

In the Matter of the Application for Revision of the Proceedings  
in case No. 528, P. C., Kalmunai.

1897.  
August 2.

*Jurisdiction—Non-summary charge—Fixing for trial under Ordinance  
No. 8 of 1896—Order of committal.*

Where one Police Magistrate inquired into a non-summary charge and sent the case to the Attorney-General for instructions, and the Attorney-General remitted the case to the Police Court with directions for committal of the accused—*Held*, it was not competent to another Magistrate of the same Court who was also District Judge to take the case up and make order fixing it for trial before himself as District Judge under Ordinance No. 8 of 1896.

THE facts of the case appear in the judgment of Withers, J.

*Wendt, Acting S.-G., for the Crown.*

2nd August, 1897. WITHERS, J.—

The Acting Solicitor-General has brought to my notice the order of Mr. Dunlop, District Judge of Batticaloa, in the case of *Sinna Pillai v. Kandan* and two others in Police Court, Batticaloa, sitting at Kalmunai, No. 528, and he has asked me to examine the record for the purpose of satisfying myself as to the legality or propriety of the order made therein by Mr. Dunlop. The accused

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were charged with voluntarily causing grievous hurt to Sinna Pillai before Mr. Byrde, the Additional Police Magistrate of Batticaloa.

After taking evidence he forwarded the case for the instructions of the Attorney-General. He was directed, I am informed, to commit the third accused for trial before the District Court of Batticaloa.

When the record was sent back to the Court below with these instructions it seems that Mr. Byrde was absent from the station, and on the 19th of July, 1897, the prosecutor and the parties accused appeared before Mr. Dunlop at Kalmunai.

In looking into the matter Mr. Dunlop came to the conclusion that he could not commit for trial without hearing at least some part of the evidence, and if he did commit the accused to stand their trial before the District Court he could not try them. The best way out of the difficulty he thought was to take the case up under Ordinance No. 8 of 1896, and consequently he fixed a day for the trial of the case before himself as District Judge of Batticaloa.

The chief question I have to decide is whether the last order is a legal and proper order under the circumstances. In my opinion it is not. If there had been no previous inquiry into the offence by another Magistrate it would of course have been competent for Mr. Dunlop without any commitment to hear, try, and determine it, for it is an offence which is not summarily triable, but one which the District Court had jurisdiction to try.

I therefore quash that order and direct the record to be sent to Mr. Byrde, who will carry out the instructions of the Attorney-General and commit the accused to stand their trial before the District Court of Batticaloa.

This order cannot possibly prejudice the accused, for they will have the advantage of being tried by Mr. Byrde, District Judge of Batticaloa.

In ordering cases I should naturally ask the Judge to send up the record with his observations, and I should give notice to the accused so that they might have an opportunity of being heard either in person or by pleader.

As I think it rather advantageous than prejudicial to the accused to make an instant order, I do so.

