

1928.

Present : Garvin J.

KING *v.* RATNAM.

544—*P. C. Jaffna, 1,880.*

Order to give security—Conditional discharge—Time within which security to be given—Imprisonment—Failure to give security—Criminal Procedure Code, s. 325 (1b).

Where a Police Magistrate makes an order under section 325 (b) of the Criminal Procedure Code discharging an accused conditionally on his entering into a recognizance for his good behaviour, he has no power to commit him to prison, pending the furnishing of security.

In making such an order the Police Magistrate may specify the date before which the security should be furnished, and, if the accused makes default, the Magistrate is entitled to enter a conviction and pass sentence according to law.

A PPEAL from an order of the Police Magistrate of Jaffna.

Rajakarier, for appellant.

Ramachandra, for respondent.

L. M. D. de Silva, Deputy Solicitor-General (with Basnayake, C.C.), as amicus curiae.—Section 325 is a difficult section to construe and it is of importance that the procedure to be followed in applying the section should be clearly laid down.

1928.

*King v.
Ratnam*

In the first place it should be made clear that section 93 applies only to Chapter VII. of the Code and has no application to section 325. A large number of incorrect orders are made owing to misapprehension on this point.

A Police Court can make one of two orders under section 325 :—

- (a) Discharge the accused after admonition.
- (b) Discharge him conditionally on his entering into a bond to be of good behaviour and to appear for conviction when called upon.

[GARVIN J.—These orders are made after the case is concluded. How do you reconcile them with section 190 which says that the Magistrate shall record a verdict of guilty or not guilty at the conclusion of the case? Once an order under section 325 (b) is made, a verdict of guilty under section 190 seems impossible because such a verdict must be entered immediately on the conclusion of the case.]

Section 325 expressly says that for the purposes of an order under it the Police Magistrate shall not record a verdict of guilty. The sections at first sight appear inconsistent. They are reconciled when an order under section 325 is regarded as a conditional order made *before the conclusion of the case*. The proceedings are not concluded but brought to a standstill for the purposes of an order under section 325. The order is essentially conditional. If the condition is broken, for instance, if the accused fails to be of good behaviour the Magistrate can continue the proceedings from the point at which he stopped them, conclude the case and make an order under section 190.

There is another point of practical importance. Section 325 (1) (b) contemplates the discharge of an accused *after* the bond with or without sureties is executed. It is sometimes necessary to give time to the accused to tender the security required of him. The procedure then to be adopted is not indicated in the section. The proper procedure would be a postponement for the purpose with an indication that an order under section 325 (b) will be made if the security is forthcoming. In most if not all cases bail ought to be allowed for the period covered by the postponement.

November 30, 1928. GARVIN J.—

I am indebted to the learned Deputy Solicitor-General for the assistance he has given me in this matter. He appeared upon a notice issued by this Court upon an order made by me on September

1928.
 ———
 GARVIN J.
 ———
*King v.
 Ratnam*

18 last. At the conclusion of the trial the Police Magistrate elected to proceed under the provisions of section 325. Instead of proceeding to conviction as in the case of a normal trial, for reasons given by him, he decided to proceed under the section referred to, and he accordingly directed the accused, under the provisions of sub-section (b) of that section, to come up for conviction and sentence whenever required to do so at any time within the next three years "giving two sureties, Rs. 200 each (with personal recognizance Rs. 200)." He concluded his order as follows: "Accused to be committed to rigorous imprisonment pending his furnishing such sureties (section 93, Criminal Procedure Code.—Limit to six months)."

Now, the concluding part of this order is, in my opinion, clearly wrong. The provisions of section 93 are applicable in the case of persons ordered to give security under the provisions of Chapter VII. of the Criminal Procedure Code. They have no application to the bonds contemplated by section 325. That part of the order must therefore be eliminated.

In the course of the argument we have had under consideration the position which will result in the event of the failure of the accused to give the security referred to in the Police Magistrate's order. The order itself specifies no period within which the security is to be given, and the circumstances of the Magistrate proceeding to make that part of the order, which I have found necessary to eliminate as irregular and unjustified by law, indicates that security was in fact not given at the time the order was made. There is little purpose in sending the case back to the Police Magistrate without any reference to this aspect of the matter. Section 325 is undoubtedly an extremely difficult section to construe, but it is necessary that an attempt should be made to give it, if possible, an interpretation which will carry out what appears to have been the intention of the Legislature. In the first place, it is to be noted that the Court is directed "without proceeding to conviction" to make certain orders. Those words, it seems to me, must be construed as meaning "without proceeding to record a conviction." Presumably it was the benevolent intention of the Legislature that a person who, though having been found guilty of having committed a breach of the law, made it appear that his case deserved the special treatment contemplated by section 325 should not be placed in the position of a person who has been convicted of an offence, and hence, while he is to be dealt with for having committed a breach of the law, that breach is not to be placed on record as a conviction of an offence. Two alternative courses are indicated. The Court may (a) order such offender to be discharged after such admonition as to the Court shall seem fit, or (b) discharge the offender conditionally on his

entering into a recognizance, with or without sureties to be of good behaviour, and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order of the Court.

The Police Magistrate obviously intended to proceed under the latter of these two alternatives. In a case where the accused is prepared to, and does in fact give security at once, no difficulty arises. But cases do often occur in which the accused is not in a position to find sureties at the moment, and when it is necessary and desirable that he should be given time to find sureties and complete the recognizance. The section does not specifically deal with such a case. But I am aware of no reason why when making an order under section (b) the Court may not in the interests of the accused specify a date on or before which the recognizance should be given, and adjourn the proceedings for the purpose, either remanding the accused or releasing him on bail. On the adjourned date, if the accused complies with the order the matter is at an end. If, however, the order is not complied with, what course should the Magistrate follow ?

It seems to me that the order of discharge is conditional and made for the benefit of the accused. If he fails to comply with the condition and take the benefit of the order, the Magistrate is entitled to proceed as from the point at which he stayed his hand under the provisions of section 325, and enter a conviction and pass sentence in accordance with section 190. With these observations I would send the case back to the Court below, vary the order, and direct that it be amended so as to give the accused a fortnight's time from the date on which this order is communicated to the accused to comply with the conditions upon which he has been given the benefit of an order under section 325 (1) (b) of the Criminal Procedure Code.

1928.

GARVIN J.

King v.
Ratnam

Order varied.

