

1964

Present : Sri Skanda Rajah, J.

W. G. DAYARATNE, Appellant, and T. A. BOWIE (I. P. Crimes),
Respondent

S. C. 947—M. C. Colombo, 23020/A

Criminal procedure—Accused produced in custody without process—Duty of Magistrate to examine informant and other persons forthwith—Meaning of word “forthwith”—Criminal Procedure Code, ss. 148 (1) (d), 151 (2), 190—Civil Procedure Code, s, 756.

By section 151 (2) of the Criminal Procedure Code :—

“Where proceedings have been instituted under paragraph (d) of section 148 (1), the Magistrate shall forthwith examine on oath the person who has brought the accused before the court and any other person who may be present in court able to speak to the facts of the case.”

Held, that the word “forthwith” means “within a reasonable time” or “as soon as practicable”.

Issadeen v. Inspector of Police, Badulla (65 C. L. W. 18) not followed.

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

Accused-Appellant in person.

D. S. Wijesinghe, Crown Counsel, for the Attorney-General.

January 6, 1964. SRI SKANDA RAJAH, J.—

Learned Crown Counsel brings to my notice that this accused was produced before the Magistrate on the 30th of July, 1962, but the evidence was recorded only on the 11th of October, 1962. He also brings

to my notice that there are some conflicting judgments with regard to the interpretation of the word "forthwith" in section 151 (2) of the Criminal Procedure Code which is as follows :—

"where proceedings have been instituted under paragraph (d) of section 148 (1), the Magistrate shall forthwith examine on oath the person who has brought the accused before the court and any other person who may be present in court able to speak to the facts of the case".

Those judgments are (1) *Issadeen v. Inspector of Police, Badulla*¹, a judgment of Herat, J., (2) Supreme Court Minutes of 5th September, 1963, S. C. No. 351/63 M. C. Nuwara Eliya No. 27415, an unreported judgment of Abeyesundere, J., and (3) Supreme Court Minutes of 23rd November, 1961, S. C. No. 946/61 M. C. Jaffna No. 21325, an unreported judgment of T. S. Fernando, J. In the first two judgments I have referred to, the word "forthwith" has, in effect, been interpreted to mean "at once", that is to say, immediately the accused is produced, whereas in the last as "within a reasonable time".

The word "forthwith" in section 190 of the Criminal Procedure Code was the subject of decision by a Divisional Bench of two Judges, viz., Wijeyewardene, C.J. and Gunasekara, J., in the case of *Banda v. David (S. I. Police)*², where they interpreted the word "forthwith" in that section not to mean "immediately". In doing so they overruled the view taken by Basnayake, J. in the case of *Vethanayagam v. Inspector of Police, Kankasanturai*³ where he construed the word "forthwith" to mean "immediately".

The word "forthwith" in section 756 of the Civil Procedure Code was the subject of decision by the Privy Council in *Sameen v. Abeyewickrema*⁴ and Their Lordships held that it was not right to construe the word "forthwith" as meaning "on the same day".

One can very well conceive of a man being produced in Court within twenty-four hours of his arrest as required by the provisions of the Criminal Procedure Code but there being no witness available at that time, e.g., the only witness being the injured man and he being unconscious in hospital and the person who brought him before the Court not knowing anything about the matter. No useful purpose will be served by examining the latter.

I prefer to interpret the word "forthwith" in section 151 (2) of the Criminal Procedure Code to mean "within a reasonable time" or "as soon as practicable". Therefore, there was no illegality or even irregularity in that the evidence was recorded on a subsequent date.

There is no merit in the appeal on the facts. It is dismissed. The conviction and sentence are affirmed.

Appeal dismissed.

¹ (1963) 65 C. L. W. 18.

² (1949) 50 N. L. R. 375.

³ (1949) 50 N. L. R. 185.

⁴ (1963) 64 N. L. R. 553.