53

IN THE FIJI COURT OF APPEAL

Criminal Appeal No. 72 of 1986

Between:

DIRECTOR OF PUBLIC PROSECUTIONS — Appellant

- and -

VIRENDRA SINGH — Respondent

Mr.A.K. Sharma for the Appellant
Mr.H. Lateef for the Respondent

Date of Hearing: 23rd February, 1987
Delivery of Judgment: 13th March, 1987

JUDGMENT OF THE COURT

Speight, V.P.

This is a second appeal pursuant to Section 22(1) of the Court of Appeal Act (Cap 12). It is against a judgment of Govind J, in the Supreme Court wherein he allowed an appeal from a decision of Mr. J.L. Cameron, Resident Magistrate delivered in the Magistrate's Court at Suva on 2nd December, 1985.

Accordingly the matter which is brought on appeal concerns a point of law only - namely whether His Lordship, in reversing the learned Magistrate's decision, correctly construed a certain provision of Section 21 of the Criminal Procedure Code (Cap 21) concerning the power of a police officer to arrest without warrant.

There were two charges before the Magistrate's Court:-

1. Disorderly Behaviour - Contrary to Section 4 of the Minor Dffences Act, Cap 18.

Particulars of Offence (b)

VIRENDRA SINGH s/o DALIPA, on the 24th day of August, 1984 at Suva in the Central Division, behaved in a disorderly manner in a public place namely Rodwell Road.

SECOND COUNT

2. Resisting Arrest: Contrary to Section 247(b) of the Penal Code Cap 17.

Particulars of Offence

VIRENDRA SINGH s/o DALIPA, on the 24th day of August, 1984 at Suva in the Central Oivision, resisted Police Constable number 1033 Deo Narayan in the due execution of his duty.

The Magistrate's Court record of the evidence discloses that on the day in question a police constable attached to the traffic section was on duty at the City Bus Station and he observed a traffic jam of some 10 to 15 buses and he found that a bus of which appellant was the driver was obstructing the traffic behind. He approached the bus and from the outside instructed the driver to move it. There was tooting from the horns of other buses which were being obstructed. Apparently the appellant neglected to move for when the constable returned a few minutes later the traffic jam was continuing and more buses were backing up behind.

Passengers were embarking on appellant's bus. The constable stepped on board and again asked the driver to move. The driver stood up and shouted loudly to the constable "Fuck off from my bus" and endeavoured to push him off the bus. The constable then put his hand on the driver and told him he was being arrested for disorderly behaviour. The driver's unorthodox conduct went further for when he could not get the constable out, he closed the hydraulic doors and drove off on his scheduled run, carrying the captive constable with him.

However, for present purposes we are concerned only with the behaviour up to the moment of purported arrest.

The learned Magistrate first concluded that the constable became a trespasser on the bus and the driver was entitled to use force to evict him and on this basis and on the basis that the language used was not sufficient to annoy or insult acquitted the driver of disorderly behaviour.

We digress at this stage to say we have reservations about the correctness of that decision. Section 4 of the Minor Offences Act, Cap 18 makes it an offence to behave in a disorderly manner in a public place an offence. A public place includes "any place to which the public are permitted to have access whether on payment or otherwise", and would prima facie appear to cover a public service vehicle embarking paying passengers. A constable has as much right as any one else to board, and to approach the driver.

There have been a number of cases, the most helpful of local relevance being a decision of the N.Z. Court of Appeal, concerning "disorderly behaviour". In Melser v. Police 1962 (NZLR) 437 all three members of that Court agreed that such conduct did not have to be such as was calculated to provoke a breach of the peace. The following comments were made:-

> "To justify conviction on a charge of disorderly behaviour, the conduct must have caused or been likely to cause disturbance or annoyance to others present (per North P).
>
> It must tend to annoy or insult such persons as are faced with it sufficiently deeply or seriously to warrant the interference of the criminal law (per Turner J).
>
> There must be conduct which not only can fairly be characterised as disorderly but also is likely to cause a disturbance or to annoy others considerably (per McCarthy J.)

