

Present: Wood Renton C.J. and Ennis J.

1915.

KURIBANDA v. TIRUAMBALAM.

407 and 408—P. C. Hatton, 9,004

Order to pay compensation—Criminal Procedure Code, s. 437—Complainant must be called upon to show cause against the order.

Before a complainant is ordered to pay compensation under section 437 of the Criminal Procedure Code he ought to have an opportunity of showing cause against it.

THE complainant, a Fiscal's officer, charged the accused with voluntarily obstructing him, a public servant, in the discharge of his public function; intentionally offering resistance to the lawful apprehension of one Andy, under a warrant issued in case No. 7,214 of the Police Court of Badulla, for the offence of quitting service without notice, and rescuing the said Andy from his custody, in which he was being lawfully detained for the said offence; and voluntarily causing hurt to him—offences punishable under sections 123, 220, and 314 of the Ceylon Penal Code. A warrant was issued, and the accused was arrested on it. The Police Magistrate (T. A. Hodson, Esq.) on April 13, 1915, acquitted the accused, and ordered the complainant to pay Rs. 25 to accused under section 437 of the Criminal Procedure Code.

The complainant appealed against this order and, with the sanction of the Attorney-General, against the acquittal of the accused.

The appeal against the order under section 437 of the Criminal Procedure Code came up before Wood Renton C.J. sitting alone on May 21, 1915, and owing to certain conflicting decisions of the Supreme Court on the point it was referred by him to a Bench of two Judges.

Tisseveresinghe, for complainant, appellant.—Section 437 of the Criminal Procedure Code does not apply to a case where the accused has been arrested by a police officer on a warrant issued

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by a competent Court. In such a case it cannot be said that "complainant cause the peace officer to arrest the accused" within the meaning of section 437. The peace officer acted under the warrant. It clearly would not apply to a case where the arrest was made by any other person than a peace officer, and a warrant need not necessarily be directed to a peace officer (section 52 (2), Criminal Procedure Code).

A person should not be punished without being heard in his defence. *Tidorisa v. Carolis* ¹.

It cannot be argued, from the mere absence in section 437 of a provision similar to the one in section 197, that an order to pay compensation can be made under section 437 without calling upon the complainant to show cause against it. *Gunasekera v. Dines Appu* ² and *Deonis v. Gemeris* ³ have not been rightly decided. An elementary right like this can only be taken away by express enactment to the contrary. Middleton J. was personally of opinion in *Deonis v. Gemeris* ³ that *Tidorisa v. Carolis* ¹ was rightly decided, though he followed the later decision.

In section 440 of the Code there is no provision as in section 197 (3), but the person charged is always called upon to show cause before being punished under that section (*Koch* 50). See Circular No. 4 of January 13, 1903, referred to in *Balasingham's Digest, 1895-1903*, p. 294. Section 12 of Ordinance No. 9 of 1895 has no provision as in section 197 of the Criminal Procedure Code, but the person charged has, nevertheless, to be called upon to show cause before he is punished. (3 N. L. R. 63, 2 N. L. R. 74.)

The charge amounts to a contempt of Court, and in all cases of contempt the person charged must be heard in defence.

No appearance for respondent.

May 25, 1915. WOOD RENTON C.J.—

This is an appeal by the complainant, who has been ordered by the Police Magistrate to pay Rs. 25 as compensation to the respondent, for having groundlessly caused his arrest on a criminal charge. The case came before me sitting alone on the 21st instant, and I referred it to a Bench of two Judges because of the conflicting decisions on the question whether before such an order is made the complainant is entitled to have an opportunity of showing cause against it. This question was answered in the affirmative by Browne J. in *Tidorisa v. Carolis* ¹. But his decision was dissented from by Sir Charles Layard C.J. in *Gunasekera v. Dines Appu* ², and by Sir John Middleton J. in *Deonis v. Gemeris* ³. I confess that apart from authority, I should have had no hesitation in accepting the view of Browne J. in *Tidorisa v. Carolis* ¹.

¹ (1900) 4 N. L. R. 324.

² (1905) 2 Bal. 69.

³ (1907) 1 A. C. R., Sup. IV.

Compensation awarded under section 437 is to be recovered as if it were a fine, and if it cannot be so recovered, the person by whom it is payable is to be sentenced to simple imprisonment. Proceedings of this character are at least *quasi-criminal*, and it seems to me to be an elementary principle of justice that the person against whom they are taken should have the chance of being heard in his own defence. The decisions in *Gunasekera v. Dines Appu* ¹ and *Deonis v. Gemeris* ² turn on the fact that section 437, unlike section 197 (3), of the Criminal Procedure Code contains no provision for a complainant, against whom the former is being enforced, being called upon to show cause. But the same observation applies to section 440 of the Criminal Procedure Code, under which a witness, who is charged with having given false evidence in a judicial proceeding, has an undoubted right to show cause before he is punished. See *Chang Hang Kiu v. Piggott* ³. It seems to me that unless such an enactment as we have here to deal with dispenses with the necessity of calling upon the person charged for his defence, he has a right to be heard before any order adverse to him can be made. I would set aside the order appealed against *simpliciter*. There is no need to consider any of the other points raised in the case.

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ENNIS J.—I entirely agree, and have nothing to add.

Set aside.

