

Present : Wood Renton C.J. and Shaw J.

VYRAMUTTU v. DURAISAMY et al.

257—D.C. (Crim.) Colombo, 4486.

Merchandise Marks Ordinance, 1888—Trial of accused before District Court must be on indictment.

A District Court has no jurisdiction to hear a charge under the Merchandise Marks Ordinance, 1888, unless the charge is brought before it on an indictment after a non-summary inquiry in the usual way.

THE facts appear from the judgment.

F. M. de Saram, for complainant, appellant.—The learned District Judge was bound to follow the decisions reported in 3 C. L. R. 83 and 1 N. L. R. 92. These decisions have been followed ever since. The Merchandise Marks Ordinance confers a special jurisdiction on the District Court, which is not controlled by the provisions of the Criminal Procedure Code.

Arulanandan, for accused, respondents.—The Merchandise Marks Ordinance gives an accused the privilege of being tried by the District Court with all the safeguards generally attaching to such a trial. If the contention of the complainant is upheld, all these safeguards will be nullified. In 3 C. L. R. 83 Withers J. does not consider the effect of the Criminal Procedure Code. In 1 N. L. R. 92 there was at least an indictment presented by the Attorney-General. In the present case there is none. A private advocate prosecuted in the District Court. The provisions of section 12 of the Criminal Procedure Code of 1898 are clear and conclusive. 3 C. L. R. 83 has been wrongly decided, and ought not to be followed.

January 20, 1917. WOOD RENTON C.J.—

I referred this case to a Bench of two Judges, in view of the decisions of Withers J. in *Spicer v. Vaiyapuri*¹ and Browne J. in *Queen v. Vaiyapuri*.² The accused were charged in the Police Court of Colombo with certain offences under the Merchandise Marks Ordinance, 1888.³ When they appeared, they exercised the election given to them by section 3, sub-section (5), of the Ordinance to be tried by the District Court instead of by the Police Court. The Police Magistrate thereupon, without taking non-summary proceedings, forwarded the record to the Additional District Court of Colombo. The learned Additional District Judge held that he had

¹ (1894) 3 C. L. R. 83.

² (1895) 1 N. L. R. 92.

³ No. 13 of 1888.

1917. no jurisdiction to hear the case, unless it was brought before him on an indictment after a non-summary inquiry in the usual way, and he accordingly discharged the accused. The complainant appeals, with the sanction of the Solicitor-General. In the two decisions above mentioned it was held that where a person charged with offences against the provisions of the Merchandise Marks Ordinance, 1888,¹ elects under section 3, sub-section (5), to be tried by the District Court, the Police Magistrate is at once *functus officio*, and has no power to take non-summary proceedings. This ruling is, *prima facie*, contrary to the provisions of section 12 of the Criminal Procedure Code, which enacts that "No District Court shall take cognizance of any offence unless the accused person has been committed for trial by a Police Court duly empowered in that behalf, or unless the case has been transferred to it from some other Court for trial by order of the Supreme Court." But it is sought to be supported by the language of section 4 of the Criminal Procedure Code, which enacts that "All offences under the Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried accordingly to the same provisions, subject however to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences." The answer to this argument, however, appears to me to be that section 3, sub-section (5), of the Merchandise Marks Ordinance, 1888,¹ does not prescribe the "manner" in which a case is to be dealt with where the person charged elects to be tried by the District Court. It merely confers upon him the right of election, and provides that, where that right has been exercised, it shall be effectuated by trial in the District Court. There is nothing in the Ordinance that can be said to create any special procedure in such cases, and I am clearly of opinion that the District Judge is right in holding that effect must be given to section 12 of the Criminal Procedure Code by the adoption of non-summary proceedings.

It would seem that the practice in the District Court in such cases as the present has been based on the rulings of Withers J. in *Spicer v. Vaiyapuri*² and Browne J. in *Queen v. Vaiyapuri*,³ although it is noteworthy that Mr. Joseph Grenier, who was then District Judge of Colombo, while holding himself bound by the former of these decisions, indicated that he did not agree with it. But now that the point has come up formally for determination, the law ought, in my opinion, to be declared in accordance with the view of the learned Additional District Judge in the decision now under appeal.

The appeal must be dismissed.

SHAW J.—I entirely agree.

Appeal dismissed.

¹ No. 13 of 1888.

² (1894) 3 C. L. R. 83.

³ (1895) 1 N. L. R. 92.