

**PIYASENA
VS
OFFICER IN CHARGE, POLICE STATION, MAWARALA AND
ANOTHER**

COURT OF APPEAL
WIJAYARATNE J
SISIRA DE ABREW J
CA 77/2005
H.C. MATARA 75/2004
M. C. MORAWAKA - 67009

Penal Code - Section 315 - Primary Court Procedure Act - Section 25(1) - Assumption of jurisdiction of the Primary Court by Magistrate - Trial of accused without plea being recorded - Validity? - Applicability of the Mediation Boards Act -

HELD

- (i) The Magistrate had proceeded to the trial of the accused without him being charged and without his plea being recorded - which is a material irregularity which nullifies the legal effect of all the proceedings thereafter.
- (ii) As regard Section 315 Penal Code, in terms of the Mediation Boards Act, Court is not permitted to take cognizance of such offences without a Certificate from the Mediation Board.
- (iii) Magistrates in certain circumstances are empowered to take cognizance of matters falling within the jurisdiction of the Primary Court - this is by way of assumption of jurisdiction of the Primary Court and not by way of exercising the jurisdiction of the Magistrate.

AN APPLICATION in Revision from the Order of the High Court of Matara.

Razik Zarook with Rohana Deshapriya for Petitioner.

Anoopa de Silva, S. C., for the Attorney General.

Cur. ad. vult

August 26, 2005

WIJAYARATNE, J.

This is an application to revise the order of the learned High Court Judge dated 03.02.2005 refusing an application to revise the order of the Magistrate of Morawaka convicting the petitioner of an offence under section

315 of the Penal Code reported to the Magistrate of Morawaka under the provisions of section 25(1) of the Primary Court's Procedure Act. Learned High Court Judge has held that this is a mere technicality and the offence punishable under s. 315 is one cognizable by the Magistrate and therefore he did not proceed with this application. Further it appears from the proceedings before the learned Magistrate of Morawaka that the Accused who was present in court on summons was put on trial without his plea being recorded. There is no minute what so ever of his being charged or what his plea was. Accordingly we presume that the learned Magistrate had proceeded to the trial of the accused without him being charged and without his plea being recorded, which is a material irregularity which nullifies the legal effect of all the proceedings thereafter. The learned State Counsel also concedes this fact. In such an event the court is obliged to quash the proceedings and direct a re-trial of the accused on the charges preferred against him.

More over, we find that the procedure of charging the accused is also not accord with the laws. A charge under section 315 of the Penal Code reported to the learned Magistrate of the area in terms of the provisions of section 25(1) of the Primary Court's Procedure Act. The Magistrate in certain circumstances is empowered to take cognizance of matters falling within the jurisdiction of the Primary Court. However, it is by way of assumption of jurisdiction of the Primary Court and not by way of exercising the jurisdiction of the Magistrate. It is also further revealed that the accused was charged with an offence punishable under section 315 of the Penal Code and convicted of same. In terms of the provisions of Mediation Board Act, Court is not permitted to take cognizance of such offences without a certificate from the Mediation Board. For all these reasons, we are unable to refer this matter to a fresh trial by the learned Magistrate. Accordingly, all the proceedings and the conviction and sentence imposed by the learned Magistrate of Morawaka and the order dated 03.02.2005 made by the learned High Court Judge of Matara are all quashed and set aside. However, this order will not operate as a bar in the event of fresh proceedings being instituted under the relevant provisions of law if the prosecution so wishes. Application for revision is allowed.

SISIRA DE ABREW, J. I agree

Application allowed.