

1963

Present : L. B. de Silva, J.

MANUEL NADAR, Appellant, and J. P. LIYANAGE (Inspector of Police), Respondent

S. C. 1,249—M. C. Gampola, 510

Criminal procedure—Accused brought before Court otherwise than on summons—Duty of Magistrate to comply with provisions of s. 187 (1) of Criminal Procedure Code.

Where an accused is brought before Court otherwise than on summons or warrant, the provisions of section 187 (1) of the Criminal Procedure Code must be complied with and direct evidence implicating the accused must be led before he is charged in the case. Even where the accused appears in Court on Police bail without the issue of summons or warrant, and the issue of summons on him is ordered on the same day, the provisions of section 187(1) would apply.

APPEAL from a judgment of the Magistrate's Court, Gampola.

Colvin R. de Silva, with M. L. de Silva, for the Accused-Appellant.

J. A. de Silva, Crown Counsel, for Complainant-Respondent.

Cur. adv. vult.

¹(1962) 63 N. L. R. 509.

²(1962) 64 N. L. R. 141.

³(1950) 1 A. E. R. at 168.

March 12, 1963. L. B. DE SILVA, J.—

The Inspector of Police filed a plaint against the accused under section 148 (1) (b) of the Criminal Procedure Code on 25th January, 1960. On that day the accused was present in Court on Police bail. The Inspector produced certain productions to be sent to the Government Analyst but gave no evidence implicating the accused. Thereafter the learned Magistrate ordered issue of summons on the accused for a subsequent date.

Summons was served on the accused and he appeared on that date and he was charged from summons. Learned Counsel for the accused-appellant urged that the proceedings were irregular as the learned Magistrate failed to record evidence under section 187 of the Criminal Procedure Code before the accused was charged.

This appeal came up before me on 14th July, 1961 and Counsel informed Court that the same question of law had been argued before a bench of three Judges and judgment had been reserved.

As this was the only point urged before me, I reserved judgment to be delivered after the decision of the bench of three Judges was given. Though the judgment (*Martin Appuhamy v. S. I. Police, Jaffna*¹) of that bench was delivered on 11th April, 1962, I regret that I have overlooked this case till my attention was drawn to it by the Registrar on 8/3/63.

In view of the decision in that case, it is now settled that where an accused is brought before Court otherwise than on summons or warrant, the provisions of section 187(1) must be complied with and that direct evidence implicating the accused must be led before he is charged in the case. Even where the accused person appears in Court on bail without the issue of summons or warrant, the provisions of section 187 (1) would apply to him.

The accused in this case first appeared in Court on the day the plaint was filed, without any issue of summons or warrant on him. This case is slightly different from the case of *Martin Appuhamy v. S. I. Police, Jaffna*. In this case, the Magistrate ordered the issue of summons on the accused in spite of the fact that he was present in Court and when he appeared on service of summons, the Magistrate charged him. It is in keeping with the law laid down in *Martin Appuhamy's case* that the Magistrate should have recorded direct evidence implicating the accused on the charge laid against him in the plaint before proceeding to charge him for that offence. I hold that compliance with the provisions of section 187 (1) of the Criminal Procedure Code was imperative in this case and that the Magistrate was not entitled to circumvent these provisions by ordering the issue of summons on an accused person who was already in Court.

¹ (1962) 64 N. L. R. 34.

I accordingly set aside the conviction and sentence' passed on the accused and all proceedings held in the Magistrate's Court after 25th January, 1960 and send this case back for fresh proceedings after complying with the provisions of section 187 (1) of the Criminal Procedure Code.

Case sent back for fresh proceedings.
