

1948

Present: Wijeyewardene S.P.J.

VELUN PIERIS, Appellant, and THE INSPECTOR OF POLICE,
MORATUWA, Respondent.

S. C. 204—M. C. Panadure, 49,668.

Criminal Procedure Code—Accused charged with offences triable summarily—Magistrate assuming jurisdiction as District Judge—Irregular—Proper procedure if offence is serious—Sections 152 (3) and 192.

Where an accused is charged with offences triable summarily, a magistrate cannot, by investing himself with jurisdiction under section 152 (3) of the Criminal Procedure Code, exercise the high punitive powers given by that section. If he thinks that the offences cannot be adequately punished by a Magistrate's Court he should act under section 192 of that Code and commit the accused for trial before a higher court.

¹ 10 Cr. A. R. 37.

A PPEAL from a judgment of the Magistrate, Panadure.

H. A. Chandrasena, for the accused, appellant.

A. C. Alles, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

April 19, 1948. WIJEYWARDENE S.P.J.—

The accused was alleged to have entered the room of a young lady and used criminal force on her, knowing it to be likely that he would thereby outrage her modesty. He was charged on two counts under sections 437 and 345 of the Penal Code.

On December 16, 1947, the Magistrate found the accused guilty on both the counts and sentenced him to two years' rigorous imprisonment on the first count and a consecutive period of two years' rigorous imprisonment and fifteen "lashes" with a rattan on the second count.

Mr. Chandrasena who appeared in support of the appeal submitted that the accused was prejudiced by the Magistrate trying him on December 16. Mr. Chandrasena invited my attention to the journal entry "call case on December 16, 1947." made on December 11, 1947, and stated that according to the practice in the Panadure Courts an "acting Magistrate" did not fix dates of trial but directed the cases to be called before the permanent Magistrate for fixing trial dates. He submitted that the accused appeared on December 16 without a lawyer defending him, as he thought that the case would not be tried on that date in accordance with the practice referred to. In reply to inquiries made by the Registrar of this Court at my direction, the Magistrate who tried the accused wrote on April 5, 1948:—

"The practice at the Panadure Magistrate's Court when an acting Magistrate officiates during the absence of the permanent Magistrate is to fix cases instituted before him for trial in due course or to direct that a case be called on a certain date to fix it for trial. In this case the accused was arrested and produced on December 11, 1947, before the Additional Magistrate, Mr. G. Amerasinghe, who charged the accused and after remanding him till December 16, 1947, made order to have the case called on December 16, 1947. On December 16, 1947, the accused was produced before me and thereafter I charged him and proceeded to try the case as firstly he was on remand and secondly he did not move for a postponement to enable him to retain Counsel or for any other reason as would appear from the entry in the record under date December 16, 1947, and also from his statement which appears at page 9 of the record."

I do not think it necessary to make any further reference to this matter, as I have decided to interfere with the conviction on another ground.

On looking into the proceedings in the Magistrate's Court I find an irregularity in the procedure adopted by the Magistrate. When the accused appeared before him on December 16, 1947, the Magistrate proceeded to invest himself with jurisdiction under section 152 (3) of the Criminal Procedure Code. That section, however, applies only to cases where an accused is charged with offences which appear to be "triable by a District Court and not summarily by a Magistrate's Court." Both the offences in this case were triable summarily by a Magistrate's Court. The Magistrate, therefore, committed a serious error in trying the accused under section 152 (3) and exercising the high punitive powers given by that section. On the plaint filed in the case the Magistrate had to try the accused summarily. If after recording the evidence for the prosecution and the defence he formed the opinion that the accused could not be punished adequately by a Magistrate's Court, he should have acted under section 192 of the Criminal Procedure Code and committed the accused for trial before a higher Court.

This Court has, no doubt, the power to sustain a conviction even where a Magistrate has assumed jurisdiction under section 152 (3) in the case of a summary offence and cure the irregularity with regard to the sentence by substituting a sentence which the Magistrate could have passed if he followed the procedure laid down in section 152 (2) (vide *Madar Lebbe v. Kiri Banda*¹). But, in view of the somewhat strong opinion formed by the Magistrate with regard to the gravity of the offences alleged to have been committed by the accused, I would set aside the conviction and direct fresh proceedings to be taken before another Magistrate.

Sent back for trial before another Magistrate.
