

1913.

[IN REVISION.]

Present: Pereira J.WANNIGASURIA *v.* SILVA.*P. C. Chilaw, 36,705.*

Imprisonment for not giving security to be of good behaviour—Subsequent conviction of accused for not reporting himself to Police—Section 321, Criminal Procedure Code, does not apply—The terms of imprisonment runs concurrently.

Where a person was condemned to undergo six months' rigorous imprisonment for default of giving security for good behaviour, and was subsequently sentenced to undergo one month's rigorous imprisonment for having failed to report himself to the Police (under section 9 of Ordinance No. 7 of 1899), and the Magistrate directed (in the warrant of commitment) that the term of one month's imprisonment should take effect after the expiry of the term of imprisonment to which accused was condemned in the earlier proceeding—

Held, that the order directing the second term of imprisonment to take effect after the first was irregular. The imprisonment contemplated by section 321 of the Criminal Procedure Code is imprisonment consequent upon a formal "sentence" on conviction, and does not include imprisonment to which a person is condemned in proceedings such as those under chapter VII. of the Code.

THE facts are set out in the judgment.

Garvin, Acting S.-G., in support of application.—The order that the sentence of imprisonment for the offence under section 9 of Ordinance No. 7 of 1899 should take effect after the expiration

of the period for which the accused was committed to prison for failure to give security for being of good behaviour is *ultra vires*. Section 321 of the Criminal Procedure Code contemplates a case where the accused who was undergoing imprisonment on conviction for an offence is sentenced again for another offence. It does not apply to a case of a person undergoing imprisonment for failure to give security under chapter VII. of the Criminal Procedure Code being sentenced for an offence. In this case the sentence of imprisonment for the offence takes effect at once. A person committed to prison for failure to give security under chapter VII. is not sentenced to imprisonment. Counsel cited *Joghi Kannigan v. Emperor*,¹ *Emperor v. Muthukumara*.²

No appearance for the respondent.

Cur. adv. vult.

April 7, 1913. PEREIRA J.—

The accused in this case was, in case No. 5,553 of the Police Court of Puttalam, on November 6, 1912, condemned to undergo six months' rigorous imprisonment for default of giving security for good behaviour. The order was apparently made under section 93 of the Criminal Procedure Code. Thereafter, that is to say, on November 11, 1912, he was convicted in the present case of having failed to report himself to the Police, as a person subject to police supervision, an offence punishable under section 9 of Ordinance No. 7 of 1899, and sentenced to undergo one month's rigorous imprisonment.

The Attorney-General now moves that this latter sentence be dealt with in revision in so far as it directs that the period of imprisonment to which the accused is sentenced should take effect after the expiry of the term of imprisonment to which the accused was condemned in case No. 5,553 of the Police Court of Puttalam. I confess I can see no such direction in the sentence in the present case, but, inasmuch as the question involved in the Attorney-General's application, assuming that the facts were correctly stated in it, was fully argued before me by the Solicitor-General, I shall express my opinion thereon, but shall make no order until the Solicitor-General points out to me the obnoxious direction that the Attorney-General complains of.

The Solicitor-General's argument is that the "imprisonment" contemplated by section 321 of the Criminal Procedure Code is imprisonment consequent upon a formal "sentence" on conviction, and does not include imprisonment to which a person is condemned in proceedings such as those under chapter VII. of the Criminal Procedure Code. On a careful consideration of the question, I am inclined to agree with him. The section speaks of "imprisonment

¹ 31 *Mad.* 515.

² 27 *Mad.* 525.

1913.
 PERERA J.
 Wanniga-
 suria v.
 Silva

to which a person is sentenced." The concluding words of the section, "to which he has been previously sentenced," refer of course to the imprisonment first mentioned in the section. The section is one of a chapter dealing with "sentences and the carrying out thereof," and, in my opinion, the imprisonment contemplated is imprisonment involved in a sentence contemplated by sections 13, 14, and 15 of the Criminal Procedure Code, which presumably refer to sentences, on formal convictions of offences, on regular charges made before the Courts referred to. Section 93 speaks of a person being "committed to prison," and not of being "sentenced to imprisonment." Section 397 of the Indian Code of Criminal Procedure is in terms similar to those of section 321 of our Code, and the view that I have taken above is supported by the decisions in the cases of *Joghi Kannigan v. Emperor*,¹ *Emperor v. Muthukumara*,² and *Ven Katigadu v. Emperor*,³ although the decision in *Emperor v. Tula Khan* ⁴ may be cited on the other side.

As stated above, I shall make no order until I have heard the Solicitor-General again.

April 8, 1913.

The Acting Solicitor-General now informs me that there is a mistake in the motion originally filed. There is no such direction as is referred to above in the sentence. The direction is in the warrant of commitment issued by the Magistrate to the Fiscal.

The Magistrate will recall the warrant and rectify it in terms of the above decision.

Order varied.

¹ 31 Mad. 515.

² 27 Mad. 525.

³ 2 Weir 452.

⁴ 3 All. 334.