*Present :* Pereira J.

1913

THE KING *v.* PILLAI *et al.*

*117-120—D. C. (Crim.) Kandy, 2,394.*

*Indictment—Charge of voluntarily causing hurt to constable with intent to prevent arresting cooly quitting without notice—No mention in indictment of a warrant to arrest cooly.*

Where an indictment charged the accused with voluntarily causing hurt to Police Constable M with intent to prevent him from doing his duty, to wit, arresting P on a charge of quitting service without notice,—

*Held*, that, on the face of it, the indictment (which made no reference to a warrant of arrest) disclosed no offence, and a conviction on it could not be sustained, nor would it be proper, in the circumstances, to amend the conviction and the indictment without giving the accused a further opportunity of defending himself on the amended charge.

THE facts are fully set out in the indictment.

*H. J. C. Pereira* (with him *Arulanandam*), for accused, appellant.—The indictment is defective, and discloses no offence known to the law. " Quitting service without notice " is not by itself an offence. Even if it is, it is not a cognizable offence. The indictment does not allege that the constable had authority to arrest " Ponnu." There is no mention made of a warrant on the indictment.

*Garvin, Acting S.-G.*, for the respondent.—It is open to the Supreme Court to amend the conviction. The evidence shows that the constable had a warrant for arresting " Ponnu."

The accused has suffered no prejudice, and the objection is a technical one and not one of substance.

*Cur. adv. vult.*

1913.

*The King v. Pillai*

September 23, 1913. PEREIRA J.—

In this case there are no less than six charges against the accused in the indictment. In view of the order that I intend making I shall not comment upon the evidence, except to the extent of observing that the extract from the Police Information Book filed of record, which contains the earliest complaint made by the witness Gomes, does not support the charges of robbery. His statement in his evidence, "I told the sergeant shortly what had happened," is hardly a satisfactory explanation of the situation. The accused were convicted under only three counts, namely, the 2nd, 3rd, and 5th. The 2nd and 3rd counts contain about the most serious charges in the indictment, and it is of the essence of these charges that the individual named Ponnu in the indictment was lawfully arrested and lawfully detained in custody by Police Constable Mudianse. Evidence has been led to show that Police Constable Mudianse was armed with a warrant for the arrest of Ponnu. Both at the trial and in the petition of appeal objection has been taken to the validity of this warrant on the ground that it does not contain a proper description of the accused. I do not know what the counsel for the accused was relying on, but *ex facie* it appears that the name of the accused in the warrant and throughout the proceedings in case No. 23,251, in which the warrant was issued, is spelt Ponnooy, and not Ponnu. Be that as it may, there was in the Police Court proceedings also evidence that Police Constable Mudianse was armed with a warrant, but apparently the Crown Counsel, for some reason best known to himself, in instructing the Magistrate to commit the accused for trial, thought it expedient to omit all reference to the warrant and to frame the 2nd charge in the indictment as a charge of causing hurt to Mudianse while discharging his duty, to wit, "while arresting Ponnu on a charge of quitting service without notice." This is the offence described in the warrant of commitment also. Objection has been taken, and strongly pressed in appeal, that neither the 2nd and 3rd counts of the indictment, nor the formal convictions filed in the case, disclose any offence known to the law. Whatever the true facts of the case may be, the objection appears to me to be sound, and I am obliged to uphold it. It is absurd to go through a solemn trial when the statements in the indictment show that no offence has been committed, even though no objection is taken to the indictment, and it would be equally absurd to convict a person, or to sustain the conviction of a person, of acts that do not in law constitute an offence. In the indictment the accused is charged with voluntarily causing hurt to Police Constable Mudianse with intent to prevent him from discharging his duty. Had the charge ended there, it might be argued that it disclosed an offence, although it might be that sufficient information was not given to the accused of the particulars of the offence with which they were

charged. But the indictment proceeds to set forth the particular duty that Mudianse was discharging at the time, and it is described as follows: "Arresting Ponnu on a charge of quitting service without notice." Now, arresting a person on a warrant duly issued by a competent Court of Justice on a charge of quitting service without notice or reasonable cause is one thing: arresting a person on a charge of quitting service without notice is quite another. Quitting service without notice alone is no offence, and quitting service without notice or reasonable cause is not a cognizable offence, that is to say, it is not an offence for which the offender can be arrested by the police. For some reason best known to himself, the Crown Counsel responsible for the indictment has withheld from it any mention of arrest on a warrant. The statement in the indictment negatives the idea of a valid and legal arrest. The indictment therefore is bad, disclosing no offence, and the conviction, following as it does the indictment, is equally bad. The accused have been convicted of an act which, on the face of the formal conviction itself, is no offence. The Acting Solicitor-General asked me to amend the conviction. A conviction is usually amended by this Court in appeal to harmonize with the charge. Where a certain charge with particulars is deliberately made, evidence that does not support the particulars is irrelevant, and it is too much to expect this Court to amend the indictment without allowing the accused a further opportunity of meeting it and then to amend the conviction to harmonize with the amended indictment. Moreover, in the verdict recorded by the District Judge on September 4 at the close of the trial, there is no mention of any arrest on a warrant duly issued by a competent Court. What the District Judge, in this connection, holds is that Ponnu (*sic*) was in fact arrested and handcuffed, and nothing more. In what he terms "reasons for verdict" recorded four days after, the learned Judge says: "The accused are charged with rescuing a cooly named Ponnen (*sic*), who was arrested upon a warrant by Constable Mudianse." With reference to this, suffice it to say that this is not the charge in the indictment. I cannot possibly affirm the conviction as it stands, and it cannot be amended so long as the indictment stands unamended. The alternative is to quash the proceedings. I accordingly quash the conviction and the proceedings since the presentment of the indictment, and direct a new trial after amendment of the indictment. It is obvious that the trial should not now take place before the same Judge, who has already formed his opinion on the facts of the case. The case should be tried by another Judge of the Court, and if another Judge is not conveniently available, either party may make application to this Court for the transfer of the case to another Court.

*Proceedings quashed.*