

1945

Present: Jayetileke J.

ABEYESEKERE, Appellant, and DE SILVA (INSPECTOR OF POLICE), Respondent.

605—*M. C. Colombo, 774.*

Criminal Procedure—Peace officer's right to demand name and address in non-cognizable cases—Appearance of accused on summons—Particulars of offence read from plaint—Not a fatal irregularity—Criminal Procedure Code, ss. 33, 187—Police Ordinance, s. 57.

A peace officer can, under section 33 of the Criminal Procedure Code and section 57 of the Police Ordinance, demand from a person who is accused of committing a non-cognizable offence in his presence his name and address.

Where the accused appeared on summons and the Magistrate, instead of explaining the charge to him from the summons itself, read to him the particulars contained in the plaint—

Held, that, though the provisions of section 187 of the Criminal Procedure Code were not complied with, the mistake did not vitiate the proceedings, as the accused did not suffer any prejudice.

A PPEAL against a conviction by the Magistrate of Colombo.

L. A. Rajapakse, K.C. (with him *K. C. Nadarajah* and *S. W. Walpita*), for the accused, appellant.

G. P. A. Silva, C.C., for the Crown.

Cur. adv. vult.

September 5, 1945. JAYETILEKE J.—

The accused in this case was charged in the Magistrate's Court of Colombo with having caused hurt to Police Constable Ranasinghe in the execution of his duty as a public servant, an offence punishable under section 323 of the Penal Code. He was convicted and sentenced to pay a fine of Rs. 50.

The facts were that on December 21, 1944, at about 4.30 P.M. the complainant was on duty at Armour Street Junction. One Wijesinghe complained to him that a tram car Inspector had abused him and his wife

in filthy language when they were travelling in the tram car. He noted the complaint in his note book, went up to the tram car which was halted there, informed the accused that a complaint had been made against him, and asked him for his name and address. The accused said "You bloody Constable, I am not going to give my address to you", and pushed him by the neck. Two points were raised by Mr. Rajapakse at the argument before me. His first contention was that the complainant had no right to demand from the accused his name and address. The answer to this contention is to be found in the language of section 33 of the Criminal Procedure Code. The section provides that when any person in the presence of a peace officer is accused of committing a non-cognizable offence and refuses on demand of such peace officer to give his name and residence he may be arrested by such peace officer. The section presupposes that a peace officer has a right to demand from a person who is accused of committing a non-cognizable offence in his presence, his name and address. One of the duties of a Police Officer under section 57 of the Police Ordinance is to detect and bring offenders to justice. This duty a Police Officer will not be able to perform, unless he is given the right to demand from an offender his name and address. The complainant was, in my opinion, well within his rights in demanding from the accused his name and address.

Mr. Rajapakse's next argument was that the Magistrate had failed to comply with the provisions of section 187 of the Criminal Procedure Code and, therefore, the conviction cannot stand. He urged that as the accused appeared on summons it was the duty of the Magistrate to read to the accused a statement of the particulars of the offence contained in the summons. The Magistrate had, instead, read to the accused the particulars contained in the plaint. The question is whether this mistake vitiates the proceedings in this case. The identical question seems to have been raised in the case of *Boulton v. Sanmugam*¹. In the course of his judgment Wood Renton C.J. said—

"The record, however, shows that the accused appeared in the Police Court in answer to a summons, and, therefore, under section 187 (2) of the Criminal Procedure Code, it was competent to the Police Magistrate to explain the nature of the charge to him from the summons itself. This the Police Magistrate did not do. He explained the charge from the plaint, and so an irregularity has been committed. But the plaint and the summons are equally precise as to the particulars of the alleged offence, and in the absence of any authority constraining me to do so, I am not prepared to hold that this irregularity is fatal to the conviction. It is clear from the evidence that the accused, who was defended by a Proctor, was fully aware of what the charge against him was, and there is nothing to show that he has suffered any prejudice from the fact that it was explained to him from the plaint instead of from the summons".

These observations seem to me to apply to this case. I would, accordingly, dismiss the appeal.

Appeal dismissed.

¹ 3 *Balasingham's Note of Cases* 46.