1951 *Present:* **Gratiaen J.**

MUTTUSAMY *et al.*, Appellants, *and* KANNANGARA (Inspector of Police), Respondent

S. C. 1,160—1,163—M. C. Ratnapura, 21,205

Arrest without warrant—Suspicion must be reasonable—Duty to inform suspect of the charge against him—Police Ordinance (Cap. 43), s. 69—Criminal Procedure Code (Cap. 16), s. 32 (1) (b)—Obstructing public servant—More than mere verbal refusal necessary—Resistance to lawful apprehension—Ingredients of offence—Penal Code (Cap. 15), ss. 183, 220 A.

Section 69 of the Police Ordinance does not authorise a police officer without a warrant to enter and search premises for alleged stolen property except on reasonable suspicion. A suspicion is proved to be reasonable only if the facts disclose that it was founded on matters within the police officer's own knowledge or on statements by other persons in a way which justify him in giving them credit.

A mere verbal refusal to allow a public servant to perform his duty is not " obstruction " within the meaning of section 183 of the Penal Code.

Where a person is charged under section 220 A of the Penal Code with offering resistance to his lawful apprehension, it is incumbent on the prosecution to prove without doubt that the apprehension was in fact lawful and justified in the circumstances of the case.

A peace officer is not entitled to arrest a person on suspicion, under section 32 (1) (*b*) of the Criminal Procedure Code, except on grounds which justify the entertainment of a reasonable suspicion.

Whenever a police officer arrests a person on suspicion without a warrant he should inform the suspect of the true ground of arrest. A citizen is entitled to know on what charge or on suspicion of what crime he is seized.

APPEAL from a judgment of the Magistrate's Court, Ratnapura.

G. E. Chitty, with *N. Nadarasa*, for the accused appellants.

Ananda Pereira, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 19, 1951. GRATIAEN J.—

This case has caused me much anxiety, and I am indebted to Mr. Chitty and to learned Crown Counsel for the assistance they have given me. Important questions have been raised regarding the powers of police officers to search premises or to arrest persons without prior judicial authority. That such powers should be vested in them, within circumscribed limits, is necessary so as to facilitate the prevention and detection of crime. Nevertheless, they are always attended by grave responsibilities, and justice requires that the Courts should be very vigilant to ensure they are not abused through inexperience, excess of zeal or " insolence of office ".

There are four accused in this case, a man and his wife and their two sons. They are Indian estate labourers employed on No. 6 division of Pelmadulla Group in Kahawatte. The 1st accused is 50 years of age and is a sub-kangany in charge of a gang of 18 tappers including his wife the 4th accused who is also 50 years of age, and his married sons the 2nd and 3rd accused. The family occupied a set of adjacent line rooms on the estate, and the evidence seems to indicate that prior to the incident which took place on the night of 31st August, 1950, they were of a peaceful disposition.

On the evening of 25th August, 1950, the 1st accused had complained to the Kahawatta police that one of his sons had been assaulted by a man named Gunapala, whose father Andirishamy was a kangany of the same division of the estate as that on which they were employed. The complaint was recorded by Police Constable Dharmasena. There is no evidence as to what official action was taken upon this complaint, and I only mention it because it has been suggested, but not proved, by the defence that Dharmasena was disposed to show some partiality towards Andirishamy and Gunapala in regard to the dispute. For the purposes of my findings in the present case, it is sufficient to record that whether this theory of favouritism be justified or not, it was in fact genuinely entertained by the members of the accused family—and particularly so by reason of the events which occurred a few days after the complaint had been recorded by Dharmasena. I have been careful to remind myself that the police officers concerned are not on trial in these proceedings and that their conduct calls for comment only in so far as is relevant to the charges framed against the accused.

