

1971 Present : H. N. G. Fernando, C.J., and Thamotheram, J.

THEVARAJAH, Appellant, and N. K. NATHAN (O.I.C., Chunnakam)
Respondent

S. C. 816/71—M. C. Chavakachcheri, 27651

*Probation of Offenders Ordinance—Section 12—Probation order—Breach of conditions
—Requirement of proof.*

When a Probation Officer reports to Court that an offender has violated the conditions of the probation order, the offender must be given an opportunity, before any sentence or order is passed, of defending himself against the allegation made by the Probation Officer.

APPEAL from an order of the Magistrate's Court, Chavakachcheri.

S. Sharvananda, for the accused-appellant.

N. J. Vilcassim, Crown Counsel, for the Attorney-General.

November 19, 1971. H. N. G. FERNANDO, C.J.—

The appellant was convicted on his own plea on 19th March 1971 of an offence of theft. Thereafter the Magistrate made a Probationary Order in respect of the appellant. On 5th July 1971 the Probation Officer filed a motion stating that the appellant had violated the conditions in the bond. Thereupon the Magistrate issued a warrant for his arrest. When the appellant was brought before Court on 30th August 1971, the Magistrate took no proceedings but immediately made an order in which he mentions that the Probation Officer states that the offender has violated the conditions on which he was placed. Upon that material, the Magistrate cancelled the former probation order and sentenced the appellant to detention in a certified school. The learned Magistrate has unfortunately misunderstood the provisions of Section 12 of the Probation of Offenders Ordinance. The Magistrate is empowered by sub-section (1) to act upon a report of a Probation Officer for the purpose of summoning an offender or of issuing a warrant to secure his attendance in Court. But once the offender is brought before Court, the power to deal with him for an alleged breach of conditions of a probation order is conferred by sub-section (6). According to that sub-section, the probation order may be cancelled and a sentence imposed on the offender, only if it is proved to the satisfaction of the Court that he has contravened the conditions of the probation order. A mere report from a Probation Officer cannot constitute proof of any misconduct on the part of an offender, who must be given an opportunity of defending himself against the allegation of a breach of the conditions of the probation order.

The order dated 30.8.71 is set aside and the case is remitted to the Magistrate to take further proceedings according to law. The Officer in Charge of the Fernham School, Atchuvely, is directed to release the appellant forthwith. The Probation Order made by the Magistrate on 3rd April 1971 will remain in force unless and until it is cancelled by the Magistrate after further proceedings. The appellant will report to the Magistrate on 3rd January, 1972.

THAMOTHERAM, J.—I agree.

Case sent back for further proceedings.
