

1952

Present : Gunasekara J.

M. M. A. DHARMATUNGA *et al.*, Appellants, and
SUB-INSPECTOR OF POLICE, PADDAWELA,
Respondent

S. C. 591-593—M. C. Gampaha, 56,429

Criminal Procedure—Joinder of accused and charges—Same transaction—No averment of it in plaint or charge—Irregularity.

Several accused persons were jointly tried in respect of several offences. There was no allegation either in the report filed in terms of section 148 (1) (b) of the Criminal Procedure Code or in the charge framed by the Magistrate that the offences with which the accused were severally charged were committed in the same transaction.

Held, that the accused could not have been jointly tried.

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

H. V. Perera, Q.C., with *Christie Fernando*, for the accused appellants.

J. G. T. Weeraratne, Crown Counsel, for the Attorney-General.

June 25, 1952. GUNASEKARA J.—

There is no allegation either in the report filed in terms of section 148 (1) (b) of the Criminal Procedure Code or in the charge framed by the Magistrate that the offences with which the accused are severally charged were committed in the same transaction. Crown Counsel very properly agrees that in these circumstances the accused could not be tried jointly.

In view of the misjoinder I quash the conviction of the accused. It will of course be open to the Police to institute fresh proceedings if they are so advised.

Conviction quashed.