

1942

Present : Soertsz J.

VARGHEESE *v.* PERERA.588—*M. C. Colombo, 43,733.*

Criminal Procedure—Accused brought in custody—Report of officer producing accused—Failure to examine officer—Charge read from report—Fatal irregularity—Criminal Procedure Code 151 (2).

Where proceedings commenced before the Police Court on the report of a public officer who brought the accused in custody to Court,—

Held, that the failure of the Magistrate to examine the officer in terms of section 151 (2) was a fatal irregularity.

In such a case it was competent to the Magistrate to charge the accused from the report only after observing the requirements of section 151 (2) and only if the offence disclosed was one punishable with not more than three months' rigorous imprisonment.

A PPEAL from a conviction by the Magistrate of Colombo.

H. W. Jayewardene, for accused, appellant.

H. A. Wijeyamane, C.C., for complainant, respondent.

Cur. adv. vult.

October 9, 1942. SOERTSZ J.—

The accused-appellant in this case was convicted of an offence in contravention of section 28 of the Poisons, Opium and Dangerous Drugs Ordinance, punishable under section 76 (5) (a) of that Ordinance, on his pleading guilty to a charge framed by the Magistrate and read to him.

He had two previous convictions, and in view of the large quantity of the offending substance found in his possession, he was sentenced to a term of one year's rigorous imprisonment.

He now appeals on a matter of law, contending that the conviction was bad in that, in the circumstances of this case, there was, in reality, no charge, because the charge framed against him was framed in violation of an imperative requirement of the law. The circumstances are these:— On the day the appellant was convicted, the prosecuting officer made a report to the Court in terms of section 148 (b) of the Criminal Procedure

Code, and at the same time produced the appellant in custody before the Court. The resulting position was that covered by section 151 (2), and it was, therefore, incumbent on the magistrate "forthwith to examine on oath the person who brought the accused before the Court and any other person who may be present in Court able to speak to the facts of the case". The record of this case does not disclose the presence of any such person as is contemplated in the second part of the section I have just quoted from, but it is perfectly clear that there was in Court the person who brought the accused before the Court.

The Magistrate, however, failed to examine him but framed a charge, in the sense that he transcribed on a charge sheet form what appeared in the report to Court, and then read it out to the accused and, in terms of section 188 of the Code, asked him if he had any cause to show why he should not be convicted.

In doing this, the Magistrate erred in two ways. He disregarded the imperative requirement of section 151 (2), and he, in effect, charged the accused from a report which he could have done, in a case like this, only after observing section 151 (2) and only if the offence disclosed was one punishable with not more than three months' imprisonment. This was not such an offence.

There was, therefore, no valid charge and that is as bad as if there was no charge at all. Such a state of things cannot be disposed of as involving an irregularity curable under section 426 of the Code. It is an illegality and is fatal to the conviction.

I have, therefore, no alternative but to quash the proceedings that took place, and remit the case for trial in the manner required by the law.

Quashed.

