled to a copy of the information to the Magistrate, and it may also be pointed out that the insistence on particulars in the order under section 112 would, to a great extent, be superfluous, if the accused were entitled to obtain copies of the information on which that order is based. At the same time, it cannot be denied that in neither case was section 548 under consideration, nor were the learned Judges considering whether the report of the Police on which the order under section 112 is based is part of the record in which that order is made.

(1) (1919) I.L.R. 43 Mad. 450.

(2) (1924) 47 M.L.J. 689, 692.

On the other side, there are observations of at least three learned Judges in a contrary sense in the well-known Full Bench decision in *Queen-Empress v. Arumugam*(1). That case was decided in 1897 before the amendment of section 173 enabled accused persons to get copies of charge-sheets under Chapter XIV. The question related to copies of Police reports under sections 157, 168 and 173 of the then Code. Of the four learned Judges who constituted the Court, three held that reports under sections 157 and 168 were not public documents and consequently the accused were not entitled to copies of them. The Court was equally divided as to reports under section 173, two Judges holding that they were, and the other two that they were not, public documents of which the accused, could get copies. The two referring Judges at page 192 say with reference to the argument founded on section 548 that, if an order has been made on a Police occurrence—report or charge-sheet affecting the person accused, such as an order for his arrest or for his remand to custody, he is *ipso facto* entitled to a copy of that document under the express terms of section 548 of the Code of Criminal Procedure. At page 206 BENSON J. refers to the argument based on section 548. He was of opinion that the argument would succeed if the Magistrate making the order is at the time a criminal Court. He rejected the argument as he thought that a Magistrate is not a Court when enquiring into offences which he is not empowered to try. This distinction between Magistrates and Courts is no longer valid after the decision of the Privy Council in *Clarke v. Brajendra Kishore Roy Chowdhury*(2), and there can be no doubt that a Magistrate acting under section 112 is a Court. It would therefore seem that, but for this distinction which did not exist,

(1) (1897) I.L.R. 20 Mad. 189 (F.B.). (2) (1912) I.L.R. 39 Cal. 953, 966 (P.C.).

ANANTA-
PADMANA-
BHIAH,
In vs.

BENSON J. would have upheld the view of the referring Judges as to section 548. There is, however, no denying the fact that these were observations, not decisions, and that they were made with respect to Police reports made under Chapter XIV and not to Police reports or information to a Magistrate with a view to his taking action under Chapter VIII.

In this state of authority, I have to decide the point before me on a consideration of the words of section 548 and such considerations as may be based on the nature of proceedings under section 107 of the Code of Criminal Procedure. In brief, what is meant by "the record" and when does "the record" begin in proceedings under section 107? On the best consideration I can give to the matter, I think the record intended is the magisterial record, and such record in proceedings under section 107 begins usually with the order under section 112, except where a Magistrate not empowered under section 107 wishes to have proceedings taken under it and issues a warrant under clause 3 of that section. The information which leads to action under section 107 may be of the most varied kind. It may be oral, sworn or not sworn, and need not be in writing. It may be from any source, official or unofficial, formal or informal. It may be derived from the Magistrate's own knowledge. He is not bound to disclose the source or the nature of the information received, *In the matter of the petition of Mithu Khan*(1). I am, therefore, of opinion that the information or report of the Police in this case was not part of the record within the meaning of section 548 of the Code of Criminal Procedure and that the petitioner is not entitled to a copy of it. The petition must be dismissed.

B.C.S.

(1) (1904) I.L.R. 27 All. 172.