1934 *Present :* **Akbar J.**

INSPECTOR OF POLICE, NEGOMBO *v.* HUSSAIN.

164—P. C. Negombo, 6,419.

Sentence—Enhancement of punishment—Evidence of bad character of accused—False allegations against prosecuting Inspector—No ground for enhancing sentence.

Where, after the conviction of an accused person, evidence of the bad character of the accused is placed before the Court for enhancement of punishment such evidence must be given under oath or affirmation by persons of undeniable position and responsibility.

The fact that the accused made an unfounded allegation against the prosecuting Inspector is not a sufficient reason for passing an enhanced sentence on him.

APPEAL from a conviction by the Police Magistrate of Negombo.

Cross da Brera, for accused, appellant.

[1] *(1918) 21 N. L. R. 106.* [2] *24 N. L. R. 188.*

March 28, 1934. AKBAR J.—

The accused was charged with having in his possession 769 grains of opium without a licence. After some evidence was led the accused pleaded guilty to the charge. The learned Magistrate sentenced him to four months' rigorous imprisonment, basing his reasons for giving such a punishment on two grounds, the first being that the accused had dared to make certain wicked allegations against the prosecuting Inspector, namely, that the accused had only 81½ grains of opium in his possession whereas the plaint stated there were 769 grains. The learned Magistrate thought this was an aggravation of his offence. In my opinion an accused person is entitled to make any suggestion he likes. They may be false or true but if they are false they should not be taken into account to enhance the punishment. The principle of our criminal law is that the accused is innocent until the crime is proved and every lattitude ought to be allowed to the accused to prove his defence so long as the rules of evidence are adhered to. The principle is the same as the one mentioned by Mr. Justice Shaw as regards the right of petitioning in the case of *Goonetilleke v. Elisa*[1]. Mr. Justice Shaw stated as follows:—

"I think that the provisions of section 180 should be exercised very sparingly and with great caution in the case of petitions against the Police to their superior officers, for it is much better that the Police Superintendent's time should be occasionally wasted in inquiring into an unfounded charge against one of his subordinates than that villagers should be deterred by criminal prosecution from laying their complaints against the Police which are necessarily somewhat difficult to prove in a Court of Law before their superior officers for departmental inquiry."

Using the same remarks I would say that it is much better that a Police Magistrate should occasionally waste his time in fully inquiring into such allegations by the defence rather than discourage the undoubted right of an accused to put his whole defence fearlessly.

The second ground the Magistrate made use of was one contrary to the provisions of the Criminal Procedure Code. He stated that Inspector Kelaart brought to his notice that accused had carried on this illicit traffic for a long time undetected and that the Inspector moved for deterrent punishment.

For this reason he sentenced the accused to four months' rigorous imprisonment. As regards these vague statements made by the Police, I would like to call the attention of the learned Magistrate to the judgment of two Judges of this Court in the case of *Nikapota v. Gunasekera*[2]. In that case the learned Judges stated that the prosecution was entitled after conviction of the accused to place the bad character of the accused for enhancement of punishment. But then such information should be given under the sanction of an oath or affirmation and by persons of undeniable position and responsibility.

I think the justice of the case requires, as I am not in a position to award punishment in this case, that I should set aside the conviction and sentence and send the case back for trial in the ordinary course before another Magistrate.

Sent back.

[1] *(1917) 20 N. L. R. 136.*

[2] *(1911) 14 N. L. R. 213.*