

1933

Present : Maartensz A.J.

BANDA v. GOMIS APPU.

156—P. C. Nuwara Eliya, 6,253.

Fiscal's officer—Executing warrant of arrest—Warrant not in terms of form No. 60—Defect in warrant no defence to obstruction.

A warrant for the arrest of a judgment-debtor is not illegal merely because it does not follow exactly the terms of the form provided in the schedule to the Civil Procedure Code, so long as it embodies the necessary averments. A defect in the warrant is no defence to a charge of obstruction unless the obstruction followed an offer to pay the amount and the Fiscal's officer was, owing to the defect in the warrant, unable to state the amount.

A PPEAL from a conviction by the Police Magistrate of Nuwara Eliya.

H. V. Perera, for accused-appellant.

L. A. Rajapakse (with him *J. R. Jayewardena*), for complainant respondent.

Cur. adv. vult.

August 31, 1933. MAARTENSZ A.J.—

The first accused appellant in this case appeals from a conviction under section 183 of the Penal Code for having obstructed a Fiscal's officer named D. R. P. Banda in the discharge of his public duties.

The officer was entrusted with the execution of a warrant of arrest issued by the District Court of Colombo in case No. 31,781 against one Piyadasa, who was, at the time the offence was committed, an employee of the first accused.

The case for the prosecution, shortly stated, was that the appellant intervened when Piyadasa, was arrested, threatened and pushed the Fiscal's officer Banda, and would not allow him to remove his prisoner.

The learned Magistrate has held on the evidence that there could be no doubt that the first accused did obstruct the peons when they attempted to remove Piyadasa. But he has not stated the facts on which he came to that conclusion, and it was urged in appeal that the evidence, except D. R. P. Banda's evidence that the first accused pushed him, did not establish more than that there was a verbal objection by the first accused to the removal of Piyadasa.

As regards Banda's evidence that the first accused pushed him, it was pointed out that the Magistrate relied mainly on the evidence of Constable Marikar who had not come on the scene when the first accused is alleged to have pushed Banda.

I have read the evidence and judgment carefully and I am of opinion that the Magistrate accepted Banda's evidence that the first accused pushed him because he made a complaint to that effect to Constable Marikar as soon as he arrived.

I am therefore of opinion that this is not a case in which I can interfere with the finding of fact of the Magistrate.

It was, however, contended that the appellant could not be convicted of obstruction as the warrant of arrest sought to be executed was not in the form No. 60 entitled "Form of warrant for arrest of a judgment debtor" in the second schedule to the Code, and particularly because it did not specify the amount due from Piyadasa on account of costs and interest.

Now some sections of the Code, as for example sections 320 and 323, which provide for the issue of writs to execute decrees for the delivery of movable property or for the possession of immovable property respectively, require that the process be, in the prescribed form, B 4, but neither section 298 of the Code which provides for the issue of a warrant of arrest nor section 305 to which form 60 refers requires that the warrant of arrest should be in form 60.

Form 60 is therefore only a model, and a warrant of arrest is not illegal merely because it does not exactly follow the terms of the form, so long as it embodies the necessary averments.

Section 305 enacts that—

"Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with the execution to bring him before the court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable be sooner paid.

“Upon the judgment-debtor being brought before the court under such warrant of arrest, if he pays the amount of the decree and the costs of arrest into court, or if he gives security for the payment of the same to the satisfaction of the judgment-creditor, or if he satisfies the court as is next hereinafter provided, either that he has no seizable property or that he is ready and willing to point out all such saleable property as he possesses for sale in satisfaction of the decree against him, then the court shall release him from arrest; otherwise, the court shall commit him to jail in execution of the decree by warrant in the form No. 61 in the second schedule hereto annexed, or to the like effect”.

And the particular objection to the warrant was that it does not specify the interest and costs due from the judgment-debtor on payment of which with the amount decreed the judgment-debtor could claim to be released. Form 60 provides for a statement of the amounts due under each head, namely, principal, interest, costs and execution. The warrant produced in this case clearly does not comply with this provision.

For the respondent it was argued that only the amount due on the decree need be mentioned, as under the second proviso to section 298 the judgment-debtor was entitled to be released on payment of the decree or order in execution of which he was arrested. In support of this argument I was referred to the case of *Ran Manika v. Dingiri Banda*¹ where it was held that an order for the payment of costs is not a decree as defined by the Code except when it was an order for costs only, or an order for costs made upon the dismissal of an action for want of jurisdiction.

I do not think it necessary to decide whether the warrant of arrest should specify the amount due on account of interest and costs as well as the amount due on the decree, or only the amount due on the decree; for the obstruction was a purely wanton act irrespective of any defect in the warrant.

The warrant was *ex facie* authority to the Fiscal's officer to arrest Piyadasa and he was entitled to arrest him, and, in the absence of an offer to pay the amount due, to bring him before the Court which issued the warrant.

The learned Magistrate has held that “no offer of any sort” was made from the time of his (Piyadasa's) arrest till he was sent to Colombo. And the first accused is therefore not entitled in my opinion to plead the defect if any in the warrant of arrest as a defence to the charge of obstruction.

It might have been different if the obstruction followed an offer to pay the amount due and the Fiscal's officer was, owing to the defect in the warrant, unable to say how much should be paid.

I affirm the conviction and dismiss the appeal.

Affirmed.