

1969

Present : Sirimane, J.

K. JAYARATNE, Appellant, and INSPECTOR OF POLICE,
MAHARAGAMA, Respondent

S. C. 1074/68—M. C. Colombo South, 92617/B

*Criminal Procedure Code—Section 152 (3)—Assumption of jurisdiction thereunder—
Sentence—Quantum.*

Where a Magistrate who is also a District Judge assumes jurisdiction under section 152 (3) of the Criminal Procedure Code for the purpose of trying a charge which is triable by a District Court as well as by a Magistrate's Court, he has no power to impose a sentence exceeding that which a Magistrate's Court can impose.

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

Colvin R. de Silva with *I. S. de Silva* and *S. S. Wijeyeratne*, for the accused-appellant.

Tyrone Fernando, Crown Counsel, for the Attorney-General.

May 27, 1969. SIRIMANE, J.—

The appellant has been convicted on five counts. On the first count he has been convicted of putting a woman in fear in order to commit extortion under Section 374 of the Penal Code. On the 2nd count he has been convicted of attempting to commit extortion under Section 373/490. On the 3rd and 4th counts he has been convicted of causing simple hurt under Section 314 and on the 5th count of committing mischief under Section 410.

I see no reason to interfere with the convictions which are amply supported by the evidence.

In regard to the sentence however, it was pointed out that the learned Magistrate has imposed a sentence of 2 years' rigorous imprisonment on the 1st count. This is a charge which is triable by a District Court as well as by a Magistrate's Court. The learned Magistrate assumed jurisdiction under Section 152 (3) of the Criminal Procedure Code apparently for the purpose of trying the charge under Section 373/490. Section 152 (3) empowers a Magistrate who is also a District Judge to impose a sentence which a District Court may impose where the offence appears to be one triable by a District Court and *not summarily* by a Magistrate. In regard to the conviction under Section 374, therefore, the Magistrate had power only to impose a sentence of 6 months' rigorous imprisonment.

I reduce the sentence passed on the 1st count to 6 months' rigorous imprisonment. The other sentences will stand. In the result the appellant will serve 1 year's rigorous imprisonment. Subject to this variation, the appeal is dismissed.

Sentence reduced.

