

1948

Present : Nagalingam J.

KANDIAH *et al.*, Appellants, and D. R. O. OF PALLAI, Respondent.S.C. 96—*M.C. Chavakachcheri, 25,649.*

*Criminal Procedure Code—Non-summary offence—Magistrate assuming jurisdiction as District Judge—Factors which should govern his decision—Section 152 (3).*

The simple character of the facts and law involved in a case are not the only factors which govern the decision as to whether a Magistrate should assume jurisdiction as a District Judge under section 152 (3) of the Criminal Procedure Code or not. The serious nature of the charge is in itself an important factor which must not be lost sight of.

APPEAL from a judgment of the Magistrate, Chavakachcheri.

*R. L. Pereira, K.C.*, with *H. W. Tambiah*, for the 1st to 8th accused, appellants.

*C. Renganathan*, for the 9th accused, appellant.

*R. A. Kannagara, Crown Counsel*, for the Attorney-General.

*Cur. adv. vult.*

June 11, 1948. NAGALINGAM J.—

The proceedings in this case commenced with a report under section 148 (1) (b) of the Criminal Procedure Code complaining that nine persons had committed the offences of being members of an unlawful assembly, rioting, criminal trespass, robbery and mischief. The learned Magistrate, even before hearing any evidence, decided to assume jurisdiction as a District Judge and to try the case summarily. The reason for the course adopted by him is set out as that "the facts are simple and no complicated questions of law or of fact are involved". On the date fixed for trial Counsel appearing for the defence submitted that non-summary proceedings should be taken in view of the extent of the damage alleged to have been caused and of the value of the property, the subject of the robbery. The learned Magistrate overruled the objection, stating that he would give his reasons later. In the course of his judgment the learned Magistrate observes that it is clear from the evidence that the facts in this case are extremely simple and that they do not involve any complicated question of law.

The Magistrate had to reach the decision as to whether he was going to assume jurisdiction as a District Judge or not before the conclusion of the trial and not after hearing the entirety of the case. It would have been impossible for the learned Magistrate to have made the observation

that from the evidence disclosed in the case the facts were extremely simple at the stage at which he decided to assume jurisdiction as a District Judge. Furthermore, even on the first date when the Magistrate decided to try the case summarily there was no material before him excepting the written report itself which would have enabled him to reach the conclusion that the facts were simple and involved no complicated questions of law. It should, however, be remembered that the simple character of the facts and law involved in a case are not the only factors which govern the decision as to whether a Magistrate should assume jurisdiction as a District Judge or not. The serious nature of the charge is in itself an important factor which must not be lost sight of. The learned Magistrate does not seem to have given his mind to this aspect of the question. In fact the sentences imposed by him on these nine accused persons show that he regarded the offences as very grave ones, for he has imposed a term of four years' rigorous imprisonment in the aggregate on each of the accused persons, this being twice the maximum sentence which a District Court in the exercise of its ordinary jurisdiction is competent to inflict. To my mind the plaint itself disclosed that the charges were serious ones. There were no less than seven charges and one of them charged these accused persons with having committed robbery of a sum of Rs. 617. The offence of robbery is one punishable with a term of ten years' rigorous imprisonment, and this circumstance coupled with the fact that there were no less than nine persons who were charged with having been members of an unlawful assembly in prosecution of the common object of which the offence of robbery was committed should have made the learned Magistrate hesitate to try the case summarily.

I would, therefore, quash the proceedings in this case and remit the case for non-summary proceedings to be taken. The fresh proceedings will be had before another Magistrate.

*Sent back for non-summary proceedings.*

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