

1956

Present : Sinnetamby, J.

O. A. PEMADASA, Appellant, and L. DAVID (D. S. I.),
Respondent

S. C. 383—M. C. Matara, 40,041

Conditional release of offenders—Recognition—Proper Form—Criminal Procedure Code, ss. 80, 82, 325, 327 (4).

Before a court can proceed to act under section 327 (4) of the Criminal Procedure Code, the recognizance entered into must be in conformity with the provisions of section 325. The form of bond relating to conditional release of offenders under sections 325 and 326 is prescribed in Subsidiary Legislation of Ceylon, Volume I, Chapter 16, at page 113.

APPPEAL from an order of the Magistrate's Court, Matara.

R. A. Kannangara, for the accused-appellant.

T. A. de S. Wijesundera, Crown Counsel, for the Attorney-General.

October 31, 1956. SINNETAMBY, J.—

The accused in this case was on his own plea convicted under section 326 of the Penal Code and ordered to enter into a bond of good behaviour for a period of two years. He was ordered to pay Rs. 25 as Crown costs; presumably the Magistrate purported to act under section 325 of the Criminal Procedure Code, but he had proceeded to convict the accused which he should not have done if his intention was to proceed under section 325.

In compliance with the Magistrate's order, the accused signed a bond but the form of bond used is one intended for bonds entered into under section 82 of the Criminal Procedure Code. The accused bound himself by the terms of that bond to be of good behaviour for two years and in the case of making default to forfeit the sum of Rs. 100.

The accused was subsequently convicted for using obscene words under section 287 of the Penal Code. The police thereupon moved the Court to issue notice on the accused to show cause why the bond he had already entered into should not be cancelled. The accused appeared on notice and had no cause to show. The Magistrate then proceeded to vacate the bond which he had no authority to do. He should either have forfeited the bond or not done so. He also proceeded to sentence the accused to a term of six months' R. I. presumably purporting to act under the provision of section 327 (4). That particular sub-section

provides that a Court before which a person is bound by his recognizance to appear for his conviction and sentence on being satisfied that he has failed to observe any conditions of his recognizance may forthwith sentence him for the original offence.

Before, therefore, the Court can proceed to act under section 327 (4), the recognizance entered into must be in conformity with the provision of section 325. The bond actually entered into in this case is not in conformity with those provisions. The form of bond to be entered into under sections 325 and 326 is prescribed in Subsidiary Legislation of Ceylon, Vol. I, Chapter 16 at page 113. The form of bond entered into by the accused cannot in any sense be said to comply even substantially with the form prescribed.

This question was considered by the Supreme Court in the case of *A. G. v. Dissanayake*¹ reported in 55 N. L. R. page 100. At page 104, the Acting Chief Justice makes the following observations, "But unfortunately due to carelessness there can be little doubt the bond that was taken by the learned Magistrate is one which comes more under section 82 rather than one under section 325 of the Criminal Procedure Code. It is in fact a bond not in conformity with the provisions of section 325 and cannot be availed of for the purpose of conviction and sentence in this case".

It seems to me, therefore, that the learned Magistrate had no jurisdiction to convict and sentence the accused for failure to observe the conditions of the bond that the accused actually entered into. It might incidentally be noted that the learned Magistrate did not make any inquiry or record any facts in regard to the antecedents or character of the person charged or to any extenuating circumstances under which the offence was committed. That seems to me to be a condition precedent to the imposing of an order under section 325. On the other hand, the Magistrate proceeded to convict the accused which is an act consistent only with the provisions of section 80 of the Criminal Procedure Code where the bond that should have been entered into is to keep the peace and the period for which that bond can be in force is a maximum of only 6 months. Carelessness on the part of the Magistrate has resulted in this inability to legally enforce the bond which he called upon the accused to enter into.

In view of the observations of the Acting Chief Justice in the *55 N. L. R.* case with which I agree, I set aside the order which the learned Magistrate has made on 20th February 1956.

Order set aside.

¹ (1953) 55 N. L. R. 100.