

1946

*Present: Howard C.J. and Soertsz S.P.J.*THE KING *v.* FONSEKA *et al.*

4—D. C. (Crim.) Mannar, 166.

Criminal procedure—Trial before District Court—Absence of prosecuting Crown Counsel—Application for postponement refused—Regularity of order discharging the accused

On the date of trial, in a prosecution before a District Court, an application was made on behalf of the Crown for a postponement on the ground that the prosecuting Crown Counsel was unable to be present. The District Judge refused the application and, as there was no one to prosecute in the case, he discharged the accused.

Held, that the District Judge had no power to discharge the accused without calling upon them to plead to the indictment.

Held, further, that an adjournment might have been granted on the costs of the accused being paid by the Crown.

A PPEAL from an order of discharge entered by the District Judge of Mannar.

H. H. Basnayake, Acting Attorney-General (with him *G. P. A. Silva, C.C.*), for the Crown, appellant.

N. Nadarajah, K.C. (with him *C. S. Barr Kumarakulasinghe*), for the accused, respondents.

February 14, 1946. HOWARD C.J.—

We are of opinion that this appeal must be allowed. It appears that on the date of trial, which had been postponed on the application of the Crown from the previous day, an application was made on behalf of the

Crown for a further postponement as Crown Counsel was in Colombo. The District Judge refused the application and, according to the record, as there was no one to prosecute in the case he discharged all the accused. We think that he had no power to do this as there had been no trial whatsoever. It might have been different if he had called upon the accused to plead and then asked the prosecution to open their case, but he did not do so, and the trial was therefore a nullity. On the other hand, we think that the District Judge might have granted an adjournment on the costs of the accused being paid by the Crown. In these circumstances we set aside the order of discharge and direct that the accused be tried. At the same time we suggest that the costs of the accused amounting to Rs. 315 be paid to them by the Crown.

SOERTSZ S.P.J.—I agree.

Order set aside.

