

1960

Present : Sinnetamby, J.

**KRISHNAPILLAI, Appellant, and INSPECTOR OF POLICE, CRIMES,
Respondent.**

S. C. 372—M. C. Jaffna, 16174

*Criminal procedure—Accused produced in custody—Duty of Magistrate to record
evidence before framing charge—Summons—Mode of service.*

Where an accused person appears otherwise than on summons, the Magistrate should record evidence before charging the accused. The Magistrate should not adopt the doubtful expedient of there and then writing out a summons and serving it on the accused.

APPPEAL from a judgment of the Magistrate's Court, Jaffna.

Colvin R. de Silva, with M. D. Jesuratnam, for accused-appellant.

S. Sivarasa, Crown Counsel, for Attorney-General.

February 24, 1960. SINNETAMBY, J.—

In this case the accused was produced on the 15th February 1959 by the Inspector of Police, Jaffna and bailed out by Court to appear on the 17th February. He appeared on the 17th February and on that day the plaint was filed. We then see an entry in the journal to the effect that summons was served. No summons was issued earlier and one can only assume that when the plaint was filed, the summons was written out and immediately served upon the accused. That this was so would appear from the summons which forms part of the record and which is dated 17th February, 1959. I do not think the Magistrate can overcome the effect of the judgment of this Court reported in 59 *N. L. R. 217* by adopting the doubtful expedient of there and then writing out a summons and serving it on the accused. The accused did appear otherwise than on summons and service on him subsequently would not cure the defect. The Magistrate should have recorded evidence before charging the accused and this he has failed to do.

The proceedings are therefore irregular and illegal. They are accordingly set aside and the case sent back for retrial in due course, according to law.

Case sent back for retrial.

