

[IN REVISION.]

1935

Present: Maartensz J.

NAIR *v.* SILVA.

P. C. Colombo, 19,272 and 27,467.

*Criminal Procedure—Order to enter into bond to abstain from liquor—Disorderly behaviour on public road—Criminal Procedure Code, s. 326 (2) (b).*

An accused cannot be ordered to enter into a bond to abstain from liquor under section 326 (2) (b) of the Criminal Procedure Code unless the accused is found guilty of the offence with which he was charged.

**A** PPLICATION for revision by the Solicitor-General.

M. F. S. Pulle, C.C., in support.

March 1, 1935. MAARTENSZ J.—

This is an application by the Solicitor-General for the revision of the orders made in these proceedings. The first order is one purporting to be made under sub-section (2) (a) and (b) of section 326 by which the Police Magistrate required the accused to enter into a bond to abstain from liquor for a period of one year, or in default to rigorous imprisonment for three months. I am not sure whether the sentence in default was to be served if the bond was not executed or in case the accused committed a breach of the bond. This order cannot be supported as it does not appear from the proceedings either that the accused pleaded guilty to or that he was found guilty after trial of the charge made against him of disorderly behaviour on the public road in breach of section 60 (2) of Ordinance No. 16 of 1865, as amended by Ordinance No. 17 of 1912. The accused did not enter into a bond in terms of this order but he appears to have entered into a bond to keep the peace and to be of good behaviour. I say 'appears' because it is not clear that the accused has executed the bond. There is a thumb impresssion on the bond, that thumb impression is not on the face of the bond identified as that of the accused. The accused was convicted on February 12 of a similar offence committed on February 4 and was on conviction sentenced to one month's rigorous imprisonment. On the same day he was called upon to show cause why he should not be sentenced to imprisonment for a breach of the bond which I have referred to. He said he had no cause to show except that he was insane, and was sentenced to three months' rigorous imprisonment. I have already pointed out that the order directing the accused to enter into a bond cannot be sustained and it follows that the sentence of three months' rigorous imprisonment for a breach of the bond must also be set aside. I direct accordingly.

I would like to point out that the accused should have been called upon to show cause why he should not be punished for a breach of the bond in the proceedings in which the order was made, namely, case No. 19,272. It was quite irregular to make the order in case No. 27,467 in which the accused was convicted of disorderly behaviour on February 12.

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In case No. 27,467 it would appear that the Magistrate sentenced the accused to one month's rigorous imprisonment because of the previous conviction. As I have held that the previous conviction cannot be sustained I think the sentence should be reduced to the period the accused has already served and that he should be discharged at once.

Let the Superintendent of Prisons, Welikada, be informed to-day of this order by telephone.

*Set aside.*

