

[ASSIZE COURT.]

1947

Present : Dias J.

THE KING *v.* STEPHEN.

S. C. 25—*M. C. Gampaha, 35,199.*

Criminal Procedure Code—Accused in prison clothes—Prejudice—Reasonable cause—Section 289 (1).

Where an accused who was undergoing a sentence of imprisonment was produced in Court, for his trial, in prison clothes—

Held, that he was likely to be prejudiced in his trial and that this was reasonable cause within the meaning of section 289 (1) of the Criminal Procedure Code for granting a postponement of the trial.

CASE listed for trial before a Judge and Jury.

Ananda Pereira, C.C. (with him *Premaratne, C.C.*), for the Crown.

Nihal Gunasekera (with him *E. A. G. de Silva* and *Titus Goonetilleke*), for the accused.

July 24, 1947. DIAS J.—

Mr. Nihal Gunasekera on behalf of the accused applies for a postponement of this trial, on the ground that his client has been produced in prison clothes. The question I have to decide is whether under section 289 (1) of the Criminal Procedure Code, there is "reasonable cause" for granting Mr. Nihal Gunasekere's application.

¹ (1931) 33 N. L. R. 83.

The Fiscal's officer in Court informs me that this prisoner does not come from Fiscal's custody as he is a convict undergoing a sentence of imprisonment in jail, and that, therefore the accused is not in the Fiscal's custody.

I find that in rule No. 223 made under the Prisons Ordinance, Chapter 44, appearing in Volume 1, pages 408 to 409 of the Subsidiary Legislation of Ceylon, this case has been provided for. The relevant portion of the rule reads as follows : " and provided further that all convicted prisoners when produced in a court of law shall be dressed in civil clothes of a type appropriate to the clothing scale under which they are classified in prison ". Therefore, there has been a breach of this rule and I agree with learned Counsel for the accused that prejudice is likely to be caused to his client by the accused appearing in the dock in clothes bearing the broad arrow mark. Therefore, I think, there is reasonable cause within the meaning of section 289 (1) to grant the postponement asked for and it is hereby allowed.

Let a letter forthwith be sent to the Commissioner of Prisons and Probation Services to explain why there has been a breach of this rule and why the Government and the tax-payer has to pay for the unnecessary expenses of this abortive trial. Had I power under section 289 to award costs I would have directed the defaulting prison officer personally to pay costs. Let the explanation when it is received be submitted to me in order to see what further action is necessary.

Postponement granted.

