1967 *Present :* **Siva Supramaniam, J.**

K. CHELLIAH and others, Appellants, *and* INSPECTOR OF POLICE, RATNAPURA, Respondent

S. C. 1147–1149/1966—M.C. Ratnapura, 4590

Criminal Procedure Code—Section 152 (3)—Indictable offence—Power of Magistrate to try it summarily—Scope.

Where a Magistrate assumes summary jurisdiction in terms of section 152 (3) of the Criminal Procedure Code in respect of an indictable offence, the jurisdiction, once it has been properly entered upon, is not affected merely because the facts and law are found later to have assumed a complicated character.

(1959) 61 N. L. R. 95.

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

M. M. Kumarakulasingham, with *S. Sinnatamby*, for the 1st accused-appellant.

S. Sinnatamby, for the 2nd and 3rd accused-appellants.

W. K. Premaratne, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

February 28, 1967. SIVA SUPRAMANIAM, J.—

The three appellants and another were charged with having dishonestly retained eleven milla logs valued at Rs. 474·91 property in the possession of the Divisional Forest Officer, Ratnapura, knowing or having reason to believe the same to be stolen property and thereby having committed an offence punishable under s. 394 of the Ceylon Penal Code. After trial, the appellants were convicted of the offence and each of them was sentenced to rigorous imprisonment for one year. The 4th accused was acquitted.

The offence was triable by a District Court by reason of the fact that the value of the stolen property exceeded Rs. 200. The learned Magistrate tried the case summarily under S. 152 (3) of the Criminal Procedure Code. Learned Counsel for the appellants strongly urged that the convictions should be set aside as the case was one in which non-summary proceedings should have been taken and the accused persons tried on an indictment. They submitted that the assumption of jurisdiction under S. 152 (3) was improper.

The reasons given by the learned Magistrate for his opinion that the the offence may properly be tried summarily were as follows:—

"(1) Facts simple. (2) No complicated points of law. (3) Expeditious trial".

Learned Counsel submitted that the reasons did not bear examination as (*a*) the facts of the case as unfolded at the trial relating to the identification of the accused as well as to the identification of the logs were by no means simple, (*b*) there arose questions of law as to whether the principal witnesses were accomplices or not, and (*c*) there was no expeditious trial as the hearing which commenced on 4th May 1965 was not concluded until 24th March 1966. While there is much force in the submissions of learned Counsel, the question for determination in appeal is whether at the stage at which the learned Magistrate assumed jurisdiction under S. 152 (3) of the Criminal Procedure Code, such assumption of jurisdiction was unwarranted. The learned Magistrate recorded the evidence of certain witnesses on 1st December 1964 and 12th January 1965 before he decided to hear the case summarily. The accused were represented by a lawyer on both dates. There was no submission made to the Magistrate either by the prosecution or by the defence that the case was not one which

may properly be tried summarily. Had the value of the logs been less than Rs. 200 the offence was one within the summary jurisdiction of the Magistrate's Court. The summary jurisdiction was ousted only because the value was Rs. 474·91. On an examination of the evidence recorded by the Magistrate on 1.12.64 and 12.1.65 I am satisfied that the assumption of jurisdiction under S. 152 (3) of the Criminal Procedure Code was not unwarranted.

I agree, with respect, with the opinion expressed by Pulle J. in *Selvaratnam v. Piyasena* (S. C. No. 503 of 1952, M. C. Colombo 20904) that a jurisdiction, once properly entered upon, is not affected merely because the facts and law are found later to have assumed a complicated character. T. S. Fernando J. expressed the same view in the case of *Khan v. Ariyadasa* [1] where he stated: "The question whether jurisdiction has been properly assumed in terms of section 152 (3) must be judged on the facts and circumstances as known to the Magistrate at the time the question came on to be decided by him and not by what may have happened at the trial at a point of time after he had decided that question." That the facts turned out to be complicated at the trial does not affect the validity of the assumption of the jurisdiction under S. 152 (3). The submissions of learned Counsel on this point therefore fail.

Learned Counsel also pointed out certain infirmities in the evidence of some of the witnesses called by the prosecution and urged that the evidence was not sufficient to establish the guilt, at least of the 1st accused-appellant, beyond reasonable doubt. I have carefully examined the whole of the evidence led at the trial and I am satisfied on that evidence that all the appellants are guilty of the charge and that there has been no miscarriage of justice by reason of a summary trial.

I dismiss the appeals.

Appeals dismissed.