

[IN REVISION.]

Present : Lyall Grant J.

KING v. MARTHELIS FERNANDO.

D. C. (Crim.) Puttalam, 472

District Court—Powers of imprisonment—Preventive detention—Indictment with notice—Proof of habitual addiction to crime—Ordinance No. 2 of 1926, s. 9; Ordinance No. 27 of 1928, s. 8.

The sentence of imprisonment which a District Court can impose is restricted by section 9 of Ordinance No. 2 of 1926 to a term of two years.

A sentence of preventive detention cannot be awarded to an accused person, unless he is arraigned on an indictment, and unless there is proof that the accused was leading persistently a dishonest or criminal life or that on any previous conviction he had been found to be a person habitually addicted to crime and sentenced to preventive detention.

A PPLICATION for revision made by the Solicitor-General.

Shockman, C.C., in support.

February 1, 1930. LYALL GRANT J.—

This is a motion in revision on behalf of the Solicitor-General. The accused was indicted for theft of copra and after trial was found guilty and in view of three previous convictions he was sentenced to four years' rigorous imprisonment and to four years' preventive detention.

By section 9 of Ordinance No. 2 of 1926 the powers of the District Court are restricted to passing a maximum sentence of imprisonment of two years. This section supersedes section 7 of the Habitual Criminals Ordinance, No. 12 of 1914, which allowed the District Court to pass a sentence of not exceeding four years. It is clear that in the present case the learned District Judge has exceeded his jurisdiction and the sentence of rigorous imprisonment must be reduced to one of two years.

The provisions as to preventive detention are contained in Ordinance No. 27 of 1928. This Ordinance provides that preventive detention may be imposed upon a person habitually addicted to crime, but it provides for certain procedure to be observed by the Court before a person can be so convicted. A part of the procedure is that an indictment shall be brought against the person and that before he is arraigned on such an indictment he shall receive not less than seven days' notice thereof. No such notice was given in the present case nor was any indictment preferred nor was any evidence led to satisfy another provision of the Ordinance that the accused was

1930
LYALL
GRANT J.

King v.
Marthelis
Fernando

persistently living a dishonest or criminal life or that on any previous conviction he had been found to be a person habitually addicted to crime and sentenced to preventive detention.

It is clear therefore that the sentence of four years' preventive detention is unauthorized. The learned District Judge might, however, have awarded, under section 8 of the Prevention of Crimes Ordinance of 1926, police supervision for a period not exceeding four years. The present case appears to be a suitable one for police supervision and accordingly I alter the sentence of preventive detention to one of four years' police supervision.

Sentence varied.

