

Present : De Sampayo A.C.J.

INSPECTOR OF POLICE v. ELARIS APPU.

305—P. C. Negombo, 45,592.

*Ordinance No. 32 of 1914—Accused discharged from jail on a license on condition that he should report to police change of residence—Going from house to visit his son who was in another district.*

Accused who was a convicted prisoner and who was discharged from jail on a written license on condition *inter alia* that he should notify to the police any change of residence, went from his residence in Negombo to Chilaw to see his son who was ill.

*Held*, that accused had not changed his residence.

No appearance for the appellant.

June 7, 1923. DE SAMPAYO A.C.J.—

I do not think that the order of the Police Magistrate can be supported. The accused-appellant had been a convicted prisoner and had been discharged on a written license. One of the conditions under which he was discharged from jail was that he should notify to the police any change of his residence. After his discharge he took up his residence at some village in the Negombo District. The present charge against him is that in violation of that condition he changed his residence from Negombo and went to some place in Chilaw. He seems to have done this on March 10 last. The evidence is that given by the Inspector of Police of Negombo. He said that the accused left on March 10 for an estate called Malahena in the Chilaw District. There was no other evidence on behalf of the prosecution. The accused explained that he did not change his residence, but that he only went to Chilaw to see his son who was sick at the time. The Magistrate, however, thought that even such a visit was a change of residence within the meaning of the license. He observed that the expression, "change of residence" was not defined in the Ordinance No. 32 of 1914, under which the provision is made for the discharge of a prisoner on a license. But he referred to certain rules made under the Ordinance which are said to refer to the "procedure to be adopted when a habitual changes his residence (1) temporarily, (2) for some length of time," and he thought that these rules threw a light on the meaning of "change of residence," and that even temporary residence was a "change of residence" in the sense required. I do not think that the Police Magistrate is here right. Both under the condition of the license and under the rules referred

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to by the Magistrate, there must be a change of residence, whether temporary or permanent. But a person going from his house to visit a sick person elsewhere does not change his residence within the meaning of this expression. I think, therefore, that the conviction of the accused is not justified.

The conviction is set aside.

*Set aside.*

