1964 *Present :* **Manicavasagar, J.**

W. P. MENDIS *v.* THE QUEEN

S. C. 331/64—Application for Bail in M. C. Kalawana, 88577

Bail—Courts Ordinance, S. 31—Meaning of words " might properly be tried ".

Section 31 of the Courts Ordinance is as follows :—

" If any prisoner committed for trial before the Supreme Court for any offence shall not be brought to trial at the first criminal sessions after the date of his commitment at which such prisoner might properly be tried (provided that twenty-one days have elapsed between the date of the commitment and the first day of such criminal sessions), the said court or any Judge thereof shall admit him to bail, ... "

Held, that the filing of the indictment and the service of a copy on the prisoner are essential and necessary requirements before the prisoner might *properly* be tried within the meaning of Section 31 of the Courts Ordinance.

APPLICATION for bail under Section 31 of the Courts Ordinance.

George E. Chitty, Q.C., with *K. Jayasekera*, for the applicant.

V. S. A. Pullenayegum, Crown Counsel, with *Ranjit Abeysuriya*, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 4, 1964. MANICAVASAGAR, J.—

This is an application by W. P. Mendis—who along with seven others was committed for trial to this Court by the Ratnapura Magistrate on charges of conspiracy and murder—that he be released on bail.

The relevant facts are not in dispute.

The committal order of the Magistrate was made on 6. 6. 64 ; the Attorney-General has still not forwarded his indictment ; the first sessions after committal of the Western Circuit in which these offences are triable began on 10. 7. 64 and ended on 8. 10. 64.

Section 31 of the Courts Ordinance under which this application is made entitles the prisoner to an order of release on bail if he is not brought to trial at the first criminal sessions after his committal at which he might *properly* be tried, provided certain other requirements stated in the section are complied with.

What do the words " might properly be tried " mean ? Does it refer, as I have hitherto held, solely to jurisdiction, that is whether a prisoner could be tried at a particular session of this Court held in a circuit ; or does it mean in addition, whether the case is ripe for trial, that is to say, all requirements of the law preceding the trial have been fulfilled.

Crown Counsel submits that the words " might properly be tried " mean appropriately tried, or is a trial reasonably feasible ; he contends, rightly, that it will not be possible to have a trial unless there is an indictment, and the prisoner has been served with a copy at least 14 days before trial.

Mr. Chitty for the prisoner submits that the indictment, and the service of it are irrelevant considerations in the interpretation of Section 31, though the delay in regard to either of these may be relevant to the question of good cause. To illustrate his submission, he said, what if the Crown Counsel puts away the record, and forgets to attend to it : is the prisoner to be on remand for months, and may be for years : if such a situation arises, and I think it unlikely, there are ways and means, both legal and otherwise, by which the officer can be compelled to perform his duties. The illustration is of no assistance to the question which I have to decide. Mr. Chitty cited the opinion of Nihill, J., in the *de Mel case*[1] where he, on that occasion pleading on behalf of the Crown, unsuccessfully contended that the effect of the amendment to the Criminal Procedure Code in 1938 was to widen the effect of Section 31 of the Courts Ordinance, and time does not begin to run in a prisoner's favour until he had been served with a copy of the indictment and two weeks had elapsed thereafter. It is relevant to keep in mind that prior to the amendment of 1938 the committal order was made after the indictment had been filed by the Attorney-General ; the procedure after the amendment is for the Magistrate to commit the prisoner if he found there was evidence sufficient to put him on trial, and then forward a copy of the record of the proceedings to the Attorney-General to enable him to forward an indictment or to take any other course which the law permitted. Nihill, J., in allowing the application for bail said :

> " Section 31 contains an important principle safe-guarding the liberty of the subject who has a right to be brought to trial with reasonable dispatch. It may be that the Section is now more favourable to a prisoner in its application than formerly but if that was not the intention of the Legislature the Section could have been amended. "

The learned judge was dealing with a case where an indictment had in fact been filed by the Attorney-General, and though his opinion which I have quoted does at first sight appear to support the prisoner it is quite clear from what the learned judge has said in his judgment that

[1] *(1940) 47 N. L. R. 136.*

he considered the filing of an indictment as an essential step before a prisoner might properly be tried ; for he proceeded as follows :

> " Neither do I consider that the Section in its application to the new procedure can be said to place a serious impediment in the path of the Crown. A period of three weeks is provided between the date of committal and the first day of the sessions. True if further evidence is required this may be too short a period in which to get it and to prepare and serve the indictment but cases can and are added to the calendar after a sessions has begun. "

The decisions of this Court in applications under Section 31 were all instances where the indictment had been filed, and a copy served on the prisoner ; the issue discussed in the present matter was not specifically raised in those cases, because it is so patently obvious that a prisoner could not *properly* be tried without an indictment. My attention has been drawn to the following passage in the judgment of Sansoni, J. in the case of *N. Sunderam et al.* [1]

> " once the indictment had been . . . . served there was no further legal impediment in the way of the Crown in bringing this case to trial. "

I am of the view that in similar applications which I have decided, I have given a restricted meaning to the words " might properly be tried "; I consider the filing of the indictment, and the service of a copy on the prisoner are essential and necessary requirements before the prisoner might *properly* be tried.

The application is refused.

Application refused.

[1] *(1955) 60 N. L. R. 281, at page 282.*