At p 443 North P. said:

> Section 3D forms part of the Police Offences Act 1927 and the collation of the words in that section show that they are directed to conduct which at least is likely to cause disturbance or annoyance to others."

Now, with respect, we believe that the learned Magistrate, and subsequently the learned Appellate Judge paid overmuch attention to the widespread acceptance today of the obscene phrase quoted earlier. Indeed the Judge said "the alleged disorderliness consisted of using the words 'Fuck Off'". Little note appears to have been taken of the fact the bus's obstruction had apparently been annoying other bus drivers, that its driver had refused to move it when asked by a traffic constable, that the resulting blockage would inconvenience and annoy many persons in the area, and law abiding citizens on the bus could well have been disturbed at the sight of their driver having a fracas with a policeman, accompanying it by offensive language - and doubtless causing delay to their orderly departure. These matters, however, will be referred to at a more relevant point later in this judgment. For present purposes we are concerned only with the second point which arose - namely, accepting that the Magistrate had held that the Appellant had not in fact committed the offence, whether the constable was entitled to arrest in circumstances - for that was held by the Appellate Judge to govern the question in the other charge of resisting a constable in the due execution of his duty.

The Magistrate held that the constable was so acting. The Appellate Judge held that because there had been an acquittal on the disorderly conduct charge (a decision he agreed with) there had been no offence and as a consequence he held that the constable did not have the power of arrest claimed on his behalf and accordingly was not acting in the due execution of his duty when resisted.

We turn to Section 21 of the Criminal Procedure Code which defines the power of arrest without warrant.

As Mr Sharma said in the course of his submissions there are 10 situations defining circumstances where the power may be exercised. For the moment we set out the first two:-

> "(a) any person whom he suspects upon reasonable grounds of having committed a cognizable offence;
>
> (b) any person who commits any offence in his presence."

Five further subsections i.e. (d), (e), (f), (g), & (j) also specify that the officer should have reasonable grounds to suspect that a certain factual situation exists,

one further subsection i.e. (i) refers to a released convict committing an offence or a breach of police supervision.

one subsection (c) refers to a person obstructing a police officer, or escaping or attempting to escape from lawful custody.

another subsection (h) refers to a person having in his possession any implement of house-breaking.

Does the omission of the reference to 'reasonable grounds to suspect' in (b), (c), (i) and (h) show an intention on the part of the Legislature that an arrest by a P.C. in the mistaken bona fide belief that one of those fact situations existed should not be protected as a lawful arrest?

Mr. Sharma drew attention to Section 5(1)(e) of the Constitution which makes it clear that it is not unconstitutional for provision to be made to permit arrest on suspicion. Nothing to the contrary has been suggested.

The question is whether, in view of the lack of uniformity in the use of the "reasonable suspicion" phraseology the power can be exercised only in circumstances provided in subsections lacking such words if the offence has not only been suspected but also in fact been committed.

We anticipate any discussion of authorities and an examination of the Appellate Judgment by posing the question: How can anyone say for certain that an offence has been committed unless and until a Court (or a series of Courts) has finally entered a conviction? Up to that time an offence is merely alleged - the suspect is deemed to be innocent - and his status is merely that of a suspected offender. No matter how clear the circumstances may appear there can be no more than a suspicion that an offence has been committed.

Submissions were made in the Supreme Court and before us concerning the differential wording of subsections 21(a) and 21(b). We think the difference can be explained in the use of the words "in the presence" in subsection (b). Our view, which we perceive to be supported by authority is that the distinction arises because when proceeding under sub-section (b) the constable in making up his mind will be sure of what he is presently observing, but under subsection (a) must consider whether he has good ground for accepting a hearsay account of what has previously occurred beyond of his personal knowledge. Reference

will be made at a later stage in this judgment to the case of Stevenson v. Aubrook 1941 2 All ER 476 which illustrates this distinction.

