

1931

Present: Drieberg J.

BANDA v. DALPADADO.

255—P. C. Colombo, 22,972.

Appeal—Order of discharge—Complainant appeals with sanction of Attorney-General—Sanction unnecessary—Time limit for appeal.

Where a complainant has a right of appeal without the sanction of the Attorney-General he cannot, by obtaining the sanction, file the appeal within the longer period allowed by section 338 (2) of the Criminal Procedure Code.

A PPEAL from an acquittal by the Police Magistrate of Colombo.

Rajakakse, for the accused, respondent, raised a preliminary objection.

The appeal is from an order discharging the accused. Such order is made under section 191 of the Criminal Procedure Code. An appeal lies as of right to the complainant within ten days. (*Suppiah v. Banda*¹, *Silva v. Rahiman*².) No sanction was necessary. The sanction referred to in section 338 (2) both before and after the amendment is the *necessary* sanction and is referable to section 336. The Attorney-General cannot by sanctioning an appeal extend the ordinary appealable period.

Pulle, C.C., for the complainant, appellant.—Although the word used by the Magistrate is "discharge", the order is tantamount to an acquittal. (*Gabriel v. Soysa*³.) An order of discharge after accused has pleaded is an acquittal and the Attorney-General may appeal within 28 days. See Ennis J.'s dissenting judgment in *Seneviratne v. Lenohamy*⁴. Very wide powers are given under the new Ordinance. See section 3 of Ordinance No. 19 of 1930 which has amended section 338 (2). In any case Supreme Court can act by way of revision.

Rajakakse, in reply.—Section 3 of Ordinance No. 19 of 1930 applies where the Attorney-General is the appellant. Here the appellant is the Police Sergeant. The sanction referred to there is also the *necessary* sanction.

June 29, 1931. DRIEBERG J.—

The complainant, a Police Sergeant, appeals with the sanction of the Solicitor-General from a judgment by the Police Magistrate discharging the accused in a case which was summarily triable. The order was made under section 191 of the Criminal Procedure Code and is one from which an appeal lies without the sanction of the Attorney-General (*Silva v. Rahiman*⁵). The appeal was not filed within ten days but within the longer period allowed for appeal with the sanction of the Attorney-General.

¹ 3 C. W. R. 127.

² 26 N. L. R. 463.

³ 31 N. L. R. 314.

⁴ 20 N. L. R. 44.

⁵ (1924) 26 N. L. R. 463.

Mr. Rajapakse contends that where a complainant has a right of appeal without the sanction of the Attorney-General, he cannot by obtaining the sanction which is not necessary file an appeal out of time. In my opinion this contention is right. If the complainant had not exercised his right of appealing within ten days it is open to the Attorney-General, though he was not the complainant in the case, to himself appeal, such a course being now possible under section 3 of Ordinance No. 19 of 1930.

The appeal is dismissed.

Appeal dismissed.

