

1962

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

K. A. ALADIN, Appellant, *and* SUB-INSPECTOR OF POLICE,
GANEMULLA, Respondent

S. C. 263—M. C. Gampaha, 65120/A

Criminal procedure—Charge—Amended plaint—Duty of Court to frame fresh charge.

Where an amended plaint is filed in a criminal case, it is the duty of the Court to frame a fresh charge on the amended plaint.

After the closure of the case for the defence, Counsel for the accused drew the attention of the Magistrate to the fact that there had been an amended plaint and that the accused had not been charged on the amended plaint. No notice, however, was taken of this matter and the Magistrate proceeded to convict the accused on the draft amended charge.

Held, that the conviction without due amendment of the charge was illegal.

APPPEAL from a judgment of the Magistrate's Court, Gampaha.

M. M. Kumarakulasingham, for the Accused-Appellant.

A. A. de Silva, Crown Counsel, for the Attorney-General.

June 28, 1962. H. N. G. FERNANDO, J.—

This is an appeal against a conviction for an alleged offence under the Excise Ordinance. The plaint against the accused had been filed on 31st May, 1961, and summons was then issued. On the 28th June, 1961, when the accused appeared in Court it would appear that the charge sheet was read to him and the charge sheet records that in answer to the charge he had pleaded not guilty. The trial was then fixed for 16th August, 1961, but for various reasons the trial did not actually commence until 30th August, 1961. It was adjourned on that day and ultimately the trial was resumed on 3rd January, 1962.

After the closure of the case for the defence, Counsel for the accused drew the attention of the Magistrate to the fact that there had been an amended plaint and that the accused had not been charged on the amended plaint. No notice, however, was taken of this matter and the Magistrate proceeded to convict the accused and pass sentence on him.

A reference to the record shows that on 13th December, 1961, the Police had filed an amended plaint. This plaint differed from the original plaint in more than one respect. In the first instance, whereas the original plaint referred only to the offence of possession of unlawfully manufactured spirits punishable under section 44 of the former Legislative Enactments, the amended plaint, though not very clearly drafted, refers both to possession of unlawfully manufactured spirits and also to possession of exciseable articles on which the prescribed duty had not been paid and refers respectively to section 46 (a) and section 47 of the Ordinance as reproduced in the new Legislative Enactments. Prima facie, it would appear that the amended plaint was filed for two purposes, firstly, in order substantially to alter the charge originally brought, and secondly, to make the charges referable to the Ordinance as it exists in the new edition of the Legislative Enactments.

There is also in the record what purports to be a second charge sheet dated 13th December, 1961, which contains a charge on the lines of the amended plaint filed on the same day, but it is clear that this amended charge sheet was not read to the accused and it follows that his plea was not recorded to the amended charge.

The fact that the Magistrate took no notice of Counsel's statement to him regarding the amended charge might at first sight mean that the Magistrate was proceeding to conviction on the original charge without alteration, but it seems to me that in fact that was not the case,

for in recording the conviction on 31st January, 1961, the Magistrate has stated "I convict accused on count 1." Since the original charge sheet quite clearly contained only one count, it is unlikely that the Magistrate would have referred to that count as count 1. On the other hand, the second charge sheet which was not read to the accused does appear to contain two different counts—a circumstance which leads me to the conclusion that the Magistrate in fact convicted the accused on the draft amended charge and not on the original charge sheet.

This is not the first occasion in recent years when instances of this sort have been brought to my notice showing that very little care is sometimes exercised with regard to the provisions of the Criminal Procedure Code regarding charges. If an amended charge sheet was, as in this case, filed by the prosecution, it was the duty of the Court to consider whether the charge previously read to the accused did in fact need amendment and if it did, it was then the duty of the Court to amend the charge, to read out the fresh charge to the accused, and then to decide whether an immediate continuance of the trial was proper. None of these steps were taken in this case despite the fact that the matter was distinctly brought to the notice of the Court at the close of the case for the defence. In the result, it is by no means clear whether the accused has been convicted upon a charge duly read out to him in compliance with the provisions of the Code.

In all the circumstances of the case I do not think the accused should be ordered to face a fresh trial. The conviction and sentence are set aside.

Appeal allowed.
