

1959

Present : T. S. Fernando, J.

K. A. JAYASINGHE, Appellant, *and* M. P. W. MUNASINGHE
(Sub-Inspector of Police), Respondent

S. S. 783—M. C. Mannar, 1972

Criminal procedure—Right of accused to be defended by pleader—Criminal Procedure Code, s. 287.

The accused-appellant, who was in the custody of the Police from the time of his arrest, was produced in Court and charged with the commission of an offence. He then applied for time to retain a lawyer. His application was however refused on the ground that a postponement even of 24 hours would involve the complainant, who was a foreign tourist, being deprived of the opportunity of leaving Ceylon as arranged by her.

Held, that, as section 287 of the Criminal Procedure Code recognises the right of an accused person to be defended by a pleader, the appellant's request for postponement was legitimate.

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

Colvin R. de Silva, with *M. L. de Silva*, for the accused-appellant.

V. S. A. Pullenayegum, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 17, 1959. T. S. FERNANDO, J.—

The appellant appeals against a conviction and sentence entered against him in the Magistrate's Court of Mannar in a case where he was charged with the offences of criminal trespass and attempt to use criminal force.

Two points have been urged against the upholding of this conviction, but it has become necessary to consider only one of these points. The appellant's counsel urges that the appellant has been deprived of a fair trial in that, by reason of the learned Magistrate's failure to comply with the provisions of section 188 (2) of the Criminal Procedure Code, he had no opportunity of being defended by a pleader. It must be noted that section 287 of the Criminal Procedure Code recognises the right of an accused person to be defended by a pleader in proceedings in a criminal court.

The appellant appears to have been arrested on the 26th August 1958 on a complaint made to the Police by the woman aggrieved by the conduct imputed to the appellant and then produced before the Magistrate by the Police on the following day, viz. 27th August. On that day he was charged with the commission of the offences referred to above and, on his pleading not guilty, was asked whether he was ready for trial. The record shows that the accused replied he was ready for trial, but immediately thereafter stated he wanted time to retain a lawyer. As he had a right to be defended by a lawyer his request was legitimate, particularly as from ~~the moment of his arrest~~ the previous day he was in the custody of the Police till he was produced in Court. He was in my opinion entitled to have time to retain a lawyer to defend him. He was refused time for this purpose because the learned Magistrate was informed that a postponement even of 24 hours would involve the complainant who was a foreign tourist being deprived of the opportunity of leaving Ceylon as arranged by her. The appellant having been refused the opportunity he desired, his trial began then and there on the 27th August and ended in his conviction that very day.

It would appear that the refusal to grant time to the appellant to enable him to instruct a lawyer was influenced by the desire of the Magistrate to ensure that the prosecution would not be deprived of the evidence of the most material witness. However understandable this desire may have been, a trial at which the appellant was deprived of one of the most valued legal rights of an accused person in spite of his expressed desire to exercise that right cannot be said to be a fair trial. I have therefore set aside the conviction and sentence.

In ordinary circumstances I would have directed that a fresh trial of the appellant do take place; but it is clear that the material witnesses have left Ceylon in circumstances in which they are never likely to return or desire to return. The directing of a fresh trial therefore would serve no purpose.

Conviction set aside.