1929

Present : Akbar J.

INSPECTOR OF POLICE, AVISSAWELLA *v.* FERNANDO.

[IN REVISION.]

P. C. Avissawella, 18,559.

Order of discharge—Proper remedy of complainant—Appeal—Application for revision—Criminal Procedure Code, s. 325.

Where an accused person is warned and discharged, the remedy open to the complainant is by way of appeal.

Where the proper remedy is by way of appeal, an application for revision will not be entertained save in exceptional circumstances.

APPLICATION by the Solicitor-General to revise an order of the Police Magistrate of Avissawella.

Schokman, C.C., in support.

Rajapakse, contra.

May 13, 1929. AKBAR J.—

This is an application by the Solicitor-General to revise the sentence passed on the accused. It is true that on the authority of a decision of Hutchinson C.J., when the Attorney-General asked for an enhancement of the punishment he stated that the proper procedure was to move in revision, but these proceedings here do not show that this is a similar case to the one considered by Hutchinson C.J. On February 4 the accused pleaded guilty and then the

Magistrate records as follows:—" From the statement of W. D. Peiris, Clerk of D. J. R. Gunawardene, a witness for the prosecution, it appears that he had taken the rubber just a little while before. This appears to be purely technical. I warn and discharge. "

Mr. Rajapakse, for the accused, has objected to my dealing with this case in revision on the ground that the Solicitor-General should have appealed from this order, and he has quoted several authorities in his favour. It was held in the case of *Suppiah v. Loku Banda*[1] and *Schokman v. John*[2] that where a Police Magistrate refers the complainant to his civil remedy and discharges the accused, the complainant's remedy is to appeal under section 338 of the Criminal Procedure Code as it is a final order, and that it is not necessary to get the sanction of the Attorney-General because it is not an acquittal. In the case of *Goonewardena v. Orr*[3] it was held that where the proper remedy is by way of appeal the Supreme Court will rarely interfere by way of revision. Finally Mr. Rajapakse quoted a judgment of my brother Lyall Grant J. in P. C. Dandegamuwa (In Revision) No. 670,[4] in which a similar point is discussed. There too it was an order under section 325 of the Criminal Procedure Code, and the Supreme Court refused the application by way of revision because it held that the Attorney-General should have appealed under section 338 of the Criminal Procedure Code. I see no reason why I should decline to follow this judgment because the Police Magistrate's order, as he did not record a verdict of guilty, clearly is one under section 325 of the Criminal Procedure Code. This case is on all fours with the case I last quoted.

It is objected by Mr. Schokman, Crown Counsel, that under section 338 the aggrieved public officer will not have the 28 days which are allowed in the case of an appeal from an acquittal and that this is inconvenient to the public service. In deciding questions of law I am not concerned with the convenience of or the inconvenience to public officers. My duty is to interpret the law as it stands, and I see no reason why I should reserve the point for decision by a Bench of two or more Judges. I see no reason why I should do so, because I quite agree with my brother Lyall Grant J.

I would therefore refuse the application.

Refused.

[1] *C. W. R. 127.*

[2] *C. W. R. 93.*

[3] *2 A. C. R. 172.*

[4] *S. C. M., October 31, 1928.*

1929.

Present : Lyall Grant and Akbar JJ.

[IN REVISION.]

D. C. Chilaw, 242.

Lunacy—Order for maintenance of lunatic—Powers of the District Judge—Ordinance No. 1 of 1873, s. 14.

Where a person is adjudged a lunatic the District Court has no power to order any other person to pay for the maintenance of the lunatic.

APPLICATION to revise an order of the District Judge of Chilaw.

Samarawickreme, C.C., in support.

March 6, 1929. LYALL GRANT J.—

On September 17, 1928, one Punchi Nona was, by the District Judge of Chilaw, remanded to the Lunatic Asylum, Angoda, pending notification of the pleasure of His Excellency the Governor. On that date the learned District Judge made order directing the husband of the lunatic to pay a sum of Rs. 10 per mensem for her maintenance.

It appears this order was originally made with the consent of the husband but that subsequently the District Judge had refused to modify or rescind the order. These facts are brought to our notice by Crown Counsel on behalf of the Government. Crown Counsel has referred us to section 14 of the Lunacy Ordinance, No. 1 of 1873, which empowers a District Court to inquire into circumstances and property of a person to be kept in custody as a person of unsound mind and to direct the payment of so much of the person's property (if that property is sufficient for his maintenance) as may be necessary to pay for his maintenance. It is, however, represented to us that the section gives no power to the Court to order another person to pay for the maintenance of a lunatic, and accordingly we are requested by the Crown to rescind the order made by the learned District Judge. I think there is no doubt that the order is wrong, that the District Judge exceeded his power, and that the order must be rescinded. The application is allowed.

AKBAR J.—I agree.

Application allowed.