**THE PEOPLE v MUTACHILA (1969) ZR 96 (HC)**

HIGH COURT

WHELAN J

12 JUNE 1969

**Flynote and Headnote**

[1]   **Criminal procedure - Arrest without a warrant - Additional subsequent**15 **charge - Counts properly before magistrate's court.**

   Where accused was arrested without a warrant in respect of two counts and subsequently was charged by the police with a third offence, all three counts were properly before the court.

[2]   **Criminal procedure - Institution of proceedings - Complaint or bringing**20 **before magistrate on arrest without warrant - Criminal Procedure Code, sections 83 (1), construed.**

   Section 83 (1) of the Criminal Procedure Code provides criminal proceedings may be instituted by complaint or by bringing person arrested without a warrant before magistrate which does not prevent 25 an accused arrested without a warrant from being subsequently charged while in custody with an additional offence.

Statute construed:

(1)   Criminal Procedure Code (1965 Cap.7), s.83 (1).

**Judgment**

**Whelan J:** This is an appeal by way of case stated from a ruling of 30 the magistrate presiding over the Subordinate Court of the First Class for the Mansa District on the 11th January, 1969.

The facts of the case are that the accused was arrested without a warrant at Mufulira on the 6th January, 1969, in respect of two counts 35 each alleging an offence contrary to section 65 (1) and 69 of the Electoral (National Assembly Elections) Regulations, 1968. He appeared before the magistrate, Mufulira, who issued a warrant of removal and he was then taken to Mansa on the 10th January. On the 10th January he was charged by the police with an offence of bribery contrary to Regulations 59 (1) (c) and 63 of the Electoral (National Assembly Elections) Regulations, 40 1968. On the 11th January the accused appeared in the Subordinate Court of the First Class for the Mansa District charged with three counts, that is to say, the bribery and two illegal practice offences to which I have made reference.

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The magistrate, being of the opinion that the accused was not properly before the court in respect of the bribery count, because he had not been arrested specifically in connection with that count, discharged the accused in respect of it. He then went on to convict the accused in respect of counts 2 and 3. 5

[1]  The question on which the opinion of the High Court is now desired is "whether or not in law the accused was properly before the the court as regards the first count".

I consider that the answer to this question is "yes" but in the circumstances of this case I do not propose to make any order which would 10 have the effect of re-opening the trial.

[2]  Section 83 (1) of the Criminal Procedure Code lays down that proceedings may be instituted either by the making of a complaint or by the bringing before the magistrate of a person who has been arrested without warrant. It does not say that no person may be charged with an 15 offence unless a complaint has been made or he has been arrested in respect of it. The proceedings in the present case were instituted by the bringing before the magistrate of the accused who had been arrested without a warrant at Mufulira in respect of two offences against the Electoral (National Assembly Elections) Regulations, 1968. Subsequent 20 to his arrest he was charged by the police with a third offence whilst in custody. I can see nothing objectionable in that. Whilst it is true that there is authority to say that evidence of arrest should be given in order that anything an accused may have said in exculpation may be put before the court, where a person already in custody for one offence is 25 charged with another offence then he has an opportunity to make a statement when so charged, and if he makes a statement evidence of it can and should be given in court by the prosecution.

There is one other matter which I consider requires comment. I do not appreciate why the accused was ever arrested without a warrant for any offence against the Electoral (National Assembly Elections) Regulations, 30 1968, as there appears to be no authority for this, but as the accused did not take the point and surrendered to the jurisdiction of the court no injustice was occasioned thereby.

*Order accordingly*  35