On the night of 31st August, 1950, Sergeant Wambeck of the Kahawatta Police and Constable Dharmasena arrived in uniform without

prior warning at the line rooms occupied by the accused at 10.40 p.m. They were accompanied by Andirishamy the father of Gunapala, and they informed the 1st accused, who was seated on the verandah reading a newspaper, that they had decided to search the line rooms occupied by himself and his family for the possession of rubber alleged to have been stolen. It is not difficult to understand that the presence of Andirishamy on this occasion induced the belief in the 1st accused's mind that it was Andirishamy who had engineered the proposed raid at this late hour as a counterblast to the earlier complaint against his son. Admittedly no search warrant had been obtained by the police to search the lines, nor had they thought it necessary to obtain the permission of the Superintendent of the estate or even the conductor of the division to search the rooms. As one would expect in such a situation, considerable commotion followed, and, although there is a conflict of evidence as to what actually took place, I will accept it as proved that, as narrated by Wambeck, the 1st, 2nd and 3rd accused "refused to allow him to search the line rooms" that the "1st accused asked him to get out of the compound", and that, "the 2nd and 3rd accused also came up and asked him to get out of the place." Wambeck states that in these circumstances he "did not enter any of the rooms". He decided—in my opinion, wisely—to send an urgent message summoning Police Inspector Kannangara, the officer in charge of the Kahawatta police station, to the scene. In the meantime Wambeck took no action to press his demand to be allowed to search the rooms. "I pacified the accused", he says, "and asked them to keep quiet till the Inspector arrived."

It is convenient at this stage to consider whether, upon this evidence, the prosecution had established the guilt of all four accused on the 1st charge framed against them. I shall refer later to the incidents which took place after Inspector Kannangara arrived on the scene at 11.50 p.m., with his police reinforcements.

The case for the prosecution on this charge is based solely on the testimony of Wambeck. It is alleged that all four accused "did voluntarily *obstruct* two *public servants*, to wit, Police Sergeant Wambeck and P. C. Dharmasena of the Kahawatta Police, at 10.40 p.m., *in the lawful discharge of their public functions*, to wit, in searching the line rooms of the 1st, 2nd and 3rd accused (*a*) *by obstructing and preventing* them from entering into the said line rooms for the purpose of the aforesaid search, (*b*) *by threatening to do bodily harm* to the said police officers and *by damaging articles* in the said line rooms in order to deter the said police officers from carrying out the said search". Dharmasena, the alleged partisan of Andirishamy, was not called as a witness.

In order to prove the commission of an offence punishable under section 183 of the Penal Code it was incumbent upon the prosecution affirmatively to prove (*a*) that the public officers concerned were in fact engaged in the lawful exercise of their public functions when they attempted to search the accused's premises on the night in question, and (*b*) that the conduct of the accused as specified in the charge constituted "obstruction" within the meaning of the section.

Were Wambeck and Dharmasena entitled to search the premises occupied by the accused on the night of 31st August, 1950 ? If this question be answered in the negative, the charge must necessarily fail. Admittedly, they had not obtained the authority of a Magistrate to search the premises in terms of Section 70 of the Criminal Procedure Code. Nor is it suggested that they acted under the provisions of section 124 of the Code, as neither of them was an officer in charge of a Police Station or an " inquirer " holding an investigation under Chapter 12 of the Code. Learned Crown Counsel submitted that their purported powers of search existed, if at all, by virtue of the provisions of Section 69 of the Police Ordinance which *inter alia* authorises any Police Officer without a warrant to enter and search " any locality . . . . which he reasonably suspects to *contain stolen property.*" (Vide *Miskin v. Dingiri Banda* [1].)

I have examined Wambeck's evidence with care, and I am content to say that, as far as these proceedings are concerned it has not been affirmatively proved that he " reasonably suspected " that the line rooms which he claimed the right to search without a warrant did contain stolen property. All he testifies to on this point is that " on receipt of information, while on night patrol ", he " went to the line rooms of the 1st, 2nd and the 3rd accused ". He " explained to them that he wanted to search their rooms for possession of rubber said to have been stolen ". Under cross-examination, he refused, as he was of course entitled to do, to disclose the name of his informant, but stated that he had " noted the information in his note-book " (which he did not produce). This is all the material on which the learned Magistrate was invited to hold that Wambeck entertained a " reasonable suspicion " that there was stolen rubber on the premises. I find it impossible to understand how a Court of law could hold that this vital ingredient of the offence was established. A suspicion is proved to be reasonable if the facts disclose that it was " founded on matters within the police officer's own knowledge or on statements by other persons *in a way which justify him in giving them credit.*" (*McArdle v. Egan* [2]). No evidence was led from which it could be inferred that Wambeck and Dharmasena were discharging lawful functions on the occasion when they complain that they were frustrated in their purpose. The charge under section 183 therefore fails *ab initio*. It makes no difference at all that Inspector Kannangara says that *after the event* he discovered some rubber in the line rooms. The sole issue which I am now investigating relates to Wambeck's knowledge and state of mind *before he decided to search the premises.* Indeed, this alleged discovery of rubber, insinuated but not proved to have been stolen, was irrelevant to any charge before the learned Magistrate in these proceedings.

