

1965

Present : T. S. Fernando, J.

R. A. PREMARATNE, Appellant, and M. T. GUNARATNE  
(Inspector of Police), Respondent

*S. C. 1393 of 1964—M. C. Anuradhapura, 2985*

*Criminal Procedure Code—Section 287—Postponement—Accused person's right to be given an opportunity to retain a pleader.*

On the date of trial the accused applied for a postponement on the ground that he had not been able to get ready for trial. The application was refused by the Magistrate in the erroneous belief that the accused was on bail and therefore had had ample time to get ready for trial. In fact, however, the accused had been in Fiscal's custody in connection with another case.

*Held*, that the refusal of the postponement amounted to a denial of the accused's right under section 287 of the Criminal Procedure Code to be defended by a pleader.

<sup>1</sup> (1967) 69 N. L. R. 289.

**A**PPPEAL from a judgment of the Magistrate's Court, Anuradhapura.

*G. E. Chitty, Q.C.*, with *S. W. Jayasuriya* and *E. B. Vannitamby*, for the accused-appellant.

*Ranjit Dheeraratne*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

March 19, 1965. T. S. FERNANDO, J.—

The appellant has been convicted on a charge of theft of cash Rs. 26 by picking the pocket of one Dissanayake.

Mr. Chitty appearing on his behalf at the hearing of this appeal before me has contended that, as a result of the refusal by the learned Magistrate who tried this case to grant the appellant's application for a postponement of the trial to enable him to get ready therefor, the appellant has been gravely prejudiced in the presentation of his defence and a denial of justice has occurred.

Although the appellant was first brought before the Magistrate on 6th July 1964 in respect of this offence alleged to have been committed on 24th June 1964, he was charged only on 19th October 1964. On this last-mentioned date, after his plea of not guilty had been recorded, the Magistrate fixed the trial for the 24th October 1964. The record made on this date reads :—" Accused to be on same bail ".

On 24th October 1964 the appellant appeared in person without any pleader and the prosecution had the assistance of Mr. Delgoda, proctor. The appellant thereupon begged that a postponement be granted as he had not been able to get ready for trial that day. The learned Magistrate, recording that the appellant has had ample time to get ready for trial, refused a postponement, proceeded to trial and convicted the appellant that very day.

The record shows that the appellant did not put a single question in cross-examination to any of the witnesses for the prosecution and did not give any evidence on his own behalf at the end of the case for the prosecution.

Mr. Chitty has brought to my notice a copy of the record in M.C. Anuradhapura Case No. 5007 from which it would appear that the appellant had been arrested by the Anuradhapura Police on 19th October 1964 in connection with another charge and had been ordered to be remanded till 26th October 1964. From a perusal of the record in that case it is quite apparent to me that the appellant was on remand from 19th October 1964 till 26th October 1964 except when his presence was necessary in Court for some time on 19th October and 24th October in connection with the plea and the trial respectively in case No. 2985. When

the learned Magistrate recorded on 24th October 1964 in case No. 2985 that the appellant has had ample time to get ready for trial he probably had in mind an entry of 19th October 1964 in that case that the appellant could stand out "on the same bail". It is quite obvious that his attention was not directed to the circumstance that while the appellant was permitted to stand out on bail already furnished in connection with case No. 2985 he had been refused bail in case No. 5007 and was consequently in custody of the Fiscal.

The right of a person who is accused of a criminal offence to be defended by a lawyer of his choice is one now ingrained in the Rule of Law which is recognized in the law of criminal procedure of most civilized countries and is one expressly recognized by section 287 of our Criminal Procedure Code which enacts that "every person accused before any criminal court may of right be defended by a pleader". Although the learned Magistrate did not expressly deny the appellant that right, it is apparent to me that, in the erroneous belief that the appellant was on bail between 19th and 24th October, his decision to go on with the trial had the same unfortunate effect. I would therefore quash the conviction and sentence and order that the appellant be tried afresh on the same charge before another Magistrate.

*Case sent back for fresh trial.*

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