

1962

*Present* : Herat, J., and Abeyesundere, J.

G. PIYADASA, Appellant, and THE QUEEN, Respondent

*S. C. 112—D. C. (Criminal), Hambantota, 43/28,347*

*Indictment—Power of Attorney-General to withdraw a count therefrom—Scope—Criminal Procedure Code, ss. 172, 202, 217 (1) (3).*

The Attorney-General has no power to withdraw a charge from an indictment at a trial in a District Court.

**A**PPEAL from a judgment of the District Court, Hambantota.

*Colvin R. de Silva*, with *M. L. de Silva*, for the accused-appellant.

*E. H. C. Jayetilleke*, Crown Counsel, for the Attorney-General.

June 21, 1962. ABEYESUNDERE, J.—

The 1st accused-appellant in this case was charged together with the 2nd accused in the District Court of Hambantota on an indictment containing eight counts. During the trial the Crown Counsel who appeared for the prosecution moved to withdraw count 8 from the indictment. That motion appears to have been allowed by the Court, although there is no order to that effect, as the withdrawal of that count is referred to in the judgment of the learned District Judge.

Unlike at a trial in the Supreme Court, the Attorney-General has no power to withdraw a charge from an indictment at a trial in a District Court. Section 202 of the Criminal Procedure Code provides that the Attorney-General may at any time before the verdict is recorded withdraw any indictment and the prosecuting counsel may also with the permission of the District Judge at any time before the verdict is recorded withdraw any indictment, and thereupon all proceedings thereon shall be stayed and the accused shall be discharged. Under sub-sections (1) and (3) of section 217 of that Code before the return of the verdict at a trial in the Supreme Court the Attorney-General may inform the Court that he will not further prosecute the accused upon the indictment or any charge therein, and the prosecuting counsel may with the consent of the presiding Judge withdraw the indictment or any charge therein, and thereupon all proceedings on such indictment or charge as the case may be against the accused are stayed and he is discharged.

The indictment in this case could have been altered by the Court under section 172 of the Criminal Procedure Code, but that course of action has not been adopted by the learned District Judge. The effect of the withdrawal of one of the counts from the indictment is that the indictment has been altered in a manner not permitted by law, and the proceedings on the indictment as so altered are therefore invalid.

I set aside the conviction of the 1st accused-appellant and the sentences passed on him and order that he be discharged. In consequence of my finding that the proceedings are invalid, I exercise the powers of revision and set aside the verdict and order of the learned District Judge in respect of the 2nd accused in this case and order that he also be discharged.

HERAT, J.—I agree.

*Conviction set aside.*

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