Present : Wood Renton J.

June 8, 1911

THE KING *v.* UMERUGATTA.

74—*D. C.* (*Crim.*) *Batticaloa*, 2,531.

Jurisdiction—Formal committal of case for trial by Police Magistrate—The Police Magistrate cannot try case as District Judge—Criminal Procedure Code ss. 18 and 425.

A Police Magistrate who did not hold the non-summary inquiry, and who did nothing more than formally commit the case for trial to the District Court, was held to have had no jurisdiction to try the case as District Judge without the consent of the accused.

A trial by such a District Judge is not an irregularity which can be cured under section 425 of the Criminal Procedure Code.

THE facts are fully set out in the judgment.

Hayley, for the accused, appellant.—The District Judge, who is Police Magistrate as well, had himself committed this case for trial. Section 18 of the Criminal Procedure Code prohibits a District Judge, who had as Police Magistrate committed a case for trial, from trying the case, except with the express consent of the accused. In the present case the accused objected to his being tried by the present District Judge. The objection is not a merely technical objection ; the committing Magistrate, even if he had not held the non-summary inquiry, might have read the confidential report in the case.

Walter Pereira, K.C., S.-G., for the respondent.—The District Judge had over-ruled the objection on the ground that he had not heard the evidence at the Police Court inquiry. The accused has not been prejudiced in the least. If the District Judge had acted irregularly, section 425 of the Criminal Procedure Code would cure the irregularity.

Cur. adv. vult.

June 8, 1911. WOOD RENTON J.—

I am not prepared in this case to uphold Mr. Hayley's contention that, even on the evidence as it appears in the record, the accused-appellant is entitled to an immediate acquittal. As I think there ought to be a new trial, it is obviously better that I should say nothing about the evidence at present. There remains, however, the important point of law which Mr. Hayley put in the forefront of his case. The learned District Judge who tried this case was not

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the Police Magistrate who actually conducted the inquiry. But it was he who formally committed the accused for trial in the District Court, and who tried him there. Under these circumstances Mr. Hayley contends that the provisions of section 18 of the Criminal Procedure Code apply. That section provides that " no District Judge shall, except with the express assent of the accused, try any case which he has committed for trial as Police Magistrate." The accused certainly did not consent here to the case being tried by the District Judge. On the contrary, an express objection was taken to its being tried by him. The learned District Judge met that objection by pointing out that he had not heard the evidence, and, therefore, did not come within the purview of section 18 of the Criminal Procedure Code. In my opinion, we must look to the language of that section itself. It recognizes no exception in favour of a Police Magistrate who has not heard the evidence at a preliminary inquiry. It prohibits a Police Magistrate who has " committed " an accused for trial as such from trying him as District Judge. There was, therefore, here a clear irregularity, and the only question is whether it can be cured under section 425 of the Criminal Procedure Code. The answer to that question depends on the meaning that we assign to the first clause of that section. It is in these terms : " No judgment passed by a court of competent jurisdiction shall be reversed or altered on appeal or revision " on account of certain specified irregularities, unless they have " occasioned a failure of justice." What then is the meaning of the section ? It was argued by the learned Solicitor-General that the words above quoted signify merely a court which has jurisdiction to try the class of offences, in the course of the trial of one of which an irregularity has been committed. I am unable to interpret the words in that way. I think that when the Legislature made use of the words " no judgment passed by a court of competent jurisdiction," it must have meant a court which had jurisdiction to pass the particular judgment brought up in appeal or revision. In the present case, in view of the express terms of section 18 of the Criminal Procedure Code, the District Judge had no jurisdiction in that sense at all. He was incompetent to try the case, and therefore section 425 of the Code cannot apply. I have consulted the decisions on this point under the corresponding section of the Indian Code of Criminal Procedure, and I find that it has been construed in the same sense by the High Court of Calcutta. It was held in the case to which I refer that where there is a personal disqualification of any Judge from trying a particular case, under provisions corresponding in substance to section 18 of the Criminal Procedure Code, the defect cannot be cured under the section of the Indian Criminal Procedure Code corresponding to section 425 of our own Code. The Indian section corresponding to section 18 of our Criminal Procedure Code is section 487, and the case that I

have referred to is *Sudhama Upadhya v. Queen Empress.*[1] I desire to quote a few words from the concluding portion of the judgment in that case: " The saving provisions," said the Court, " of section 537 " (which is the section corresponding to section 425) " extend only to the orders and so forth of courts of competent jurisdiction ; and in our opinion a Magistrate who, in consequence of a personal disqualification is forbidden by law to try a particular case, though he may be authorized generally to try cases of the same class, cannot be said with respect to that case to be a court of competent jurisdiction." I set aside the conviction and sentence complained of, and send the case back for a new trial, which must take place before another District Judge.

Sent back.