

1929.

Present: Lyall Grant J.

INSPECTOR OF POLICE, BADDEGAMA *v.* HENDRICK.

600—P. C. Galle, 37,093.

Notorious bad liver—Requirements of charge—Accused person as danger to the community—Criminal Procedure Code, ss. 83 and 385.

An order under section 83 of the Criminal Procedure Code should not be made against a person unless he is so dangerous as to render his being at large, without security, hazardous to the community.

In such a proceeding the summons must contain a brief and definite statement of the substance of the information on which the summons is issued.

A PPEAL from an order of the Police Magistrate of Galle.

W. M. de Silva, for appellant.

October 14, 1929. LYALL GRANT J.—

The charge against this accused was that he being a notorious bad liver and a dangerous character be asked to show cause why he should not be ordered to execute a bond with surety for his good behaviour, under section 83 of the Criminal Procedure Code.

The defendant appeared and said that he had cause to show.

The evidence led in support of the charge was that of one Pransappu, who spoke of a dispute which he had with the accused and said that the defendant threatened to do him bodily harm. He added that the accused drank hard. Under cross-examination he admitted that the defendant made complaints against him as he deducted payment due to him (accused).

The second witness said that four or five months ago he met the accused on the road. The accused was drunk and abused him, and that he (accused) drank every evening.

The rest of the evidence related to a dispute which arose owing to the accused having blocked the path leading to the house of one Siyadoris. Siyadoris said that the Police Officer came and that the accused in his presence threatened to hit Siyadoris. The Police Officer gave evidence in regard to the same incident and said that the accused actually hit Siyadoris. The Constable Arachchi said that the accused got drunk and caused fright to innocent people, and the Vidane Arachchi said that the accused was quarrelsome and tried to assault people, drank hard, and put persons in fear of personal injury.

It is admitted that in 1917 the accused was convicted of being drunk and disorderly, and he also admits that before his marriage, the time of his marriage not being stated, he had been in jail for assault and affray. He also admitted that about eighteen months ago he struck his anut as she abused him. Since 1917 no case

seems to have been taken against the accused. On this evidence the Magistrate said that he was satisfied that the defendant puts persons in fear of injury, and that they will not prosecute him only because they fear him, and he directed the defendant to put on a bond to be of good behaviour for six months.

The charge was brought under section 83 of the Criminal Procedure Code, which reads as follows:—

“ Whenever a Police Magistrate receives information that any person within the local limits of the jurisdiction of the Police Court of such Magistrate is an habitual robber, housebreaker, or thief or an habitual receiver of stolen property knowing the same to have been stolen or that he habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury or that he is an habitual protector or harbourer of thieves or that he is an habitual aider in the concealment or disposal of stolen property or that he is a notorious bad liver or is a dangerous character, such Magistrate may in manner hereinafter provided require such person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.”

It was argued on appeal that the charge was too vague as it did not specify in what respects the defendant was a notorious bad liver and a dangerous character, and it was also argued that the evidence was insufficient to support the conclusion at which the Magistrate had arrived.

In *Kanagasingham v. Tambyah*¹ Chief Justice Bertram held that “ where proceedings are taken under section 83 of the Criminal Procedure Code against a person, the summons must contain a brief statement of the substance of the information on which such summons is issued.”

The information upon which the Magistrate issued summons in this case was that of the Sub-Inspector of Police, Galle, who said “ I know the defendant. He is a notorious bad liver. He has been convicted of assault and mischief. He continually puts people in fear of injury.”

In *Kanagasingham v. Tambyah* (*supra*) Chief Justice Bertram refers to section 85 of the Ordinance, which provides that “ every summons or warrant issued under the last preceding section shall contain a brief statement of the substance of the information on which summons or warrant is issued.” He goes on to say “ The Magistrate, therefore, before he acts at all, must receive certain information and he ought to see that that information is of a very definite

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¹ (1923) 24 N. L. R. 474.

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 if a man is charged with being a bad liver or a dangerous character,
 and the character he bears has to be proved by evidence of general
 repute, it would be necessary to state the characteristics complained
 of in somewhat general terms. But these characteristics complained
 of should be precisely stated, and, if possible, defined and described
 when the man comes into Court the chapter thinks it
 necessary that he should understand the nature of the case he is
 called upon to meet."

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The provisions of section 83, which extends the power of the Magistrate to order certain classes of evil doers to execute a bond for good behaviour in the case of notorious bad livers, is peculiar to our Code.

The corresponding section of the Indian Code provides these powers, where a person is so desperate and dangerous as to render his being at large without security hazardous to the community. I think that what was intended by section 83 must be considered to be the same thing as is specified by the words I have quoted from the Indian Code. It cannot be supposed that unless a person is so dangerous as to render his being at large without security hazardous to the community he should be ordered to give such security.

The summons issued on the accused contains in addition to the words on the charge sheet, which stated that the accused was a notorious bad liver and a dangerous character, the words "and that he was likely to commit a breach of the peace." It seems to me that the charge is so vague as not to give notice to the accused of the evidence which is likely to be led against him. It cannot be said, using the words of Bertram C.J., that "the characteristics complained of have been precisely stated."

On examining the evidence one finds that no evidence has been brought of any conviction against the accused since 1917. The evidence of the Police Officer that the defendant struck Siyadoris is clearly untrue, when one looks at Siyadoris' own evidence. The date of the incident referred to by Pransappu is not given, but it appears from the evidence that the incident may have occurred years ago.

The only assault which is clearly proved is that by the defendant on his aunt, an incident which has been brought out by the accused himself.

The present case appears to be very similar to the one dealt with by Bertram C.J., which I propose to follow.

The appeal will be allowed, but, if, after the lapse, of say, six months, further complaints are made against the appellant, then no doubt he may be dealt with by proceedings more exactly and regularly framed.

Appeal allowed.