In our view the difficulties in this area which haveemerged in other jurisdictions have been eliminated in the Fiji legislation - just as they have now been in for example in New Zealand by Statute - Section 21 of the Crimes Act and in Tasmania by Section 55 of the Police Offences Act; and similarly in other States. In the United Kingdom the situation was resolved for Courts within that jurisdiction by two House of Lords decisions: Barnard v. Gorman 1941 AC 378 and Wills v. Bowley 75 Cr. App. R. 164, 1982 2 All ER 654. It is the applicability of the later decision in Fiji which is at the heart of the matter.

In our view the reason for the differing wording of subsections (a) and (b) in Section 21 is related to the different position which arises when, on the one hand a constable sees events occurring and can thus be confident of his facts, as against hearsay information from others, whose reliability may be uncertain. It does not in our view relate to uncertainty as to whether ascertained conduct amounts to a defined crime. The difference in the power given in Section 21(a) and 21(b) seems to us to remedy the often expressed problem of balancing the interests of the individual who should be protected from illegal arrest against the interests of the public in the maintenance of order and safety. That has been achieved by providing for certainty in the ascertainment of facts rather than opinion as to their legal consequences.

In considering whether a statute authorises a power of arrest in cases of honest belief on reasonable grounds it has been sometimes held that this inference of legislative intentions can more easily be taken - or

as Halsbury suggests (4th Edition, Volume 11, para 116) can only be taken - in cases where the offence is of a dangerous nature or for some other reason calls for urgent action. Trebeck v. Croudace 1918, 1KB, 158 particularly at 165.

This may well be a helpful test in cases where the power is given only in respect of one specified offence but where the power to arrest covers a wide variety of offences of differing nature and gravity (as does the Minor Offences Act, Cap 18) the extent of the power of arrest must surely be the same whatever the particular offence may be. Doubtless a constable in exercising his discretion whether to arrest or not would take into account matters of urgency and public safety.

The Court in Ledwith v. Roberts 1937 1 KB 232, 1936 3 All ER 570 accepted the decision of two of the three learned Lords Justice in Trebeck v. Croudace as establishing that the power of arrest without warrant with honest belief on reasonable grounds arose only in cases requiring prompt action - Greene L.J at 257 (583) and Scott L.J. at 270 (593). That conclusion however was obiter - it was not essential to the ratio decidendi. In that case the constables had no doubt as to what they had observed - two youths acting suspiciously in proximity of the coin box of a public telephone. But the mistake which they made, which lead to the arrest being unlawful, was their belief that this conduct amounted to a defined offence. The constables believed that "being a suspected person" was a status derived from the conduct under observation whereas the long history of the Vagrancy Act requires it to be a pre-existing reputation. The two youths under observation had no such history.

Hence the constables could not in any event have entertained a belief on reasonable grounds.

The difficulty which can arise was illustrated in Stevenson v. Aubrook 1941 2 All ER 476 where a constable, being understandably mislead by a complaint inaccurately relayed to the police, chased and arrested a man for indecent exposure which had not in fact occurred. In a cri de coeur Hallet J. said at p. 481 - 482 of that case:-

> "I am quite satisfied here, upon the evidence, that the defendants did honestly and on reasonable grounds believe that the plaintiff had committed the offence of wilfully exposing his person with intent to insult any female. However, the difficulty with which I am faced is that, as it seems to me, in Ledwith v. Roberts (2) the majority of the Court of Appeal have decided the question for me, and I am bound, sitting here as a judge of first instance loyally to follow any guidance which has been afforded to me by that court.
>
> So far as the judgment of Greer, L.J., in Ledwith v. Roberts (2) is concerned, there is no difficulty at all. Scott, L.J., at p. 262, has provided a list of offences included in the Vagrancy Act, 1824, s. 4. No. 13 as follows:
>
> ... being a suspected person or reputed thief and frequenting any place of public resort with intent to commit felony.
>
> The decision of Greer, L.J., as I understand it, was based upon the fact that it had not been proved, and had not, I think, even been alleged, that the respondents there were suspected persons or reputed thieves within the meaning of the relevant part of sect. 4. That, of course, has nothing to do with this case which I am now considering.
>
> I am not going to refer to the other facts in Ledwith v. Roberts (2) because with those also I am not concerned, nor am I going to refer to the historical review of the vagrancy legislation which Scott, L.J., provided, or to the desirability

