

1969

*Present : Wijayatilake, J.*

M. P. WILLIAM, Appellant, and INSPECTOR OF POLICE,  
MIRIGAMA, Respondent

*S. C. 969/68—M. C. Gampaha, 19645/B*

*Criminal procedure—Magistrate's Court—Trial of indictable offence with offences triable summarily—Failure of Court to assume jurisdiction under s. 152 (3) of Criminal Procedure Code—Effect—Criminal Procedure Code, ss. 152 (3), 180 (1), 425.*

Where a number of offences are alleged to have been committed in the course of the same transaction, the joinder, at one summary trial, of an indictable offence with offences triable summarily vitiates the entire proceedings if the Magistrate omits to assume jurisdiction in terms of section 152 (3) of the Criminal Procedure Code. In such a case, the mere fact that the accused has been acquitted in respect of the indictable offence is of no consequence.

*Ramasamy v. Gunaratne* (72 N. L. R. 187) followed.

*Joseph v. Wootler* (72 N. L. R. 213) not followed.

**A**PPEAL from a judgment of the Magistrate's Court, Gampaha.

*S. C. E. Rodrigo*, for the accused-appellant.

*Sorath Silva*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

June 17, 1969. WIJAYATILAKE, J.—

A very important question with regard to the failure on the part of the learned Magistrate to assume jurisdiction under section 152 (3) of the Criminal Procedure Code has been raised in this Appeal.

The accused was charged under five counts :

1. That he held out threats to a public servant—G. V. Madurapperuma, Grama Sevaka No. 16 . . . . with intent to cause alarm to the said Grama Sevaka an offence punishable under section 186 of the Penal Code.
2. At the same time and place and in course of the same transaction he did attempt to cause simple hurt to the said public servant . . . . an offence punishable under section 323/490 of the Penal Code.
3. That in the course of the same transaction he did intentionally insult the said Grama Sevaka . . . . an offence punishable under section 486 of the Penal Code.
4. Or in the alternative to count 1 he did commit criminal intimidation to the said Grama Sevaka an offence punishable under section 486 of the Penal Code.
5. Or in the alternative to count 2 above in the course of the said transaction as set out in counts 1, 2 and 3 he did attempt to assault the said Grama Sevaka . . . . an offence punishable under Section 314/490 of the Penal Code.

As would appear from the Schedule to the Criminal Procedure Code count 1 under Section 186 of the Penal Code is not triable by the Magistrate's Court. However, the Magistrate could have, if he was so inclined, assumed jurisdiction under section 152 (3) of the Criminal Procedure Code and proceeded to trial summarily. The learned Magistrate has failed to do so. There is nothing on the face of the record to show whether he had given his mind to the question of jurisdiction at all. He had purported to try the accused on all the counts as Magistrate. After "trial" he had acquitted the accused under count 1 and convicted him under counts 2 and 3. As I have already stated counts 4 and 5 are alternative to counts 1 and 2.

Mr. S. C. E. Rodrigo, learned counsel for the appellant, submits that all the proceedings at the trial have been vitiated as the Magistrate clearly had no jurisdiction to proceed to trial on count 1. If he was so inclined he could have assumed jurisdiction but he has failed to do so. Mr. Rodrigo submits that it is clear on the face of the charge sheet that there has been a joinder of the charges as contemplated in section 180 (1) of the Criminal Procedure Code as all the acts alleged refer to the same transaction. He accordingly submits that it is clear that despite the several charges there has been only one trial. The Magistrate having acted outside his jurisdiction in seeking to try the accused under count

1 the proceedings would be illegal *ab initio* in respect of all the counts. In my opinion this is a substantial objection. The mere fact that the accused was acquitted under this particular count is of no consequence if the proceedings in Court do not constitute a "trial" within the meaning of the Criminal Procedure Code. The counts 2 to 5 were triable by the Magistrate but as would appear from the Charge Sheet these counts have been joined with count 1. I do not think the trials in respect of the five counts are severable. It is one trial and the Magistrate has purported to so record the evidence in respect of all the counts. If the Magistrate had no jurisdiction to do so in respect of count 1 and he proceeded to record evidence at this trial clearly he was acting illegally. I do not think such an illegality can be cured by resorting to section 425 of the Criminal Procedure Code.

My attention has been drawn to two recent judgments of this Court which dealt with an analogous situation, except that in the instant action the accused has been acquitted under the count in question. In *Ramasamy et al. v. Gunaratna*<sup>1</sup> Pandita-Gunawardene J. held that it is not permissible to separate an illegal trial from the trial on the counts triable by a Magistrate where there has been a joinder of charges under section 180 (1) of the Criminal Procedure Code and that an illegality of this nature is not curable under section 425 of the Criminal Procedure Code. de Kretser J. in the case of *Joseph v. Woolter*<sup>2</sup> has discussed this judgment at length and he has taken a different view. I have given my anxious consideration to the matter before me in the light of these conflicting decisions but with great respect I am inclined to adopt the principle as set out by Pandita Gunawardene J. I do not see how the principle set out by Ennis J. in the case of *King v. Jayasinghe*<sup>3</sup> can salvage this case, the proceedings at the Trial being illegal *ab initio*. With great respect I am unable to subscribe to the view that the trials are severable in a situation such as this where there has been a joinder of charges relating to the same transaction. Furthermore, how is it possible to distinguish the evidence led in respect of count 1 from the rest of the evidence?

Here we are concerned not with the sentences the Magistrate has sought to impose but with something more fundamental and that is with the verdicts he has pronounced on the "evidence" led. If it was an illegality or irregularity in regard to the sentences we could invoke the provisions of section 425 of the Criminal Procedure Code but in a situation such as this where in fact there has been no trial as the Magistrate had no jurisdiction, in my opinion, it would not be open to this Court to invoke these provisions.

I would accordingly quash the proceedings and send the case back for proceedings *de novo* before another Magistrate.

*Proceedings quashed.*

<sup>1</sup> (1968) 72 N. L. R. 187; 75 C. L. W. 85.

<sup>2</sup> (1969) 72 N. L. R. 213.

<sup>3</sup> (1915) 18 N. L. R. 374.