

1960

Present: H. N. G. Fernando, J.

P. G. PIRIS (Ex-Chairman, Village Committee) Appellant, and
CHAIRMAN, VILLAGE COMMITTEE (Medasiya Pattu,
Matale), Respondent

S. C. 29—M. C. Matale, 6179

Village Committee—Money certified by Auditor-General as due to Committee from a person—Default of payment—Jurisdiction of a Magistrate to impose sentence of imprisonment—Village Communities Ordinance (Cap. 198), s. 54—Criminal Procedure Code, s. 312 (1) and (2)—Income Tax Ordinance, s. 80.

When the Auditor-General issues a certificate under section 54 of the Village Communities Ordinance that a sum of money is due from a person to a Village Committee, a Magistrate has no power to impose a term of imprisonment in default of payment of the certified amount.

APPEAL from a judgment of the Magistrate's Court, Matale.

E. R. S. R. Coomaraswamy, with *E. B. Vannitamby*, for accused-appellant.

E. B. Wikramanayake, Q.C., with *S. B. Yatawara*, for complainant-respondent.

Cur. adv. vult.

October 17, 1960. H. N. G. FERNANDO, J.—

The appellant was formerly the Chairman of a Village Committee, and has become liable to make good to the Committee certain sums which had been expended out of the funds of the Committee without due authority or which had not been duly brought to account or credited to the Village Fund. The Auditor-General issued a certificate under Section 54 of the Village Communities Ordinance (Cap. 198) that a total amount of Rs. 4,123·89 is due to the Committee from the appellant. The Section provides that, upon the filing of the certificate in a Magistrate's Court, the amount therein specified shall be recovered in the same manner as a fine imposed by the Court. When the certificate was filed in the Magistrate's Court, the Magistrate issued a distress warrant for the seizure of movable property of the appellant, but the warrant was returned unexecuted with a report that he was not possessed of property available for seizure. Thereafter the Magistrate made order, which is now the subject of appeal, sentencing the appellant to a term of four months' imprisonment for his failure to pay the certified amount.

The Magistrate relied on my unreported judgment in *Herath v. Munasinghe*¹ when he overruled the objection that he had no power

¹ *S. C. 634, M. C. Kegalle 16388, S. C. Minutes of 27th August, 1957.*

to impose a term of imprisonment in default of payment of the certified amount. I have there held in identical circumstances that a default term of imprisonment may be imposed, and that sub-section (1) (e) of the Criminal Procedure Code would determine the length of the term in such a case. While it is disappointing to realize that my judgment was erroneous, I welcome the opportunity now given me to employ the language of Baron Bramwell in a similar situation: "The matter does not appear to me now as it appears to have appeared to me before".

The relevant provision in Section 54 of the Village Communittees Ordinance is that "*the sum so certified, may on application to a Magistrate, be recovered in the same manner as a fine imposed by the Magistrate*". Sub-section (2) of Section 312 of the Criminal Procedure Code is undoubtedly brought into application thereby, for the issue of a distress warrant against movable property is the means provided for the recovery of fines imposed by a Magistrate. But the power conferred by sub-section (1) to impose a sentence of imprisonment in default of payment of a fine is not a means of recovering the amount of a fine; it is a power to punish a convicted person by imprisonment in the event that the amount of the fine may not in fact be paid or recovered by distress. Under Section 312 (1) (b), "in the case of an offence . . . punishable with fine only, *the Court passing the sentence may direct BY THE SENTENCE that in default of payment of the fine the offender shall suffer imprisonment for a certain term . . .*" It is clear that this power is part of the jurisdiction of the Court, *as the Court of trial*, to punish a convicted offender by its sentence, and that in exercising that power *the Court is not acting as a Court of Execution*. The discretion to impose a default sentence can be exercised by a Magistrate only when he is passing the sentence in a trial, and cannot be exercised at the stage when a distress warrant has failed to achieve the purpose of recovering the amount of the fine. If a Magistrate cannot in his ordinary jurisdiction decide to impose a fine at that stage, it follows that he cannot so decide in a case where a special jurisdiction is conferred on him only for the purpose of the recovery of some amount due to some other authority.

There is not, in Section 54 of the Village Communittees Ordinance, such express provision as is contained in Section 80 of the Income Tax Ordinance, empowering a Magistrate to impose a sentence of imprisonment in the exercise of the jurisdiction to enforce the recovery of a sum certified to be due to a Village Committee. I am in agreement with the opinion expressed in a similar connection by Pulle, J. (*Thambipillai v. Manmunai South & Eruvil Co-operative Agricultural Production and Sales Society, Ltd.*¹), and my own unreported judgment should not be followed.

The sentence of imprisonment passed against the appellant is quashed.

Sentence of imprisonment quashed.

¹ (1953) 55 N. L. R. 284.