

1956

Present : H. N. G. Fernando, J.

D. D. BENJAMIN, Petitioner, and E. J. GUNAWARDENA (S. I. Police),
Respondent

S. C. 316—Application in Revision in M. C. Avissawella, 10,438

Compounding of offences—Scope of Magistrate's jurisdiction—Criminal Procedure Code, s. 290.

A Magistrate, in granting his consent under section 290 of the Criminal Procedure Code to the compounding of an offence, has no jurisdiction to lay down any terms binding the parties.

APPPLICATION to revise an order of the Magistrate's Court, Avissawella.

M. M. Kumarakulasingham, for the accused-petitioner.

E. A. G. de Silva, for the complainant-respondent.

October 12, 1956. H. N. G. FERNANDO, J.—

The petitioner and another person were charged in the Magistrate's Court of Avissawella with the offence of intimidation. On 18th June, 1954, the case was compounded and the accused discharged on terms thus recorded by the Magistrate :—

“ It is now agreed between the parties that the budded rubber portion in Rose Valley Estate be handed over to Albert Edirisinghe, the V. H. of Mabula, to be looked after.

D. D. Martheenu the complainant in this case will file a civil action for declaration of title to the said plantation within two months from today. The V. H. of Mabula will deposit the proceeds of this budded rubber plantation to the credit of the civil case.

‘The accused and complainant further undertake not to enter into this budded rubber portion *until* the decision in the civil action. If the civil action is not filed on or before 18th August, 1954, then the possession of this budded rubber portion is to be handed over to the 1st accused and he will also hand over the proceeds of this budded rubber portion for the two months to the 1st accused.

In view of this agreement the parties move to compound the case. I allow the application and discharge the accused.”

An action for declaration of title to the land in question was subsequently filed by the complainant in the District Court, but was withdrawn on 15th June 1956 with liberty to institute an action for partition.

The petitioner thereafter applied on 25th June 1956 to the Court for an order “discharging the Village Headman from managing the budded rubber portion of the Rose Valley Estate”. Upon this application the Magistrate on 21st July 1956 made the order now complained against, directing “that the V. H. do hand over the land in question to the complainant who was in possession at the time the Village Headman took over”.

In my opinion both the petitioner, in making this application for the “discharge” of the Headman from management, and the Magistrate, in directing restoration of possession of the land to the complainant, have misconceived the power of a Magistrate's Court in regard to such matters.

A Magistrate, in granting his consent under section 290 of the Code for the compounding of a case, has the duty only to state his reasons for consent, but has no jurisdiction to lay down any terms binding the parties. The journal entry of 18th June 1954 is an ORDER, *only in so far as it allows the compounding and discharges (and acquits—vide section 290 (5))* the accused. The Magistrate did not in fact make, and had indeed no power to make, any order that the Headman should manage the land. That part of the entry which relates to the terms on which the parties applied to compound the case is only a record by the Magistrate of an agreement between the parties—an agreement which constitutes sufficient reason for the Magistrate to consent to the compounding. I see at present no objection whatever to such a record being

made, but the making of it does not have the effect of extending the Magistrate's jurisdiction beyond its point of termination, i.e., the discharge of the accused, or of conferring jurisdiction to determine rights in property. This latter jurisdiction a Magistrate enjoys, but only for the limited purpose of determining whether or not a person charged is guilty of some offence, and not for the purpose of placing any party in possession of land.

In my opinion therefore—

- (a) the Magistrate was wrongly called upon to vacate his order as to management, for the reason that he made no such order ;
- (b) the Magistrate should not have directed restoration of possession to the complainant, because he lacked the jurisdiction to do so.

For these reasons I set aside the order of 21st July 1956. The parties and the Village Headman must advise themselves on the problem with which they are now faced.

Order set aside.