of its reform. However, when I come to the judgment of Greene, L.J., I find this passage at p. 256:

> There does not appear to me to be any such reason of emergency in the case of some, at any rate, of the offences mentioned in the Vagrancy Act, 1824, s. 4; and I do not think it would be permissible to construe sect. 6 as justifying an arrest on honest, suspicion in the case of some of those offences and not in others - it must be all or none.

Then, after reading a passage from the judgement of Bankes, L.J., in Trebeck v. Croudace (9) Greene, L.J., said, at p. 257:

> I cannot myself read this decision as extending to cases other than those where the nature of the suspected offence requires prompt action.

I want to say quite plainly, with all possible respect to the court above that, if I were asked whether the nature of the suspected offence here required prompt action, I should answer that question without an instant's hesitation in the affirmative. Here the suspected offence is a man riding round on a bicycle indecently exposing his person, and the matter certainly did, in my opinion, require prompt attention. I repeat what I said during the argument - namely, that, looking at this offence as a layman, I should not only say that the police were justified in taking the action they took in view of the information which they had received, but I should go further and say that, in the view of the ordinary man in the street, the police would have been lamentably failing in their duty if they had done anything else. Greene, L.J., has expressed the view, as it seems to me, that, in the case of offences under sect.4, the right to arrest on reasonable suspicion does not arise under sect. 6. I think that he would have gone further, because he doubts whether Trebeck v. Croudace (9) was rightly decided. He does not suggest, however, that it is not binding, and Scott, L.J., I observe, said at p. 270, that the law of this country is as laid down in Trebeck v. Croudace (9) until it is reversed by the House of Lords. Therefore, I am justified, I think, in treating Trebeck v. Croudace(9) as the law. I think that the decision in Ledwith v. Roberts (2) supports that view, and also that in Gorman v. Barnard (II), but it seems to me that I am precluded by the judgments of Greene and Scott L.JJ., which expressly refrain from holding

that the doctrine in Trebeck v. Croudace (9) is applicable where the offence is one under the Vagrancy Act, 1824, s.4, and where the only power to arrest is that derived from sect. 6 of that Act.

For my own part, with all respect to those judges whose views are at least such that I do not feel justified in disregarding them, I feel much more inclined to agree with MacKinnon, L.J., in Gorman v. Barnard (11). I am not talking about the actual decision in that case. I appreciate how Clauson, L.J., distinguishes Trebeck v. Croudace (9), and I say nothing as to what I should have thought if the matter had fallen for decision by me, but, with regard to what MacKinnon, L.J., says generally on the question of Trebeck v. Croudace (9) and Isaacs v. Keech (10), I think that, if I were unfettered by authority, I should have taken the same view as he did. It seems to me, however, that I am precluded by authority from deciding this case in favour of the defendants.

Reverting to what I said at the beginning of this judgment, it seems to me that, if the law is as I have just said I think it is having regard to the decision in Ledwith v. Roberts (2), the police are very greatly fettered in performing their duty of protecting the public, and I think it must come as a shock to a layman to learn that, if the police receive, and believe, such a complaint as was made by Mrs. Bushby in this case, they can take no action other than applying for a warrant or a summons against a man whose identity they are in most cases probably quite unable to establish."