I am not satisfied that the conduct of the accused in any event constituted " obstruction " within the meaning of section 183. A mere verbal refusal to allow a public servant to perform his duty is not " obstruction ". (*Laurensz v. Jayasinghe* [3]). The learned Magistrate has taken the view that the alleged " threat to do bodily harm "

[1] *(1922) 4 C. L. Rec. 166.*
[2] *(1933) 30 Cox C. C. 67.*
[3] *(1913) 16 N. L. R. 505.*

to the Police Officers was not substantiated, as is evident from his order acquitting all the accused of the charge of intimidation. The only other allegation made by Wambeck in this connection was that the 1st, 2nd and 3rd accused " broke pots and pans and created a commotion ". With great respect, I do not see how, even if this uncorroborated evidence be true, such senseless destruction by the accused of their own property could seriously be regarded as calculated to obstruct or prevent a policeman from entering the line rooms. (Vide *Police Sergeant, Hambantota v. Silva* [1]). The impression which I have formed is that when Wambeck and Dharmasena were refused permission to carry out their intended search, they very wisely decided to stay their hand until a senior officer arrived on the scene. The accused must be acquitted of the charge framed under section 183.

The outstanding charges are based upon the alleged conduct of the accused after Inspector Kannangara arrived on the scene with two constables. I shall first narrate what actually took place according to the evidence of Kannangara and Wambeck. The position now was that four hysterical but unarmed estate labourers (one of whom was a woman of 50) were confronted by a police inspector, a police sergeant and 3 police constables all of whom carried batons or other tangible aids to the gentle art of persuasion. The inspector says that he too demanded that he should be permitted to search the line rooms without a warrant. This permission was refused. He immediately ordered Wambeck and the others to arrest the 1st, 2nd and 3rd accused *on a charge which he did not specify.* After a slight scuffle, these three accused persons were taken into custody and forcibly removed to the police station. In the meatime the 4th accused hurried away to the Assistant Superintendent of Police, Ratnapura, and complained of the treatment which her family had suffered at the hands of the police party. Her complaint was recorded, she was examined by the doctor, and was *kept in police custody until the next morning.* She was then produced before the Magistrate and, on the application of the police, *remanded to Fiscal's custody for 5 days without any charge being framed against her.* The other accused were similarly remanded for 6 days until charges were framed against them. How a Magistrate, acting judicially, could have lent his sanction to such an indefensible proceeding I cannot understand. The procedure laid down by Section 126A of the Criminal Procedure Code is intended to be applied only in those rare cases in which the investigation of allegations against a person in police custody suspected of crime *cannot be completed within 24 hours.* In this case the facts relating to the present charges were matters within the personal knowledge of the police officers who took part in the transaction. No material was placed before the Magistrate to justify a decision that, pending the framing of charges, justice required that the accused should be placed on remand. When private citizens are arrested without a warrant, it is imperative that the provisions of Sections 37, 126 and 126A of the Criminal Procedure Code should be scrupulously applied. If this is not done, police powers which are designed to protect the community " become a danger instead of a protection " (*per* Scott L. J. in *Dumbill v. Roberts* [2]).

[1] *(1939) 40 N. L. R. 534.*

[2] *(1944) 1 A. E. R. 326 at 329.*

The second charge against the accused was that they " obstructed A. Kannangara, Inspector of Police, at 11.50 p.m. in the lawful discharge of his public functions, to wit, in searching the line rooms for stolen scrap rubber ". This charge must also fail for the same reasons which I have set out in relation to the earlier charge of obstruction. No evidence was led upon which the learned Magistrate could hold that Kannangara was entitled to search the premises without a warrant. Kannangara was therefore not proved to have been engaged in the lawful discharge of his public functions at the time. Indeed, I would say that, *upon the material placed before the Court*, the Inspector would probably have been a trespasser if he had persisted in entering the premises without a warrant when permission to enter was refused him. (*Davis v. Lisle* [1]). In any event no evidence was led of any " obstruction " other than the bare verbal refusal by the 1st, 2nd and 3rd accused to authorise the attempted invasion of their homes. The 2nd charge therefore fails.

