

1957

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

T. KULATUNGAM, Appellant, *and* M. M. HUSSEIN
(Inspector of Police), Respondent

S. C. 617—M. C. Jaffna, 11,224

*Sentence—Offender previously convicted—Sentence that may be imposed on him—
Prevention of Crimes Ordinance, s. 6.*

Where section 6 of the Prevention of Crimes Ordinance is utilised to impose a sentence of two years imprisonment, a Court has jurisdiction to impose, in addition, a further term of imprisonment in default of payment of a fine.

Observations as to the circumstances in which section 6 of the Prevention of Crimes Ordinance may be utilised.

APPEAL from a judgment of the Magistrate's Court, Jaffna.

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

T. A. de S. Wijesundera, Crown Counsel, for the Attorney-General.

Ananda Pereira, Acting Senior Crown Counsel, as *amicus curiae*.

Cur. adv. vult.

January 24, 1958. H. N. G. FERNANDO, J.—

The accused in this case was tried by the learned Magistrate of Jaffna, acting under section 152 of the Criminal Procedure Code, on a charge of theft punishable under section 369 of the Penal Code. Having convicted the accused the Magistrate imposed a fine of Rs. 50, in default one month's rigorous imprisonment, and also sentenced the accused to a further period of two years rigorous imprisonment, purporting to act under section 6 of the Prevention of Crimes Ordinance. He directed that the sentences of imprisonment should run concurrently. The only matter which was raised by Counsel for the appellant was whether in a case where section 6 of the Prevention of Crimes Ordinance is utilised to impose a sentence of two years imprisonment, it is proper in addition to impose a further term of imprisonment in default of payment of a fine. I am satisfied that the default term was properly imposed; but since the provisions of section 6 of the Prevention of Crimes Ordinance are liable to be misconceived, it may be of assistance to Courts of first instance if I set out in brief certain observations as to the circumstances in which that section may be utilised.

In the first place the substantive provision of section 6 authorises a Court to sentence an offender for a period not exceeding two years, notwithstanding anything to the contrary in any relevant provision of the Criminal Procedure Code or the Penal Code or any other Ordinance: that is to say, a power is conferred to imprison for two years despite (in the case of a Magistrate) the limitation imposed by section 15 of the Criminal Procedure Code or (in the case of any Court) the fact that the section creating the offence provides for a lesser punishment.

But this special jurisdiction is only conferred when the following conditions are satisfied:—

- (a) that there should be a conviction of a crime preceded by two or more convictions of crimes which have been punished by rigorous imprisonment exceeding one year in the aggregate, and
- (b) the case must be one in which the Court would not otherwise (i.e. but for section 6) have jurisdiction to impose a two year term of imprisonment.

It is unnecessary for present purposes to consider condition (a). The effect of condition (b) to which I have just referred is that section 6 would never be applicable in a case tried before the Supreme Court or

before the District Court if the offence charged is declared by the Penal Code or other law to be punishable with imprisonment for two years or longer. Nor would it apply where a Magistrate has assumed jurisdiction under section 152 of the Criminal Procedure Code to try an offence so punishable. It is important, I think, to emphasise the words "*in any case in which he would not otherwise have jurisdiction so to do*", because those words make it manifest that the section is *only intended for cases where jurisdiction does not already exist to impose a two year term* and should not be utilised by *any Court* in order to sentence an offender to more than two years.

It follows that section 6 can only be resorted to upon a conviction for a crime punishable with a term of imprisonment shorter than two years, and that in such cases the section is not intended to authorise a term of imprisonment additional to the term prescribed in the law creating the offence, but only to enhance the length of the prescribed term to one which may extend to two years. The limitation of the sentence of imprisonment to one of two years, however, does not fetter the right to impose a separate sentence of imprisonment in default of the payment of a fine, subject of course to the general limitation contained in section 312 (1) (c) of the Code ; namely one-fourth of the term fixed by the section creating the offence of which the accused is convicted.

The appeal is dismissed.

Appeal dismissed.
