

1955

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

RAFIDEEN, Appellant, and SIRISENA (Inspector of Police),
Respondent

S. C. 520—M. C. Kandy, 9,835

Indictable offence—Consent of accused to be tried summarily—Assumption of summary jurisdiction by Court—Legality—Criminal Procedure Code, s. 152 (3).

Consent of the accused is not a proper ground for the assumption of jurisdiction under section 152 (3) of the Criminal Procedure Code.

APPPEAL from a judgment of the Magistrate's Court, Kandy.

M. M. Kumarakulasingham, for the accused-appellant.

George Candappa, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 16, 1955. H. N. G. FERNANDO, J.—

The Magistrate has tried this case under section 152 (3) of the Criminal Procedure Code stating as his grounds for so doing " Facts as reported are simple. No points of law. Speedy disposal and at accused's request ". There is no requirement in section 152 (3) for the consent or the request of the accused to a summary trial and it has been held in

S. C. No. 1,557/M. C. Kurunegala No. 7,894, S. C. Minutes May 13, 1954 that consent by itself is not a proper ground for the assumption of jurisdiction under that section.

The fact that the Magistrate in this case has mentioned an irrelevant ground makes it at least doubtful whether the other grounds he mentions would have been considered by him sufficiently for the purposes of assuming jurisdiction, and also makes it difficult for this Court on appeal to decide whether the Magistrate's decision to try the case was a proper one. I need hardly mention that several judgments of this Court have clearly laid it down that the decision to try a case under section 152(3) should be made only after full consideration of the circumstances of the case and that the reasons of the Magistrate must be stated for the benefit of this Court. The statement of reasons in the present case appears to be mere formal or literal compliance with the proper procedure.

The appeal on the facts has also been argued before me and I am satisfied that the accused was guilty of the offence charged. That being so, my doubts upon the question whether the Magistrate properly assumed jurisdiction are not sufficient to justify the quashing of the proceedings. The conviction is therefore affirmed and the appeal dismissed.

Appeal dismissed.

