*Present:* Drieberg J.

1927

MENON *v.* FERNANDO.

*379—P. C. Chilaw, 21,587.*

*Charge—Proceedings initiated on written report—Summons issued—Charge read from summons—Irregularity—Criminal Procedure Code, s. 425.*

The proceedings against an accused person commenced with a written report under 148 (1) (*b*) of the Criminal Procedure Code, and the Police Magistrate issued summons in which the charges were stated as they appeared in the report.

When the accused appeared on summons, the Magistrate explained the charge to him from the report, instead of from the summons.—

*Held* that the irregularity did not vitiate the conviction.

APPEAL from a conviction by the Police Magistrate of Chilaw.

*Croos Da Brera*, for accused, appellant.

September 16, 1927. DRIEBERG J.—

(After dealing with the facts.)

I see no reason to disagree with the conclusions which the learned Police Magistrate has come to on the facts of the case.

Mr. Croos Da Brera however contends that the conviction is irregular as the Police Magistrate when the accused-appellant appeared did not adopt the correct procedure required by section 187 of the Criminal Procedure Code.

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DRIEBERG J.

*Menon v. Fernando*

The proceedings commenced with a written report under section 148 (1) (*b*) by an Excise Inspector complaining of the commission by the appellant of offences under sections 16, 17, and 43 of the Excise Ordinance, No. 8 of 1912; these offences are punishable with more than three months' imprisonment or a fine of Rs. 50; the offences were properly formulated and contained all the particulars required of a charge by the Code. The Police Magistrate ordered summons, and in it the charges were stated precisely as they appeared in the report.

The accused-appellant appeared after service of summons. The record of the proceedings relevant to this point is as follows: " Charge is explained from the plaint. The accused pleads not guilty "; a date was fixed for trial.

The accused having appeared on summons the Magistrate should have read to the accused the statement of the particulars of the offences contained in the summons; what he did was to read to him the same statement of it from the report.

Mr. da Brera contends that this is not a strict compliance with the procedure required, that the appellant having appeared on summons the charge should have been read from the summons and not from the report, especially as the offences were not within the proviso to section 187 (3).

Now, the Police Magistrate did read and explain to the accused the statement of the offences as contained in the summons, though he read it not from the summons but from the report, where it appeared in the same words. This is a substantial compliance with the provisions of section 187, and the course adopted was not attended with the least possibility of prejudice to the accused; what he heard from the Police Magistrate was exactly what appeared in the summons he had received and no doubt read and came to Court to answer.

It remains to be considered whether the conviction is bad or whether this slight irregularity is one within the provision of section 425 of the Criminal Procedure Code. In my opinion it does not vitiate the conviction; the same view was taken by Wood Renton C.J. in the case of *Boulton v. Sanmugam*, [1] and I do not think that this view is in conflict with the principle underlying the decision of the Full Court in *Ebert v. Perera*.[2]

I therefore dismiss the appeal.

*Appeal dismissed.*

[1] *(1915) 3 Bal. Notes of Cases 46.*

[2] *(1922) 23 N. L. R. 362.*