

1937

[IN REVISION.]

*Present: Fernando A.J.*GUNETILEKE (S.-I., POLICE) *v.* NEPO SINGHO *et al.**P. C. Avissawella, 14,763.*

*Prevention of Crimes Ordinance—Charge under sections 373 and 490 of the Penal Code—Magistrate assumes jurisdiction as District Judge—Registered criminal—Ordinance No. 2 of 1926, s. 6.*

Section 6 of the Prevention of Crimes Ordinance, 1926, applies where a person is accused of an offence triable summarily.

It does not apply to a case where the Police Magistrate, who is also a District Judge, tries a case summarily under section 152 (3) of the Criminal Procedure Code.

THIS was an application by the Solicitor-General for revision of an order of the Police Magistrate of Avissawella.

*M. F. S. Pulle, C.C., for the Solicitor-General.*

*Cur. adv. vult.*

July 14, 1937. FERNANDO A.J.—

The two accused in this case were charged with attempting to commit extortion, an offence punishable under sections 373 and 490 of the Penal Code. After the accused had surrendered to Court, the Police Magistrate, who was also a District Judge, decided to try the case under the provisions of section 152 (3) of the Criminal Procedure Code. At that trial, they were convicted, and sentenced each of them to undergo two years' rigorous imprisonment, and two years' Police supervision. It is contended for the Solicitor-General, that each of the accused was a registered criminal within the terms of Ordinance No. 2 of 1926, and that the Magistrate should have discontinued the summary proceedings and commenced non-summary proceedings against the accused as soon as it was brought to his notice that the two accused were registered criminals.

Crown Counsel referred to various decisions of this Court, and his position was that these decisions were inconsistent with one another. In *P. C. Kegalla, 12,703*, decided on September 13, 1929, Akbar J. refused

to interfere in a similar case by way of revision. "I do not think", he said, "section 6 of Ordinance 2 of 1926 applies to a case of this description where the Police Magistrate who is also a District Judge, tried the accused summarily under section 152 (3) of the Criminal Procedure Code". He does not set out his reasons at any greater length, but I understand that order to mean that section 6 is not applicable to a case where a Police Magistrate tries a case summarily under section 152 (3) because he is also a District Judge. In other words, section 6 of Ordinance No. 2 of 1926 only applies in a case where a person is accused of a crime triable summarily, and not to a case where the offence with which the accused is charged is not summarily triable. Crown Counsel also referred to the case of *Nadarajah v. Gopalan*<sup>1</sup>, where Dalton J. expresses his opinion that a Police Magistrate who tries a case summarily under the provisions of section 152 (3) has rid himself of his character as Police Magistrate, and is nothing more and nothing less than a District Judge. He refers to the case of *Nadar Lebbe v. Kiri Banda*<sup>2</sup>, where de Sampayo J. expresses the opinion that a Police Magistrate, if he proceeds under section 152 (3), acts in all cases as Police Magistrate, but as Dalton J. states the only question for decision by the Full Court was whether a Police Magistrate trying a case under section 152 (3) can, in respect of an offence triable by him summarily as Police Magistrate, exercise his larger punitive powers as District Judge. In P. C. Balapitiya, 42,272, which is printed at the foot of page 379 of the 18th volume of the *New Law Reports*, de Sampayo J. expresses the same view, and in P. C. Colombo, 43,809, Koch J. on June 19, 1936, appears to have adopted the same view as Dalton J. He did not actually decide that the procedure adopted by the Police Magistrate was wrong, but quashed the proceedings and ordered non-summary proceedings to be taken against the accused, reserving to the accused the right to raise the plea of *autrefois convict* as was done by Dalton J. in *Nadarajah v. Gopalan* (*supra*).

Dalton J. also refers to a judgment of Lyall Grant J. in P. C. Dandegamuwa, 4,802, but that case appears to have turned on the question whether the Police Magistrate, when he assumed jurisdiction under section 152 (3), was still a Police Magistrate or District Judge. This question, however, is of purely academic interest in the case before me. Before I can deal with this application in revision, I must be satisfied that the Police Magistrate who tried this case, whether he acted as Police Magistrate or District Judge, was required to follow the provisions of section 6 of Ordinance No. 2 of 1926. As I have already pointed out in P. C. Gampaha, 34,542 (Supreme Court Minutes of February 24, 1937), that section can only apply where a person is accused of a crime triable summarily. The judgment of Akbar J. to which I have already referred, appears to me to have proceeded on that ground, and in the case before me, the offences with which the accused were charged were not triable summarily. In these circumstances, I do not think it necessary to refer this question to a fuller Court. I refuse to deal with these proceedings in revision.

Application refused.

<sup>1</sup> 32 N. L. R. 115.

<sup>2</sup> 18 N. L. R. 376.