

1937

Present : Soertsz J.

POLICE SERGEANT HENDRICK *v.* ARUMUGAM *et al.*

325—*P. C. Nuwara Eliya, 11,885.*

Confession—Made to Unofficial Police Magistrate—Non-summary proceedings—Case tried summarily by Police Magistrate as District Judge—Criminal Procedure Code, s. 134—Evidence Ordinance, ss. 24 and 26.

Where a confession was made to an Unofficial Police Magistrate by an accused person in non-summary proceedings taken against him and the case was eventually tried summarily by a Police Magistrate acting as District Judge,—

Held, that the confession was admissible in evidence.

A confession made to an Unofficial Police Magistrate by an accused whilst he was in the custody of a police officer is admissible under section 26 of the Evidence Ordinance.

A PPEAL from a conviction by the Police Magistrate of Nuwara Eliya. The accused were charged with the theft of jewellery under section 369 and 440 of the Penal Code valued at over Rs. 300. The

main evidence against the accused was a confession made by first accused while in Police custody before an Unofficial Police Magistrate who recorded the confession because the offence was a non-summary one. The Police Magistrate tried the accused summarily making use of his powers as District Judge and admitted the confession in evidence against the accused.

O. L. de Kretser (Junior), for appellant.—The confession is inadmissible because—

(1) Section 84 (a) of the Courts Ordinance, No. 1 of 1889, which confers powers on an Unofficial Police Magistrate does not permit him to take proceedings in cases triable summarily.

In 6 *Cal. Law Reports* 289 it has been held that recording a confession is the commencement of proceedings. (*Principles Criminal Procedure Code*, p. 177.)

Sections 134 and 302 of the Criminal Procedure Code, in terms of which the confession was recorded, are primarily intended for non-summary offences. These sections were not intended to regularize confessions to the Police. (*Chitale Criminal Procedure Code*, vol. I., p. 846.)

(2) An Unofficial Police Magistrate has only the powers of a Police Court and not of a Police Magistrate as laid down in the Criminal Procedure Code. Therefore section 26 of the Evidence Ordinance does not apply and the confession recorded before an Unofficial Police Magistrate while accused is in Police custody is bad.

Douglas Jansze, C.C., for the Crown.—It is immaterial as to how a case is tried subsequently if at the time of recording a confession the accused is charged with offence non-summary in character.

The powers of a Police Court and a Police Magistrate are identical. Therefore a confession before an Unofficial Police Magistrate can be used in evidence.

There is sufficient evidence even eliminating the confession to convict accused.

Cur. adv. vult.

May 14, 1937. SOERTSZ J.—

The two accused-appellants were charged with offences punishable under section 440 and section 369 of the Penal Code. The value of the stolen property was three hundred and thirty-three rupees, and consequently, both offences fall beyond the jurisdiction of the Police Court. The Magistrate before whom the accused were charged being also District Judge assumed jurisdiction under section 152 (3) of the Criminal Procedure Code and after trial, convicted both the accused and sentenced each of them to a term of three months' rigorous imprisonment. The Magistrate in his judgment points out that he considered the two cases separately. That is as it should have been, for in the case of the first accused the prosecution relied on a confession said to have been made by him to an Unofficial Police Magistrate and that confession, if admissible, was admissible only against the first accused. This confession was made by appellant's counsel the first ground of attack. He contended that the confession was inadmissible (a) because the Unofficial Police Magistrate derived his powers from section 84A of the Courts Ordinance,

No. 1 of 1889, and that section enacts that "he shall have all the powers and authority by the Criminal Procedure Code, 1898, vested in the Police Court *save and except the power and authority to take proceedings with regard to, or hear, try, or determine any offence which by that Code or by any law of this Colony is summarily triable before a Police Court*", and he argued that because in this case the Police Magistrate who heard the case tried this case summarily the power or authority of the unofficial Magistrate to take proceedings must be considered to have been ousted. In my opinion there are two answers to this argument, first that at the time the proceedings of taking the accused confession was carried out by the Unofficial Police Magistrate the case was a non-summary case. Second that the crucial fact which determines the power or authority of the Unofficial Police Magistrate is not the fact that eventually the accused was tried summarily, but the fact that the offence or offences with which the accused were charged were offences which were not summarily triable by a Police Court. Section 84A says that the Unofficial Police Magistrate has all the powers given to a Police Magistrate by the Criminal Procedure Code *save the power to take proceedings with regard to any offence summarily triable by a Police Court.* Neither of the offences charged in this case was triable summarily by a Police Court.

Although the Magistrate tried them he tried them as District Judge. The next point taken was that the confession was bad inasmuch as it was taken while the first accused was in the custody of P. S. Nair. Section 26 provides that no confession shall be made if it is made whilst an accused is in the custody of a Police Officer unless it is made in the immediate presence of a Police Magistrate. And it was urged that this statement or confession was made in the presence of an Unofficial Police Magistrate and not of a Magistrate. The Evidence Act does not define Magistrate but section 84A gives an Unofficial Police Magistrate all the power and authority vested by the Criminal Procedure Code in Police Courts except the powers I have already indicated, and therefore an unofficial Magistrate has the power and authority to take a confession *save and except in a case in which the offence is summarily triable.*

I, therefore, come to the conclusion that the statement made by the first accused to the Unofficial Police Magistrate is admissible. There is evidence that it was a voluntary statement and not induced in any of the ways described in section 24 of the Evidence Ordinance. It was open to the Magistrate to convict the accused on that statement alone. It was an unequivocal confession. But I have examined the other evidence in the case and in my opinion that evidence quite apart from the confession is sufficient to support the conviction of the first accused. That evidence and the confession taken together make his conviction inevitable.

In regard to the second accused the evidence is equally strong. He was a labourer on the estate. Soon after the theft he pawned a pair of "Koppu" belonging to the complainant with the pawnbroker, Selliah Pillai, and had described himself as Muniandy although the name by which he was known was Muttiah. Muttiah was his name on the check roll. About this time he gave Rs. 29 to Peris Appuhamy, a trader, for safe keeping and he gave a goldsmith certain articles of jewellery of

the kind lost by the complainant and requested him to melt these and convert them into articles of a different kind. His key fitted the padlock fixed to the complainant's door. One of the "Koppus" pawned by him has been clearly identified by the complainant.

All these facts established the case against him beyond reasonable doubt. I dismiss the appeal.

Affirmed.