I shall now deal with the third and most serious charge against the accused. It is alleged that they did " intentionally offer resistance to Inspector Kannangara in the *lawful apprehension* of the 1st, 2nd and 3rd accused *on a charge of theft* of scrap rubber, property belonging to the Pelmadulla Group, and thereby committed an offence punishable under Section 220A of the Penal Code ".

To establish this charge it was incumbent upon the prosecution affirmatively to prove that *resistance* to arrest was offered, and that the *arrest without a warrant on a charge of theft was lawful.*

That some resistance was offered by the 1st, 2nd and 3rd accused has, I think, been established. They were unarmed, but in the scuffle that followed upon their arrest Wambeck sustained a few abrasions and so did Dharmasena and constable Arifdeen. Inspector Kannangara himself apparently fell down—with the minimum loss of dignity, I trust—and sprained his left thumb when he was dragging one of the accused into his car.

It is no doubt regrettable that four out of five police officers armed with batons should sustain even trivial injuries when they were performing an alleged public duty in arresting three unarmed estate labourers. But the fact remains that they inflicted far more bodily harm than they themselves received in the course of the scuffle. Apart from a number of abrasions, the 1st accused, aged 50, sustained six contusions caused by blows from a police baton, or as the doctor surmises, a cane or a belt. One of the contusions was nine inches long, another eight inches long and a third six inches long. Two months later, at the trial, the 1st accused was able to remove his shirt and point out to the learned Magistrate two of the " scars of the unequal battle ". The 2nd accused also sustained abrasions, a contusion on his chest and other contusions two inches long on the upper part of his left thigh, which, according to the doctor, were caused by a cane, a belt or a baton strap. The 3rd accused sustained an abrasion, a contusion on the top of his right shoulder and two contusions four inches long on his abdomen. In the opinion of the doctor these injuries were caused by a cane, a belt or a baton strap.

[1] *(1936) 105 L. J. R. 593.*

Finally, the 4th accused who was an old woman, sustained an abrasion and three contusions, one of them 2½ inches long on the small of her back. The doctor says that these contusions could have been caused by blows with a cane or a baton. Inspector Kannangara further admits that at one stage he " pulled her by her hair and pushed her aside ".

The learned Magistrate had held, and I will therefore assume, that the four accused were assaulted by the police officers *after* the male members of the family made some show of resistance to their arrest. The view taken by the Magistrate is that they " merely asked for trouble by their unseemly and obstinate conduct ". My own reaction to this disagreeable incident is to register the hope that the average disciplined and well-trained police officer is competent to apprehend unarmed private citizens, however hysterical and rebellious they may be, without inflicting as much bodily harm as Inspector Kannangara and the four subordinate officers who acted on his orders seem to have considered necessary.

Assuming then, that resistance was offered by the accused, the question to be determined is whether their arrest without a warrant was a lawful arrest. The accused were not prosecuted for common assault, but for resisting the lawful apprehension by a police officer in the execution of his official duty. It is alleged in the charge that the purported arrest was *on a charge of theft*, and learned Crown Counsel has, with characteristic fairness, conceded that no evidence was led by the prosecution to prove that Kannangara was entitled to order the arrest of the 1st, 2nd and 3rd accused without a warrant on the night of 31st August, 1950. On the facts of this case, the legality of the arrest depended upon whether the accused were persons " against whom a *reasonable complaint* had been made or *credible information* had been received or a *reasonable* suspicion existed " of their having been concerned in the commission of the offence of theft. (*Section 32 (1) (b) of the Criminal Procedure Code.*) Inspector Kannangara has nowhere in the course of his evidence referred to any complaint or information or suspicion the reasonableness of which could have been tested by the learned Magistrate, whose function it was to inquire into the officer's state of mind at the time that he ordered the arrest. (*McCardle v. Egan* (*supra*)). As Scott L.J. pointed out in *Dumbell v. Roberts* (*supra*), " The principle of personal freedom, that every man should be presumed innocent until he is found guilty, applies also to the police function of arrest . . . For that reason it is of importance that no one should be arrested by the police except on grounds which in the particular circumstance of the arrest really justify the entertainment of a reasonable suspicion." Where a citizen is charged with offering resistance to his lawful apprehension, it is incumbent on the prosecution to prove without doubt that the apprehension was in fact lawful and justified in the circumstances of the case.

