

1948

Present : Basnayake J.

PUNCHIAPPUHAMY, Appellant, and WIJESINGHE (Excise Inspector), Respondent.

S. C. 1,491.—M. C. Galle, 7,044.

Criminal Procedure Code—Plea of guilt—Tendered by proctor—Conviction irregular—Section 188.

A plea of guilt must be tendered by the accused himself. The accused cannot be convicted on a plea of guilt tendered by his proctor.

APPEAL from a judgment of the Magistrate, Galle.

W. H. Wickremesinghe, for accused appellant.

A. C. Alles, Crown Counsel, for the Attorney-General.

February 5, 1948. BASNAYAKE J.—

At the conclusion of the trial of this case, the proctor who appeared for the two accused tendered a plea of "guilty" on behalf of the first accused. The prosecution then with the permission of the learned Magistrate withdrew the charge against the second accused. It is now urged on behalf of the first accused that the proctor had no authority to withdraw his previous plea of "not guilty" and tender a plea of "guilty" and that the conviction cannot therefore stand.

The contention of counsel is entitled to succeed. Section 188 of the Criminal Procedure Code makes no provision for the pleader of the accused making the statement required thereunder. An accused cannot be punished on an admission of guilt unless that admission is unqualified and made by the accused in person. This Court has consistently laid this down. In this connexion I need only refer to the case of *Saram v. Neina Marikar*¹. I quash the conviction and order a retrial of the first accused before another Magistrate.

Sent back for re-trial.

¹ (1900) 4 N. L. R. 154.