

1970

*Present : Sirimane, J.***THE QUEEN v. MOHATEEN***S. C. 290/69 (2nd Northern Circuit)—M. C. Mannar, 4937.*

*Criminal Procedure Code—Section 299 (5) (6)—Non-summary inquiry—Deposition of a witness—Certification by Magistrate—Omission of Magistrate to append it—Effect.*

Where the deposition given by a witness at a non-summary inquiry does not have, appended to it, a certificate signed by the Magistrate that the evidence given by the witness before him was read over and admitted by the witness to be correct, as required by section 299 (5) of the Criminal Procedure Code, the omission to comply with section 299 (5), by itself, is no bar to the witness's evidence being led at the trial before the Supreme Court.

ORDER made in the course of a trial before the Supreme Court.

*Kumar Amarasekara*, Crown Counsel, for the prosecution.

*Malcolm Perera*, with *D. P. S. Gunasekara* and *A. Viswanathan* (assigned), for the defence.

August 14, 1970. SIRIMANE, J.—

Mr. Perera for the accused submits firstly, that the evidence already given by Inspector Fernando in this Court should be withdrawn from the jury, on the ground that in the Magistrate's Court proceedings there is no certificate signed by the Magistrate that the evidence given by the Inspector before him was read over and admitted by the witness to be correct as required by Section 299 (5) of the Criminal Procedure Code.

The inspector had given evidence on 29.3.69 when the accused was represented. At the end of the examination-in-chief Mr. Perera had moved for a date to cross-examine the witness after reading through the evidence given that day. This application was granted. On the next date, probably due to an oversight the inspector had not been called, nor does it appear that Mr. Perera for the accused wanted to cross-examine the witness.

Mr. Perera relies on the case of *Rex v. Gee*<sup>1</sup>. The facts in that case are entirely different. The witnesses had been examined by the Chief Constable from a typed written statement, which was checked by the clerk and ultimately signed by the different witnesses. Nothing was taken down by the Magistrate, and the defendants (who were charged with shop-breaking) were apparently not given an opportunity to cross-examine the witnesses either. The provisions of Section 17 of the Indictable Offences Act 1848 (then in force) which contained some provisions similar to those in our code were completely ignored and it was in these circumstances that the Court held that the proceedings were so defective that there was no lawful committal. In the case of *Edgar Parr Pontika Rooney*<sup>2</sup> the proceedings in the lower court had taken place on three days. In the case of evidence of witnesses recorded on one day there was no jurat. The Commissioner did not permit that evidence to be led, but the appellants were convicted on the other evidence. An application to quash the committal was refused. That was at the time when the Magistrate's Court Rules were in operation. Mr. Perera has not been able to point out any provision either in the Indictable Offences Act or the Magistrate's Court Rules similar to Section 299 (6) of our Criminal Procedure Code, which provides that the absence of such a certificate should not bar even the *deposition* being tendered in evidence if there is other evidence to show that the requirements of the section were in fact complied with.

<sup>1</sup> (1936) 2 K. B. D. 442.

<sup>2</sup> (1958) 42 Criminal Appeal Reports 192.

In this instance the *witness himself* has given evidence, and when he was in the witness box it was not suggested that the requirement had not been complied with. However that may be, I am of the view that the omission to comply with Section 299 (5), by itself, is no bar to the witness' evidence being led at the trial before the Supreme Court.

The second submission by Mr. Perera is that the deposition of the Government Analyst (which was read to the jury with his consent) should also be withdrawn. There is no procedural omission in the recording of this evidence in the Magistrate's Court. Mr. Perera's submission that the Analyst's evidence relates to the gun and the cartridge produced by the Inspector, and should therefore be rejected, is in my view quite untenable.

The application is refused.

*Application refused.*

---