

Present : Dalton J.

1928.

MUHANDIRAM v. SIMON.

305—P. C. Hambantota, 8,145.

*Criminal procedure—Accused not represented—Record by Magistrate—
Failure to explain points of evidence against him to accused—
Criminal Procedure Code, s. 296 (1).*

Where, in proceedings before a Police Court the Magistrate at the close of the case for the prosecution made an entry on the record to the effect that the accused was not represented and where it appeared from the evidence of the accused that he had understood the principal points in the evidence against him,—

Held, that the failure on the part of the Magistrate to comply with the requirements of section 296 (1) of the Criminal Procedure Code did not vitiate the conviction.

*King v. Roma*¹ followed.

A PPEAL from a conviction by the Police Magistrate of Hambantota.

Ranwaka, for appellant.

August 2, 1928. DALTON J.—

This appeal came up before me on July 2 last when Counsel for appellant, without arguing the appeal on the merits, stated that it would appear that the Police Magistrate had no jurisdiction to deal with the offence, it being punishable under section 403 of the Penal Code. It would seem from that section and the schedule that the District Court alone has jurisdiction. I accordingly directed that the matter be sent back for non-summary proceedings. The Magistrate has, however, called my attention to an amending Ordinance, No. 6 of 1924, under section 7 (g) of which the Magistrate has jurisdiction to try this offence in case the value of the property is under Rs. 100, as is the case here. The matter was therefore put down for further argument and Counsel has expressed regret for his oversight. The order already made is therefore recalled and Counsel has now argued the case on the other grounds set out in the petition of appeal.

The accused was undefended, and he urges that the record does not show that the Magistrate has strictly complied with the provisions of section 296 (1) of the Criminal Procedure Code. In *Viswanathan v. Namusicayam*² Pereira J., following an earlier

¹ 7 C. W. R. 14.

² 4 Bal. N. C. 75.

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case decided by Wood Renton C.J. (*Fernando v. Perera*¹), held that when the record did not show that the Magistrate had complied with the provisions of section 296 (1) a new trial should be ordered.

The record in this case shows that at the close of the case for the prosecution an entry was made by the Magistrate to the effect that the accused was not represented. In view of what subsequently happened that entry would fairly obviously seem to be a reference to section 296 (1), although, as pointed out by Wood Renton C.J. in *Somaliya v. Kaluwa*,² a Police Magistrate should remember the importance of obviating difficulties of this kind by making a short and clear note in the record showing that the requirements of the section have been complied with. Here the accused did give evidence, and it is clear from his evidence that he understood the principal points in the evidence of the witnesses for the prosecution against him. It is true he now urges in his petition of appeal that he has been prejudiced, but he does not say in what way, neither can Counsel state how he has been prejudiced, as his evidence shows he was quite aware of the effect of the evidence against him. Schneider J. in *The King v. Roma*³ in somewhat similar circumstances followed the decision in *Somaliya v. Kaluwa* (*supra*) holding that the conviction was not bad and it seems to me that the principle applied in those cases is also applicable here.

The last point urged was to the effect that the Muhandiram, upon whose report to the Court these proceedings were launched, was not a person entitled to exercise the powers given by section 129 (1) of the Criminal Procedure Code. No objection was taken on this point in the lower Court and it was not pressed. If it had been raised in the lower Court no doubt evidence would have been forthcoming to show that the objection was groundless.

The appeal must therefore be dismissed and the conviction affirmed.

¹ 16 N. L. R. 477.

² 4 C. W. R. 121.

³ 7 C. W. R. 14.