The nature of this dilemma in cases (such as the present) where offence of a wide variety fall within the purported arrest power was neatly summarised in the Editorial Note to the case:-

"EDITORIAL NOTE. This case deals with the conflict between two fundamental principles - namely, (i) the liberty of the subject, and (ii) the protection of the public. The general rule is that, where a statute confers a power of arrest and does not expressly give the right to arrest on reasonable and probable cause for suspicion, no such right of arrest can be inferred unless there is an immediate need of arrest so as to prevent injury to the public. When the offence complained of is that of indecent exposure, the necessity of

> protecting the public would appear to be the overriding consideration, and HALLETT, J,, would have so held but for the decision of the Court of Appeal in Ledwith v. Roberts (2). In that case, which dealt with another offence under the Vagrancy Act, 1824, s.4, it was held that sect. 6 conferred no right of arrest on honest suspicion in respect of such an offence. It was also considered by Greene, L.J., that the provisions of sect. 4 were not severable so as to give a right of arrest on honest suspicion in some cases and not in others. The questions involved in the present case are of unusual interest and importance, and it is to be hoped that they will be considered by a higher tribunal."

Now it will be observed that Hallett J., was dealing with the matter at a date when the most recent authority was that of the Court of Appeal in Gorman v. Barnard , 1940 3 All ER 453 and he strongly favoured the dissenting opinion of MacKinnon L.J., but was bound by the majority opinion of the Court which had affirmed the views of Greene & Scott L.JJ., in Ledwith v. Roberts that arrest was empowered on honest belief only in urgent cases.

Doubtless, to the satisfaction of Hallett J., and of the Editor Gorman v. Barnard went to the House of Lords and is now reported as Barnard v. Gorman 1941 AC 378.

The case concerned the arrest of a ship's steward on a charge of smuggling cigars into the United Kingdom, by allegedly concealing them in a ship in which he was serving. The material was discovered by Customs officers. He was arrested and charged but the trial Magistrate dismissed the case, expressing himself as giving the defendant the benefit of the doubt.

The Steward sued for false imprisonment. He failed at first instance but succeeded on appeal with MacKinnon L.J., dissenting, as has been mentioned. On appeal, a powerful bench of the House - Viscount Simon L.C.,

Lord Thankerton, Lord Wright, Lord Romer and Lord Porter unanimously reversed the Court of Appeal decision and restored the verdict in favour of the Customs officers, who at all levels, it had been conceded, had acted with honest belief on reasonable grounds.

.The relevant provision creating the offence and the power of arrest was Section 186 of the Customs Consolidated Act 1876:-

> "Every person who shall . . . . knowingly harbour, keep conceal, or knowingly permit or suffer, or cause or procure to be harboured, kept, or concealed any prohibited, restricted, or uncustomed goods . . . . with intent to defraud Her Majesty of any duties due thereon . . . . shall for each offence forfeit either treble the value of the goods, including the duty payable thereon, or one hundred pounds, at the election of the Commissioners of Customs; and the offender may either be detained or proceeded against by summons".

In considering when a person was an offender Viscount Simon said at p.384:-

> "Approaching the problem in this spirit, I confess that I think that the correct solution can be reached without reference to the decided cases to which we were referred, though I will, out of respect to the arguments addressed to the House and to the judgments below, refer to these cases in a moment. The final words of the section run as follows: "and the offender 'may either be detained or proceeded against by summons.' If we separate these alternatives and consider the second of them, the provision, therefore, is that the offender may be proceeded against by summons. In this connection "the 'offender' cannot possibly be construed as limited solely to the man who is actually guilty of the offence. Whether "the 'offender' is guilty of the offence charged will only be determined at the hearing. The summons accuses him of an offence, and it remains to be ascertained whether the accusation is justifed. It is plain, therefore, that the 'offender' who may be summoned must include an innocent person who is wrongfully suspected of having committed the offence.