There is another aspect which calls for emphasis. When a police officer arrests a man *on the authority of a warrant* issued by an order of Court, Section 53 of the Criminal Procedure Code requires that he " shall notify the substance of the warrant to the person arrested, and if so required shall show him the warrant or a copy thereof issued by

the person issuing the same ". *A fortiori*, whenever a police officer arrests a person on suspicion *without a warrant*, " common justice and commonsense " require that he should inform the suspect of the nature of the charge upon which he is arrested. This principle has been laid down in no uncertain terms by the House of Lords in *Christie v. Leachinsky* [1] and it is indeed very much to be desired that the following general propositions enunciated by Lord Chancellor Simon should be borne in mind by all police officers in this country:—

" (1) If a police officer arrests without warrant upon reasonable suspicion, he must in ordinary circumstances inform the person arrested of the true ground of arrest. He is not entitled to keep the reason to himself, or to give a reason which is not the true reason. In other words, *a citizen is entitled to know on what charge or on suspicion of what crime he is seized;*

(2) If a citizen is not so informed, but is nevertheless seized, the policeman, *apart from certain exceptions*, is liable for false imprisonment."

The evidence on record shows how widely these elementary rules have been departed from. Neither the accused nor the junior officer who were instructed to effect the arrest were informed of the reason for the drastic action ordered to be taken. Indeed, the accused were in police custody for one night and in Fiscal's custody for 5 days before any charges were formulated against them. How then can it be argued that the accused were not entitled to resist their attempted apprehension without a warrant and on an unspecified charge ? " Is Citizen A ", asked Lord Chancellor Simon, " bound to submit unresistingly to arrest by Citizen B in ignorance of the charge against him ? I think, my Lords, that cannot be the law of England. Blind unquestioning obedience is the law of tyrants and slaves; it does not yet flourish on English soil ". Let us not forget that the law of Ceylon coincides with the English law on this fundamental matter affecting the rights of private citizens. I acquit the accused on the 3rd charge framed against them.

All the accused were acquitted by the learned Magistrate on the charge of intimidation. There remains for consideration only the charge under which the 4th accused is alleged to have " intentionally offered resistance to Inspector Kannangara and others in the lawful apprehension of the 1st, 2nd and 3rd accused". For the reasons which I have already set out, this charge also fails because the arrest has not been proved to have been lawful. Apart from that, the accusation has not been substantiated on its merits. All that this unfortunate woman is alleged by the Inspector to have done in her distress was to cling on to the police officers when they were overpowering her husband and her sons in order to arrest them. Her own version is much the same. " I saw the police officer assaulting my husband and my sons ", she explained to the Magistrate, " I held the officers and asked them not to arrest my sons. The Police Officer pushed me to a side and I fell down ". To attribute to this woman's behaviour a *criminal* intention to interfere with the lawful functions of public officers is to betray the lack of a sence of proportion. I quash the conviction.

[1] (*1947*) *L. J. R. 757.*

In the result, all four accused must be acquitted of all the charges framed against them. My decision is, of course, based only on my assessment, as an appellate Judge, of such evidence as the prosecution thought fit to place before the learned Magistrate at the trial. I am in accord with the view expressed by the learned Magistrate that attempts on the part of any person to delay or deter the administration of justice should not be tolerated. But it is no less important, as I have pointed out, that the actions of police officers who seek to search private homes or to arrest private citizens without a warrant should be jealously scrutinised by their senior officers and above all by the Courts. In cases of this nature, it seems preferable that the facts should in the first instance be reported to the Law Officers of the Crown so that, after an impartial examination of all the available material, the real transgressors, whoever they might be, could be brought to justice.

Appeals allowed.