

Present: Mr. Justice Wood Renton.

July 28, 1910

SIVAKOLUNTHU v. CHELJIAH.

P. C., Jaffna, 810.

Police Magistrate—Power to punish summarily for contempt of Court—
False evidence—Contradictory statements.

A Magistrate has no power to punish summarily as for contempt of Court a witness for making two contradictory statements.

THE complainant in this case charged the accused with robbery and hurt. In his evidence complainant proceeded to say:—

- (a) *Accused is not on bad terms with me.* In January last he applied for tobacco plants to me.
- (b) *I refused to give. Since then he is on bad terms with me.* That is why he did this to me.
- (c) *I do not know why he did this to me.*

The learned Magistrate recorded his opinion that the evidence disclosed barefaced perjury, and read to the complainant the three statements (in italics) as to the motive for the assault, and called upon him to show cause why he should not be summarily dealt with under section 440 (1) of the Criminal Procedure Code for giving false evidence; the complainant had no cause to show, and he was convicted and fined Rs. 50 (two months' rigorous imprisonment in default).

The complainant appealed.

Balasingham, for the appellant.—The charge does not specify which of the statements is false. A witness can be punished for making contradictory statements only by the Supreme Court or the District Court (section 439, Criminal Procedure Code). A Police Magistrate cannot convict for contempt of Court under section 440, Criminal Procedure Code, unless he is able to hold that any particular statement is false (*Theneris v. Sayeneris*¹, *King v. Dias*²).

July 28, 1910. WOOD RENTON J.—

His Lordship set out the facts, and continued:—

It is clear that the Police Magistrate has made the inconsistency of the statements just mentioned the ground of the conviction. He does not say directly which of these inconsistent statements he holds to be false, for his subsequent finding that what occurred was

¹ (1904) 1. B. L. 1.

² (1903) 6. N. L. R. 258.

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" probably " an altercation on account of the bad feeling between the parties does not, in my opinion, amount to a distinct finding that the appellant had spoken the truth when he said that the accused had been on bad terms with him since the incident of the refusal of the tobacco plants. A Police Magistrate has no power to convict a person under section 440, sub-section (1), of the Criminal Procedure Code, solely on the ground that he had made inconsistent statements, some of which were false. Section 439 of the Code, as amended by section 2 of Ordinance No. 2 of 1906, confers power on the Supreme Court and on the District Court to convict on that ground, safeguarded, however, by the requirements of a regular, although summary, trial. It is the duty of any Court, acting under section 440 of the Code, not only to confront the person charged with the specific statements on which the Court is relying, but also to find which of these statements is or are false. In the present case there has been no finding to that effect, and the conviction and sentence cannot stand. I have no sympathy whatever with mere technical objections where they are taken for the first time in appeal, and I am prepared to interpret section 425 of the Criminal Procedure Code in the wide sense which the Legislature clearly had in view in enacting it. But I am not prepared to waive any of the requirements by which the Legislature and the Supreme Court have safeguarded the exercise of the extremely valuable powers conferred on the legal tribunals by section 440, sub-section (1), of the Criminal Procedure Code, to give a Court, which has failed to satisfy the requirements in the first instance, any further opportunity of supplying defects. In my opinion the only way to ensure the correct application of the powers under section 440 of the Code of Criminal Procedure in the Courts of first instance is to let it be clearly and widely understood that any flaw in their exercise will be fatal to a conviction. On these grounds I set aside the conviction and sentence, and direct the acquittal of the appellant.

Appeal allowed.