Present : **Koch J.**

S. I., POLICE *v.* WIJESEKERE.

701—P. C. Badulla, 19,524.

Insult—Abuse intended to be provocative—Elements of offence—Penal Code, s. 484.

Abuse is not punishable under section 484 of the Penal Code unless the person abusing gives provocation, intending or knowing it to be likely that such provocation will cause the person provoked to break the peace or to commit any other offence.

APPEAL from a conviction by the Police Magistrate of Badulla.

S. Nicholas, for accused, appellant.

Cur. adv. vult.

November 13, 1935. KOCH J.—

I have not had any assistance from the respondent in this appeal. The appeal is from a conviction under section 484 of the Penal Code for intentionally insulting and giving provocation to a Sub-Inspector of Police. The appellant was fined Rs. 25. The appeal is based on a point of law.

Now, the law requires that the insult must be provocative and intended by the accused, and further that it must be established that the accused intended or knew it to be likely that such provocation will cause the party provoked to break the public peace or commit any other offence.

The language used by the accused does appear to be abusive and insulting, but the question arises as to whether this is sufficient to warrant a conviction under the section. It is true that the Sub-Inspector in his evidence has stated that he was humiliated, and that had he not left the place, he might have been compelled to commit a breach of the peace. This may correctly represent the feelings of the party insulted, but the law requires that the Court should be satisfied as to the intention of the aggressor.

The learned Police Magistrate has held that the Inspector had made an unwarranted entry into the accused's pharmacy and proceeded to insist on his right to hold an inquiry in respect of the illegal dispensing of medicines.. He therefore acquitted the accused on the other charge framed under section 183 ; briefly, that charge was to the effect that the accused had obstructed a public servant in the discharge of his public functions.

Now, this being the position, it would not be unreasonable to expect that the accused, who was a registered medical practitioner and was previously in Government service for a period of 15 years, would have resented the intrusion. In fact the accused does say in his evidence that he "could have asked the Inspector", to use his own words, "to clear out and that both exchanged words".

It is argued that where a person without legal warrant therefor forces himself into premises in occupation of another and insists on holding an inquiry, he unjustifiably provokes that other, and if the other turns abusive and insulting—as is only to be expected—it cannot be presumed that the other intended by his retaliatory conduct to provoke the former to commit a breach of the peace, particularly where the party abused is a minion of the law and is expected to keep himself under restraint and to exercise prudence.

Lord Ellenborough, in *Rex v. Southerton* [1], required the threat or abuse to be of such a nature as to overcome a firm and prudent man.

Jayewardene A.J., in *Herath v. Rajapakse* [2], where he dealt with the case of a Police Officer similar to the present case, in setting aside the conviction, was of opinion that firmness and prudence are expected of a Police Officer and that an ebullition of temper on the part of an accused which results in the use of abusive language is not sufficient in law to constitute the offence.

In *Mataragawara v. Unnanse* [3], Pereira J. held that although the language complained of was indecent and abusive no offence was made

[1] *6 East 126.* [2] *1 C. L. W. 326.* [3] *2 Crim. Appeal Reps. 49.*

out unless it can be said that the accused intended by the use thereof to provoke the complainant to commit a breach of the peace or knew that he, by the words used by him, was likely to cause the complainant to commit a breach of the peace.

In *Rahaman v. Perera*[1], Lyall Grant J., upholding the principle set out above, held that in his opinion it could not be said that the accused had the intention or the knowledge of the likelihood previously referred to.

In *Batcha v. Dunn*[2], Hutchinson C.J., in agreeing that the language used was foul, inexcusable, and reprehensible in the highest degree, still was of opinion that no offence was committed unless it appeared from the circumstances and, having regard to the person to whom it was addressed, that the person who used it intended or knew that it was likely to cause the person to whom it was addressed to break the peace or commit some other offence.

The Inspector in the case before me ought to have known that an unlawful entry on his part was calculated to result in repercussions, and he should have been prepared to steel himself against any method of resentment the party aggrieved would in every probability adopt, while on the other hand it would be reasonable to expect that the party annoyed would give full vent to his feelings as a retaliatory measure without intending or knowing it likely that a Police Officer from whom is expected firmness and prudence would lose his head to such a degree as to cause a breach of the peace.

The conviction cannot be sustained and must be set aside. The accused is acquitted.

Set aside.

[1] *(1929) 10 C. L. R. 160.*

[2] *3 S. C. D. 80.*