

CRIMINAL REVISION.

Before Mr. Justice Baguley.

1937

Nov. 22.

JAGDEO PANDAY *v.* N. C. HILL.*

Complaint—Report by a Police Officer—Non-cognizable offence—Report under orders of magistrate—Report without instructions from magistrate—Child Marriage Restraint Act, ss. 5, 9—Anonymous petition—Police Officer asked by magistrate to investigate case—Proceedings commenced on a letter from Police Officer—Illegality of proceedings—Criminal Procedure Code, ss. 4 (h), 157.

When a Police Officer investigates a non-cognizable case under the orders of a magistrate, the report which he makes at the end of his investigation is of the same nature as a report made under s. 157 of the Criminal Procedure Code, and such a report being a Police Report is not a complaint within s. 4 (h) of the Code, though if a Police Officer, acting without instructions from a magistrate reports a non-cognizable offence to a magistrate with a view to the magistrate taking action, this is a complaint.

King-Emperor v. Sada, I.L.R. 26 Bom. 150, referred to.

An offence under s. 5 of the Child Marriage Restraint Act is not cognizable.

An anonymous petition stating that an offence under the Child Marriage Restraint Act was about to take place is not a complaint nor is a letter written by a Police Officer to the District Magistrate who had forwarded the petition to him for inquiry, a "complaint." Proceedings initiated by the magistrate regarding the letter as a complaint are bad by virtue of s. 9 of the Child Marriage Restraint Act.

K. C. Sanyal for the applicants.

Tun Byu (Government Advocate) for the respondent.

BAGULEY, J.—This is an application to quash the proceedings pending against the applicants under section 5 of the Child Marriage Restraint Act. The proceedings originated in the following manner. (I base this on the report made by the District Magistrate and certain Police papers which have been sent up) :

* Criminal Revision No. 493B of 1937 arising out of Criminal Regular Trial No. 2 of 1937 of the Court of the District Magistrate, Myitkyina.

An anonymous petition was sent to the Superintendent of Police through the Deputy Commissioner, Myitkyina, dated the 15th May 1937, which was received in the Deputy Commissioner's office on the 17th of May. The petition stated that certain people were going to marry their son and daughter on the 17th of May, 1937. It was not, therefore, a petition stating that an offence had taken place, but that an offence was going to take place. The petition reached the District Magistrate on the 27th of May, and he forwarded it to the Assistant Superintendent of Police. The Assistant Superintendent of Police reported that he could not get any witnesses to give evidence, but he discussed the matter with the District Magistrate and agreed to make a formal report. A letter was then sent in to the District Magistrate purporting to have been from the Assistant Superintendent of Police, but it was signed by some other person on his behalf. The learned District Magistrate regarded this as a complaint made by the Assistant Superintendent of Police and initiated proceedings, sending the matter for enquiry by the Subdivisional Magistrate, Myitkyina, under section 202, Criminal Procedure Code.

It is argued that, as there is no complaint, the proceedings are bad by virtue of section 9 of the Child Marriage Restraint Act, which states that no Court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnization of the marriage. The question then arises as to whether the letter written on behalf of the Assistant Superintendent of Police to the District Magistrate is a "complaint" or not.

The word "complaint" is not defined in the Child Marriage Restraint Act: but as this is a criminal act and the matter is one relating to procedure, the definition of "complaint" given in

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section 4 of the Criminal Procedure Code must, I think, be applied.

Section 4 (*h*) of the Criminal Procedure Code says :

“ ‘ Complaint ’ means the allegation made 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.”

As the anonymous petition referred to an offence which was contemplated, the anonymous petition, or a petition of this nature, even if it had been signed, would not be a “ complaint ” within the terms of the definition : so the only thing which can be regarded as a complaint is the letter. Is this a “ complaint ” or is it a “ report by a Police Officer ” ?

“ Report by a Police Officer ” is not defined in the Code, but “ Police Reports ” are dealt with in Chapter XIV of the Code. This Chapter deals with information given to the Police, and section 157 states that when an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, that is to say, of a cognizable offence, he shall send a report of the same to a Magistrate, and that report is undoubtedly the report upon which a Magistrate can take cognizance of a case under section 190 (*b*) of the Criminal Procedure Code, and this report is a type of allegation which is expressly stated in section 4 (*h*) not to be a complaint within the meaning of that definition.

Section 155 (2) of the Criminal Procedure Code says that no Police Officer shall investigate a non-cognizable case without the order of a Magistrate, and section 155 (3) says that when a Police Officer has received an order from a Magistrate to investigate a non-cognizable case, he may exercise the same powers in respect of

the investigation as may be exercised in the case of an investigation of a cognizable case.

It seems to me, therefore, that when a Police Officer investigates a non-cognizable case under the orders of a Magistrate, the report which he makes at the end of his investigation is of the same nature as a report made under section 157, and such a report being a Police Report is not a "complaint", though if a Police Officer, acting without instructions from a Magistrate reports a non-cognizable offence to a Magistrate with a view to the Magistrate taking action this is a complaint, *vide King-Emperor v. Sada* (1).

An offence under section 5 of the Child Marriage Restraint Act being punishable only with simple imprisonment up to one month or a fine of Rs. 1,000, or both, under Schedule III of the Code of Criminal Procedure is not cognizable : so the letter written on behalf of the Assistant Superintendent of Police to the District Magistrate is a "Police Report" and not a "complaint."

The present proceedings not having originated on a "complaint" are bad by virtue of section 9 of the Child Marriage Restraint Act. The proceedings will, therefore, be quashed, as not having been legally initiated.

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