> But, if that is so, how can 'the offender' having a different meaning when the first alternative is considered ? Here again the detention is preliminary to an accusation, unless, indeed, satisfactory explanations are offered, and it is right to let the suspected person go. I cannot think that in a sentence which uses the words 'the offender' only once and then provides for his alternative treatment, the word has a different meaning with a different content according to the alternative adopted."

After discussing various cases including Ledwith v. Roberts the Lord Chancellor went on to say at p. 387:-

> "As I have said, I do not find it necessary, for the purpose of reaching my conclusion in the present appeal, to pronounce upon these earlier decisions. My own view, however, is that, when the question arises whether a statute which authorizes arrest for a crime should be construed as authorizing arrest on reasonable suspicion, that question has to be answered by examining the contents of the particular statute concerned rather than by reference to any supposed general rule of construction."

We agree with these observations, - and by a parity of reasoning would hold that in Section 21(b) "a person who commits an offence" means a person who is justifiably suspected of committing an offence.

In the same case Lord Wright said that to hold the contrary view point - that the arrest is unlawful if the suspect is acquitted - would be "a manifest absurdity" in the context of that authorizing statute. Lord Romer designated the proposition as "nonsensical". Lord Porter said at p. 401:-

> "A more natural explanation is that 'offender' means a suspected person, and I should so interpret it in s.186, even if that section stood alone. If this interpretation be adopted the accused person would still have the protection against arrest which all suspected

> persons have by law, namely, that those who take them into custody must have reasonable and probable cause for their action."

Of more recent time is the decision of the House in Wills v. Bowley 75 Cr. App. 164, 1982 2 All ER 654.

This case, as was only proper, attracted a great deal of the learned Appellate Judge's attention and in his judgment he canvassed at length the speeches of Lord Elwyn-Jones and Lord Lowry and adopted their conclusion that a similar power of arrest under Section 28 of the Town Police Clauses Act 1847, which also defined a variety of minor offences, could be lawfully exercised only if the fact of the commission of the offence was subsequently confirmed by a conviction unless it was a case where public safety or danger to life arose.

Lord Romer in Barnard v. Gorman had characterised a similar proposition as equivalent to the procedure of "sentence first, verdict afterwards" mentioned in Alice in Wonderland.

The Judge did acknowledge that the reasoning he was adopting was that of the two Law Lords who comprised the minority in the House. The view of the majority was delivered by Lord Bridge, and was concurred in by no lesser judicial persons than Lord Wilberforce and Lord Russell of Killowen.

The power to arrest arose in respect of "every person who commits any of the following offences...." and the duty was imposed:-

> "and the constable shall take into Custody without warrant .... any person who within his view commits any such offence."

The facts of the case were, as the Appellate Judge said,on all fours with the present - it concerned a woman using almost identical words "in the view" of constables.

Strictly speaking, the Courts of this country are not bound to follow decisions of the House of Lords, as is the case with decisions of the Privy Council, but we wish to say that such a course should only be embarked on in the rarest of circumstances and when it is apparent, beyond debate, that the House of Lords is in error or when its decision conflicts with a Privy Council decision. We commend the lengthy examination by the Court of Appeal of New Zealand of the circumstances in which a country subject to Privy Council appellate jurisdiction should or should not apply House of Lord's authorities - see Corbett v. Social Security Commission 1962, NZLR 878. Although that decision dealt primarily with the dilemma, which may but rarely arise, of conflict between the Privy Council and the House of Lords, the tenor of all the judgments demonstrates the highly persuasive effect of the House in that Appeal Court - a view which this Court firmly endorses. We wish to say that unless such a decision is inappropriate to Fiji conditions, or has been demonstrated to be wrong by subsequent Privy Council opinion this Court will adhere to long standing practice, and a fortiori, so must the other Courts of this country.

Before leaving the topic we believe that the conclusions outlined in Barnard v. Gorman are cogently restated by the judgments of the majority in Wills v. Bowley. Great weight was placed on the opinions of of the House in Barnard v. Gorman concerning the interpretation of the word "offender" as meaning "suspected offender" and their Lordships placed it in parallel, as we have earlier done with "committing an offence."

