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 THE KING.
 MOSELY, J.

I must hold that the powers of punishment rest in the officers appointed in such behalf by section 7 of the general Police Act. It follows that the delegation of these powers to them was *ultra vires* of the Local Government, which was not the authority empowered to punish, such authority being the officers designated.

It ensues then that sanction of the Local Government to prosecute a subordinate police officer is not required, and this application in revision will be dismissed.

CRIMINAL REVISION.

Before Mr. Justice Mosely.

1937
 Oct. 7.

RAI MOHAL PANDAY *v.* MAUNG PO SEIN.*

Crown servants—Acts done in execution of duty—Protection for acts done in good faith—Committal to Sessions—Magistrate's duty—Findings as to nature of act and good faith—Criminal Procedure Code, s. 197—Government of Burma Act, s. 124.

S. 124 of the Government of Burma Act affords a general indemnity to all servants of the Crown for acts committed in the execution of their duty as such before the 1st April 1937. The protection given by this section is in addition to the existing protection given by section 197 of the Criminal Procedure Code.

A magistrate must take all the available evidence and come to a finding whether the acts complained of were done or not done by a servant of the Crown in the execution of his duty and in good faith or not before he decides whether to commit the accused to Sessions.

A. Eggar (Advocate-General) for the Crown.

Soorma for the complainant.

MOSELY, J.—This application in revision was made by the Advocate-General against an order of the Fourth Additional Magistrate, Rangoon, passed in a committal proceeding.

* Criminal Revision No. 515B of 1937 from the order of the 4th Additional Magistrate of Rangoon in Criminal Regular Trial No. 184 of 1937.

The case in question was one instituted by two *chaprasis* of the High Court against a Sub-Inspector of Police. The complaints were instituted on the 20th March 1937. The Magistrate referred to section 124 (2) of the Government of Burma Act but in the order now under revision refused to come to a finding whether the acts complained of were not done in good faith. The order amounts to one purporting to commit the accused to Sessions irrespective of whether the acts were done in good faith or not.

This is clearly contrary to the wording of the section. Section 124 (1) is as follows :

"No proceedings civil or criminal shall be instituted in Burma against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the commencement of this Act, except with the consent of the Governor in his discretion."

It is clearly not applicable here as the complaints were laid and the proceedings instituted before the Act came into force on the 1st April 1937.

Section 124 (2) is as follows :

"Any civil or criminal proceedings instituted in Burma, whether before or after the commencement of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the said date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed, the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged on the revenues of Burma."

It should be remarked that section 124 purports to be a general indemnity to all servants of the Crown for acts committed in the execution of their duty as such before the commencement of the Act. The

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protection given by this section is in addition to the existing protection given by section 197 of the Criminal Procedure Code, referred to in the next section of the Government of Burma Act, section 125, which prohibits any restriction of protection of public servants conferred by that section of the Criminal Procedure Code or of sections of the Civil Procedure Code without the previous sanction of the Governor.

The learned Magistrate was correct when he said that all the available evidence which deals with the point should be taken before a finding is come to as to whether the act complained of was done in the execution of the Sub-Inspector's duty and in good faith or not. He should not have prejudged this point in the middle portion of his order, and it would appear that he has failed to consider whether the Sub-Inspector had reasonable ground to think or suspect that the *chaprasis* were committing an offence under section 336 of the Penal Code by throwing stones on the roof of Mr. Pinto's building. The Magistrate has only considered the effect of section 426, Penal Code. His attention is directed to *Ma Nyein Gale v. Nga Sein and others* (1) and several previous rulings on the effect of section 336, Penal Code, to be found in "Dunkley's Digest" under "Penal Code—section 336" at pages 946 and 947.

The Magistrate, in revision, will be directed to take the available evidence and come to a finding whether the acts complained of were done or not done in good faith before he decides whether to commit the accused.

The proceedings will be returned with these remarks.