

1896.  
August 28.

ALISANDRY v. BRAMPY *et al.*

*P. C., Colombo, 6,015.*

*Warrant of arrest—Its requisites—When a Police Magistrate may try a person for escape from lawful custody—Criminal Procedure Code, Schedule II., p. 326.*

A warrant of arrest in these terms, "Whereas B of Wailgama stands charged with the offences of criminal trespass, theft, and voluntarily causing hurt, you are hereby directed to arrest the said "B," &c., is defective in that it neither sufficiently particularizes the offences referred to in it, nor specifies the sections of the Penal Code relating to such offences.

A Police Magistrate has power to try a person for escaping from lawful custody only when the offence for which such person was arrested is one cognizable by a Police Court.

**T**HE facts of the case sufficiently appear in the judgment.

*Wendt*, for appellant.

28th August, 1896. WITHERS, J.—

The conviction of the first accused appellant in this case must, I think, be quashed. This person was convicted of the offence of escaping from lawful custody. The point of law taken on his behalf was that the offences for which he was arrested and taken

into lawful custody were offences not cognizable by the Police Court. Hence the District Court was the Court having jurisdiction (see Schedule II., Criminal Procedure Code, p. 326), and not the Police Court. The warrant of arrest under which the man was arrested was not properly put in evidence, but it is to be found stitched in the record forming page 16, and I will examine it. It is directed to the Police Vidané of Udamapitigama, and recites as follows:—"Whereas Edirisinhage Brampy Appu of Wailgama "stands charge with the offences of criminal trespass, theft, and "voluntarily causing hurt, you are hereby directed to arrest the "said Edirisinhage Brampy Appu."

This is a defective warrant, in that it fails to particularize the offence mentioned in it. Criminal trespass is a generic word for a variety of offences, and it may signify entrance upon property in a person's possession with intent to commit an offence punishable with imprisonment of either description for ten years. Such an offence is not cognizable by a Police Court.

The offence of theft mentioned in the warrant does not state whether it is theft from the person, or from a dwelling-house, or the value of the property stolen. There are cases of theft which are not cognizable by a Police Court.

The other offence of voluntarily causing hurt may be causing hurt which a cutting instrument. If so it would be an offence not cognizable by the Police Court.

The sections of the Ordinance relating to the offences are not specified in the warrant. They should have been specified so as to show what Court had proper cognizance of them. This warrant being, so to speak, at large, the complainant should have proved that the information or complaint upon which it was issued related to offences cognizable by a Police Court.

I sent for the proceedings to see what the offences were to which the original information related.

The information charged the appellant with entering complainant's house with intent to commit theft, and with the commission of theft therein. It further charged him with stabbing complainant with a knife. These offences are clearly beyond the jurisdiction of the Police Court to try summarily. Consequently in the circumstances the Police Magistrate was not competent summarily to try the appellant for escaping from the custody of the officer who arrested him under the warrant. It was issued on the charge of offences not cognizable by the Police Court.

I must therefore quash the judgment and sentence of the first accused.

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WITHERS, J.