

1957

*Present :* H. N. G. Fernando, J.

P. SUWANDA, Appellant, *and* INSPECTOR OF POLICE,  
KAHAWATTA, Respondent

*S. C. 477—M. C. Ratnapura, 59719*

*Crown costs—Failure to pay—Power of Court to impose a sentence of imprisonment—  
Criminal Procedure Code, ss. 312, 325.*

The appellant was ordered to enter into a bond under section 325 of the Criminal Procedure Code as well as to pay Rs. 25 as Crown costs, and time was given to pay the Crown costs.

*Held*, that, on failure to pay the Crown costs, the Magistrate had no jurisdiction to impose as a penalty a sentence of imprisonment.

<sup>1</sup> (1954) 56 N. L. R. 250.

<sup>2</sup> (1919) 9 C. W. R. 64.

**A**PPEAL from an order of the Magistrate's Court, Ratnapura.

No appearance for the accused-appellant.

*Shiva Pasupati*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

September 3, 1957. H. N. G. FERNANDO, J.—

The appellant in this case was ordered to enter into a bond under section 325 of the Criminal Procedure Code to be of good behaviour for a period of three years as well as to pay Rs. 25 as Crown costs, and time was given till 10th April 1957 to pay the Crown costs. The Crown costs not having been paid on that date, the Magistrate purported to vacate his previous order both for the bond and for the payment of Crown costs and proceeded to pass a sentence of three months' rigorous imprisonment.

I doubt whether the failure to pay Crown costs as ordered can be followed by the imposition of a term of imprisonment and also whether an order for a recognizance under section 325 can be vacated and replaced by a sentence of imprisonment except in circumstances expressly set out in Chapter 26 of the Code. But in any event if the provisions of section 312 of the Code are applicable where an order for Crown costs is made upon the footing that such order is equivalent to a fine, section 312 clearly contemplates that a default term must be imposed if at all at the same time as the fine. For this reason, if for no other, the Magistrate had no jurisdiction to impose a sentence of imprisonment as a penalty for the failure to pay the fine.

The appellant in his petition of appeal states that he is now prepared to pay the costs ordered. The sentence imposed on 10th April 1957 is set aside and the orders made on 27th March 1957 are restored.

*Sentence of imprisonment set aside.*