

Present: Bertram C.J.

1918.

SILVA v. CAROLIS.

729—P. C. (Itg.) Colombo, 13,711.

Contempt of Court—Witness in a state of intoxication in Court—Jurisdiction of Police Court to deal summarily with the contempt—Courts Ordinance, ss. 51 and 59—Criminal Procedure Code, s. 440—Civil Procedure Code, part IX.

To a witness to come before the Court in a state of intoxication and to give evidence before the Court is an act of contempt of Court committed in the face of the Court. Section 59 of the Courts Ordinance does not enable a Police Magistrate to deal summarily with the case of a contempt of this kind committed in the face of a Police Court.

The Magistrate should report the matter to the Supreme Court, for the Supreme Court to deal with it under section 51 of the Courts Ordinance (No. 1 of 1889).

Part IX of the Civil Procedure Code applies only to Civil Courts.

Section 440 of the Criminal Procedure Code cannot be applied for dealing with the foolish and incoherent utterances of a drunken man.

THE facts appear sufficiently from the judgment.

Bawa, K.C. (with him *F. de Zoysa*), for the appellant.

September 13, 1918. BERTRAM C.J.—

This is a case in which a Police Magistrate appears to have been placed in an extremely difficult position. A witness, an Excise Inspector, appeared before him, and if we accept as correct the minute made by the learned Police Magistrate, this witness was in a state of gross intoxication, so much so that it was quite impossible for the Magistrate to proceed with the case. He was compelled to acquit and discharge the accused, and he then proceeded to deal with the witness.

It is not necessary for me to decide this question now. Anything I may say on the subject is necessarily *obiter*. But it appears to me that for a witness to come before the Court in a state of intoxication and to give evidence before the Court is an act of contempt committed in the face of the Court. It is particularly a case of outrageous and gross contempt when that witness is a public officer responsible for proceedings against a member of the public. The question then arose in what manner the Magistrate should deal with the case. It is probable that he appreciated the difficulty of dealing with it under section 59 of the Courts Ordinance. That enactment contemplates Police Courts dealing with contempts committed in

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the presence of the Court itself, because it refers to the power of the Police Court for that purpose in express terms. But the legislator appears to have been mistaken in assuming that certain penalties were by law provided for such a contempt, because it is only in cases in which penalties in that behalf are by law provided that a Police Court has jurisdiction to take cognizance of and to punish the offence. Further, it is only in cases in which a special procedure is provided by law that this course can be taken.

Now, the only penalties and the only procedure provided for by law in respect of contempts of Courts before the Courts, other than the Supreme Court, are to be found in part IX. of the Civil Procedure Code. My own opinion is that the terms of that chapter, and the expressions used in the title and introductory provisions of the Civil Procedure Code, clearly show that that chapter only applies to Civil Courts. The only course, therefore, for a Magistrate who wishes to deal with a contempt of Court committed in the face of the Court, is to report the matter to the Supreme Court, to enable the case to be disposed of under section 51 of the Courts Ordinance. This is an extremely unsatisfactory position, because it is the essence of contempt of Courts, particularly in cases where the contempt is committed in the face of the Court, that the procedure should be what is described as *brevi manu*. Doubtless, feeling the difficulty of dealing with the matter under section 59 of the Courts Ordinance, the Magistrate attempted to deal with it under section 440 of the Criminal Procedure Code.

That section is intended to enable the Court to deal with gross and deliberate perjury by a summary procedure. I do not think that in any case it was the intention of that section that the Magistrate under that section should deal with the foolish and incoherent utterances of a drunken man. In any case the Magistrate appears hardly to have prepared his charge properly for that purpose. A charge under section 440 should state that the witness gave false evidence, and should specify or indicate the words which were alleged to be false. The Magistrate has, however, not taken this course in this case, and, further, he has taken a course which would be calculated to be embarrassing to an accused person, even if he was not too intoxicated to understand the proceedings. He has, in fact, combined two distinct charges. He called upon the witness to show cause why he should not be punished under section 59 of Ordinance No. 1 of 1889 and section 440 of the Criminal Procedure Code for a contempt of Court, in that he appeared before the Court in a state of intoxication, and while in that state gave false evidence. He was quite correct in the charge under section 440 in embodying a reference to contempt of Court, and it would have been sufficient if he had stated "for a contempt of Court in that he gave false evidence." But the circumstance that he gave the false evidence while he was in a state of intoxication is irrelevant to this charge. That circumstance

would be only relevant to the charge under section 59. I feel, therefore, that it would not be right, in all the circumstances, to say that these are irregularities which did not cause a failure of justice, and I must come to the conclusion that the effort of the Magistrate to deal with the matter under section 440 is not successful.

The case is one which may properly be brought before this Court, at is is a matter which is specially within its jurisdiction. The question will no doubt be more fully argued when it comes before this Court, whether it is a contempt of Court for a witness to appear before a Court and give evidence in a state of intoxication. I leave that question open for the present. I set aside the conviction, and direct that the Police Magistrate take the necessary steps to bring the matter before this Court for hearing.

Set aside.

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