

1960

Present : Weerasooriya, J.

THE ATTORNEY-GENERAL, Appellant, and R. J. DON DAVITH,  
Respondent

*S. C. 645—M. C. Colombo, 17392/C*

*Criminal Procedure Code—Absence of witness on date of trial—Application for issue of warrant to compel attendance—Duty of Court to grant it—Sections 62 (1) (b), 148 (1) (b), 282.*

When a prosecution witness is absent without reasonable excuse although served with summons, it is the duty of the Magistrate, unless for reasons to be recorded by him he deems it unnecessary to do so, to issue a warrant to compel the witness's attendance, if the prosecution makes application for such warrant.

**A**PPPEAL from an order of the Magistrate's Court, Colombo.

V. S. A. Pullenayegum, Crown Counsel, for Attorney-General,  
(Complainant-Appellant).

No appearance for Accused-Respondent.

March 22, 1960. WEERASOORIYA, J.—

This is an appeal by the Attorney-General against an order acquitting and discharging the accused-respondent. The report to Court filed under Section 148 (1) (b) of the Criminal Procedure Code charged the accused with the offence of voluntarily causing hurt with a sword to one Michael Kelaart. On the summons returnable date the accused was formally charged and he pleaded not guilty and the trial was fixed for the 8th of June, 1959. The journal entry on that day shows that the prosecution witnesses were absent although summons had been served and that on the prosecution officer moving for warrant on the witnesses the Magistrate refused the application without giving any reasons for doing so, and he then made order acquitting and discharging the accused.

Under Section 62 (1) (b) of the Criminal Procedure Code a Court is empowered to issue a warrant on a witness who has been duly summoned and fails without reasonable excuse to appear in terms of the summons. Section 282 of the Criminal Procedure Code also provides that—

“ if for the purpose of any inquiry or trial in a Magistrate's Court the prosecutor or the accused applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless for reasons to be recorded by him he deems it unnecessary so to do.”

In the present case when the prosecution witnesses were absent although served with summons it seems to me that the Magistrate should have acceded to the application of the prosecuting officer for warrants on

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the witnesses. No excuse whatever had been placed before Court for the absence of these witnesses and it is difficult in the circumstances to think of any good reason why the Magistrate should not have issued warrants to compel their attendance.

The order acquitting and discharging the accused is set aside and the case will be remitted to the Court below for the trial to be proceeded with in accordance with law before another Magistrate.

*Order set aside.*

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