

1948

*Present : Basnayake J.*ABDUL AZIZ, Appellant, *and* PODIAPPU, Respondent.*S. C. 19—M. C. Matara, 63,499.*

Village Communities Ordinance—Offence also triable by Magistrate—Direction by Government Agent for trial by Magistrate—Sufficient authority—Section 93.

The direction by a Government Agent under section 93 of the Village Communities Ordinance that an offence should be tried before a Magistrate's Court is sufficient authority for the Magistrate to issue process without the institution of fresh proceedings in terms of section 148 of the Criminal Procedure Code.

A PPEAL from a judgment of the Magistrate, Matara.

M. H. A. Azeez, for the accused, appellant.

Boyd Jayasuriya, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 18, 1948. BASNAYAKE J.—

The accused-appellant (hereinafter referred to as the appellant) was on March 18, 1946, along with another, charged before the Village Tribunal of Kirinda with the offence of using criminal force on one Weligama Liyana Arachchige Podiappu. On April 11, 1946, the Assistant Government Agent of Matara directed under section 93 of the Village Communities Ordinance that the offence be tried before the Magistrate's Court of Matara. His direction is as follows :—

“ The Magistrate, Matara.

Having read the proceedings of V. T. Kirinda Criminal Case No. 1981 and the report of the President V. T., I hereby direct under the provisions of section 93 of the V. C. Ordinance (Chapter 198), that this case be tried before the Magistrate's Court of Matara.”

On the receipt of that direction the learned Magistrate issued notice on the parties and in due course tried the offence. He found the appellant guilty and sentenced him to a term of six weeks' rigorous imprisonment.

Learned counsel for the appellant urges that the conviction is bad in that the proceedings before the Magistrate were not properly instituted in any one of the ways prescribed by section 148 of the Criminal Procedure Code. He submits that a Magistrate has no jurisdiction to try and determine a case which has not been instituted in the manner prescribed by that section. I am unable to uphold the contention of learned counsel. Section 93 of the Village Communities Ordinance leaves no room for doubt that the direction of the Assistant Government Agent is sufficient authority for the Magistrate to try the offence. The section reads :

“ 93. It shall be lawful for the Attorney-General, or the Solicitor-General, or for any Government Agent having jurisdiction in the village area in question in the following cases :—

- (a) in the case of any offence which, but for the provisions of this Ordinance, would be cognizable by a Magistrate's Court ;
- (b) in the case of any offence against a by-law made or deemed by virtue of any written law to have been made under this Ordinance, which is also an offence under any other Ordinance,

if he shall consider that such offence may more appropriately be tried before a Magistrate's Court, to direct such offence to be tried before a Magistrate's Court having local jurisdiction, and if necessary to stay the further trial of such offence before any Village Tribunal or Committee ; and such Magistrate's Court shall accordingly try such offence.”

The direction which the Assistant Government Agent is empowered to make coupled with the authority conferred by the concluding words of the section “ such Magistrate's Court shall accordingly try such offence ”, to my mind removes all necessity for the institution of fresh proceedings in the prescribed manner.

Learned counsel for the appellant and learned Crown Counsel who appeared as *amicus curiae* inform me that they have not been able to trace any decision of this Court on this point. I myself have not come across any case which deals specifically with the question now before me. But I find that the cases of *Cassim v. Juanis*¹ and *Attorney-General v. Cornelis*² proceed on the assumption that the direction of the Government Agent is sufficient authority for a Magistrate to issue process and proceed to try the case in due course of law. I hold that the direction of the Assistant Government Agent which I have quoted above was sufficient authority for the Magistrate to proceed in this case as he has done. The appeal is dismissed.

Appeal dismissed.

¹ (1913) 1 *Balasingham's Notes of Cases*, p. 15.

² (1911) 14 *N. L. R.* 316