

APPELLATE CRIMINAL.

Before Mr. Justice Carr.

P. J. MONEY

v.

KING-EMPEROR.*

1928

June 8.

Legal Practitioners' Act (XVIII of 1879), s. 36—Presence of the alleged tout whether compellable—Refusal to appear to show cause—Prosecution under section 195 (1) (a), Criminal Procedure Code whether open to appeal—Penal Code (XLV of 1860), s. 174.

Held, that in proceedings under section 36 of the Legal Practitioners' Act against an alleged tout his presence cannot be compelled either to show cause or to receive orders in the case and that accordingly refusal to appear does not constitute an offence under section 174 of the Penal Code.

Held, that where a complaint is laid by the District Magistrate under section 195 (1) (a), of the Criminal Procedure Code, such prosecution can be questioned only by way of revision and not by way of an appeal.

CARR, J.—The appellant, P. J. Money, asks this Court to set aside an order of the District Magistrate, Rangoon, making a complaint against him under section 174 of the Penal Code. The appellant was called upon by the District Magistrate under section 36 of the Legal Practitioners' Act to show cause why he should not be entered as a tout in a list to be published under that section. The appellant appeared at the enquiry and was directed by the District Magistrate to attend at 11 o'clock on the 2nd of April and receive orders in the proceedings. He did not attend and for that reason the District Magistrate has charged him under section 174 (2) of the Penal Code.

It is clear to me that the District Magistrate's action was wrong. Section 36 of the Legal Practitioners' Act merely says that no person's name shall be included in the list of touts until he shall have an opportunity of showing cause against its inclusion. The effect of that is that the District Magistrate could

* Criminal Appeal No. 503 of 1928 against the order of the District Magistrate of Rangoon in Criminal Regular No. 247 of 1928.

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not proceed without giving the appellant notice of his intention to do so and giving him an opportunity to show cause against the action proposed, but it does not authorise the District Magistrate to compel the appellant's attendance in the proceedings. If, after the receipt of such a notice, the appellant absented himself, it would have been open to the District Magistrate to proceed in his absence. Nor was it open to the District Magistrate to compel his attendance to receive orders in the case. It cannot be said, therefore, that the appellant was legally bound to attend the District Magistrate's Court and therefore section 174 of the Penal Code cannot possibly apply and the prosecution must necessarily fail.

There is however a further matter which calls for consideration. The offence in question is one which falls within sub-section 1 (a) of section 195 of the Criminal Procedure Code and section 476 of the Procedure Code does not apply to offences referred to in clause (a) of this sub-section. Section 476 therefore does not authorise the making of the complaint by the District Magistrate. I have no doubt, however, that the District Magistrate had the inherent power to make the complaint which is necessary under section 195 before the appellant could be prosecuted. But a further result is that section 476 (b) also does not apply in this case and that no appeal therefore lies. The matter does, however, in my opinion come within the revisional jurisdiction of this Court and, in view of what I have said on the merits of the case, I am satisfied that this Court ought to set aside the order and direct the District Magistrate to withdraw his complaint.

In exercise of my revisional jurisdiction, I therefore direct that the complaint made by the District Magistrate be withdrawn.