50

We accept the following passage from the speech of Lord Bridge as correctly expressing the law on arrest without warrant in cases covered by provisions such as Section 21(b).

> "It seems to me scarcely less nonsensical than the construction of "offender" in section 186 of the Customs Consolidation Act 1876, which your Lordships' House rejected in Barnard v. Gorman (supra) to construe such provisions as these in the sense that the legality of the arrest can only be established by an ex post facto verdict of guilty against the person arrested. Parliament, in enacting any such provision, must have intended that any person who was committing any of the specified offences, whether serious or trivial, should be arrested and brought to justice, very often, no doubt, because this might be the only way he could be brought to justice at all. But the person making the arrest cannot determine guilt in advance; he cannot know that guilt will in due course be established; his only protection, if he is to have any, at the time of making the arrest must be found in his honest belief on reasonable grounds that he has observed the commission of a relevant offence by the person he arrests. If a power of arrest in flagrante delicto is to be effective at all, the person who exercises it needs protection; protection not only against liability to pay damages in tort, but perhaps more important, as the instant case shows, protection, so far as the law can give it, against violent resistance to the reasonable force which a person exercising a lawful power of arrest is entitled to use in order to effect and maintain his arrest. If the protection the law affords is contingent and unpredictable, how can Parliament reasonably have expected anyone to rely on it ? Yet, surely Parliament must have intended the protection to be relied on in order that the power of arrest should be effective. Making an arrest can never be an agreeable task and may often be very disagreeable; how much more so if the law gives no assurance of protection.
>
> The considerations to which I have directed attention in the foregoing paragraph apply with particular force to a provision, such as section 28 of the Act of 1847, wnere the constable is put under a duty to arrest, and neglect of that duty may be visited with criminal sanctions. The same applies to section 6 of the Vagrancy Act 1824 which, besides the general powers of arrest given to any person

> referred to in Ledwith v. Roberts (supra) provides: "...and in case any constable... shall not use his best endeavours to apprehend and to convey before some justice of the peace any person that he shall find offending against this Act, it shall be deemed a neglect of duty in such constable... and he shall on conviction be punished in such manner as is hereinafter directed." It would seem to me quite ridiculous to construe these provisions in such a way as to force upon the constable a choice between the risk of making an unlawful arrest and the risk of committing a criminal neglect of duty. This would be to impale him on the horns of an impossible dilemma. A conclusion to that effect is sufficient to dispose of the present appeal."

We adopt this not only out of respect for the persuasive authority of the House, but because we accept it as cogent and compelling and common sense interpretation of statutory intention in a case on all fours with the present. An arrest under Section 21(b) is lawful if done in honest belief on reasonable grounds that the observed conduct constitutes an offence.

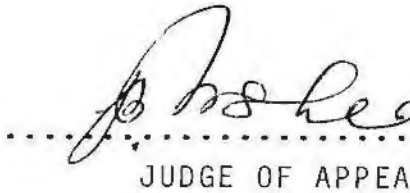
One further point remains to be considered concerning the final disposal of this matter. For the reasons canvassed at the beginning of this judgment concerning the situation which arose at the bus stop we accept that he had such a belief - indeed we would part company from the Magistrate and the Appellate Judge as to the commission of the offence of disorderly behaviour, but that is not and could not be under appeal. Our finding is that the constable was acting in due execution of his duty and the driver's resistance constituted an offence under Section 247(b) of the Penal Code.

This conclusion would be sufficient to justify the matter being sent back to the Magistrate's Court for reinstatement of conviction on the second count

but Mr Sharma for the appellant indicated that the Director's sole interest in this matter was to obtain a decision on the important point of law.

Accordingly, pursuant to Section 44 of the Penal Code the Respondent will be discharged without conviction.

VICE-PRESIDENT



JUDGE OF APPEAL

JUDGE OF APPEAL