

APPELLATE CRIMINAL.

Before Mr. Justice May Oung.

MAUNG THAN

v.

KING-EMPEROR.*

1923

No. 4.

Criminal Procedure Code, Chapter VIII—Persons against whom proceedings under the chapter are taken, not persons accused of an offence—Section 436—Power to direct further enquiry.

Held, that section 436 of the Criminal Procedure Code applies to "person accused of an offence" and not "any accused person" and therefore does not include persons against whom proceedings are taken under Chapter VIII of the Code.

Ebrahim v. King-Emperor, 2 L.B.R., 80—superseded.

In Criminal Miscellaneous Trial 253 of 1923 of the Court of the Subdivisional Magistrate, Moulmein, the present petitioner, Maung Than, was called on under section 3 (a) of the Burma Habitual Offenders' Restriction Act and section 112, Criminal Procedure Code, to show cause why an order of restriction under the former Act should not be passed against him and why he should not be called upon to furnish security under section 110, Criminal Procedure Code. Seven witnesses for the prosecution were examined. Maung Than was then called on to make his defence and after examining three witnesses for the defence, the Magistrate decided that he should be discharged and the case was classified as mistaken. The case was then taken up in revision by the District Magistrate who after calling upon the petitioner to show cause ordered further inquiry under the provisions of section 436 of the Criminal Procedure Code. The petitioner thereupon applied to the District Magistrate for submission of the proceedings to the High Court.

* Criminal Revision No. 699-B of 1923 arising out of Criminal Miscellaneous No. 253 of 1923 of the Court of Subdivisional Magistrate, Moulmein.

MAY OUNG, J.—Section 436, Code of Criminal Procedure, formerly section 437, now contains the words “any person accused of an offence”, instead of “any accused person”, and hence does not include persons against whom proceedings were taken under Chapter VIII. The decision in *Ebrahim v. King-Emperor* (1) has thus been superseded *pro tanto*.

The order directing further inquiry is accordingly set aside.

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MAUNG
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EMPEROR.

FULL BENCH (CRIMINAL).

Before Mr. Justice Young, Officiating Chief Justice, Mr. Justice Heald, and Mr. Justice May Oung.

NGA MYIN

v.

KING-EMPEROR.*

1923
Dec. 12.

Whether a village headman is a police-officer—Confession to a village headman, admissibility of—Evidence Act (1 of 1872), section 25.

Held, that a village headman is not a police-officer, and section 25, Evidence Act, does not exclude a confession made to him by an accused person.

Per YOUNG, OFFG. C.J.—“The mere bestowal of the same powers of arrest as are given to a police-officer does not make the village headman a police-officer, any more than it makes a Magistrate a police-officer.”

Per HEALD, J.—“There can be no doubt that the Legislature when it enacted the Village Act did not regard the headman as a police-officer since it provided separately in the same section of the Act for the appointment of village headmen and the appointment of one or more rural policemen for a village-tract.”

Per MAY OUNG, J.—“Where a village headman is shown to have taken an active part in the investigation of an offence in conjunction with the police, a confession alleged to have been made to him in the course of such investigation should be received with the utmost caution.”

Crown v. Nga Po Hlaing, I, L.B.R., 65—reaffirmed.

This matter arose out of the order of reference reported below and made for reconsideration of the

(1) (1902) 2 L.B.R., 80.

* Criminal Reference No. 66 of 1923 arising out of Criminal Revision No. 416-B of 1923 of this Court.