

1959

*Present : Basnayake, C.J.*

ATTORNEY-GENERAL, Appellant, and BASKARAN, Respondent

*S. C. 33—M. C. Point Pedro, 4801*

*Criminal procedure—Charge—Duty of Magistrate to frame charge in a summary case—Joinder of charges—Effect thereon of Interpretation Ordinance, s. 9—Criminal Procedure Code, ss. 172, 187—Penal Code, s. 409—Motor Transport Act, No. 48 of 1957, s. 84 (2)—Motor Traffic Act, No. 14 of 1951, s. 226.*

The obligation of framing the correct charge or charges in a case summarily triable is one that rests on the Magistrate. Where, therefore, the Magistrate refuses to frame charges in the terms suggested by the prosecution, it is his duty to frame the correct charge.

The rule laid down in section 9 of the Interpretation Ordinance, that when an act or omission constitutes an offence under two or more laws the offender is liable to be prosecuted under either or any of those laws but shall not be liable to be punished twice for the same offence, applies to offences which though punishable under different laws consist of the very same ingredients. It is designed to prevent a person being punished twice for the same offence and does not, therefore, concern the trial of more than one offence at the same trial.

The accused, who was alleged to have defaced the identification plates of an omnibus and obscured a part of them, was charged with having committed three offences, viz. :—(1) under section 409 of the Penal Code, (2) under section 84 (2) of the Motor Transport Act, and (3) under section 226 of the Motor Traffic Act.

*Held*, that section 9 of the Interpretation Ordinance was not a bar to the prosecution of the accused under each of the laws referred to in the respective charges.

**A**PPEAL from a judgment of the Magistrate's Court, Point Pedro.

*Ananda Pereira*, Senior Crown Counsel, with *V. S. A. Pullenayegum*, Crown Counsel, for Complainant-Appellant.

No appearance for Accused-Respondent.

*Cur. adv. vult.*

July 17, 1959. BASNAYAKE, C.J.—

This is an appeal by the Attorney-General. Proceedings were instituted on 13th May 1958 on a written report under section 148 (1) (b) of the Criminal Procedure Code by Inspector of Police Rajasundaram. The report alleged that the accused committed offences punishable under section 409 of the Penal Code, and section 84 (2) of the Motor Transport Act, No. 48 of 1957, and section 226 of the Motor Traffic Act, No. 14 of 1951.

On that day summons was issued on the accused. He appeared on 27th May 1958. But no evidence was recorded till 8th July 1958 as the witnesses for the prosecution were not present, when after recording the evidence of Police Constable Kandiah the Magistrate, without reading the statement of particulars of the offences contained in the summons, as he was entitled to do under section 187 (2), framed the following charges against the accused :—

“ You are hereby charged, that you did, within the jurisdiction of this Court, at Pt. Pedro, on 30th April 1958—

1. Did with intent to cause knowing that he was likely to cause wrongful loss or damage to Ceylon Transport Board did cause change in omnibus No. 33 § 1177 property of the Ceylon Transport Board by obliterating the letter § on the identification plates of the said omnibus so as to diminish the value or utility thereof and that he did thereby commit mischief an offence punishable under section 409 of the Penal Code.

2. At the same time and place aforesaid and in the course of the same transaction the above named accused did wilfully deface the identification plates of the aforesaid omnibus No. 33 § 1177 of the Ceylon Transport Board and he is thereby guilty of an offence punishable under section 48 (2)—(sic)—of the Motor Transport Act No. 48 of 1957.

3. At the same time and place aforesaid and in the course of the same transaction the above named accused did obscure a part of the front and rear identification plates of motor vehicle to wit the aforesaid omnibus No. 33 § 1177 by the application of paint thereof in contravention of section 24 (2) of the Motor Traffic Act No. 14 of 1951 and that he is guilty of an offence under section 216 (1) (a) of the Motor Traffic Act No. 14 of 1951 punishable under section 226 of the said Act.

The accused pleaded not guilty and the case was fixed for trial. On 29th September 1958 when the case came up for trial Crown Counsel who appeared for the prosecution moved to amend the charges and submitted the following charges in substitution of those read to the accused on 8th July 1958 :—

“ You are hereby charged, that you did, within the jurisdiction of this Court, at Pt. Pedro, on 30th April 1958—

1. You with intent to cause or knowing that you were likely to cause wrongful loss or damage to the Ceylon Transport Board did commit mischief by obliterating the Sinhala Letter Sri on the identification plates of omnibus No. 33 § 1177 so as to diminish the value or utility of the said omnibus and that he (sic) has thereby committed an offence punishable under section 409 of the Penal Code.

2. That at the time and place aforesaid and in the course of the same transaction you did wilfully deface the identification plates of omnibus No. 33 § 1177 of the Ceylon Transport Board by obliterating the Sinhala Letter Sri on the said identification plates and that you are thereby guilty of an offence punishable under section 84 (2) of the Motor Transport Act No. 48 of 1957.

3. That at the time and place aforesaid and in the course of the same transaction you did obscure a part of the front identification plate of a motor vehicle to wit omnibus No. 33 § 1177 by obliterating the Sinhala letter Sri thereon in contravention of section 24 (2) of the Motor Traffic Act No. 14 of 1951 and that you are thereby guilty of an offence punishable under section 226 read with section 216 (1) (a) of the said Motor Traffic Act.

4. That at the time and place aforesaid and in the course of the same transaction you did obscure a part of the rear identification plate of a motor vehicle to wit omnibus No. 33 § 1177 by obliterating the Sinhala letter Sri thereon in contravention of section 24 (2) of the Motor Traffic Act No. 14 of 1951 and that you are thereby guilty of an offence punishable under section 226 read with section 216 (1) (a) of the said Motor Traffic Act.

Counsel for the accused objected to this application, basing his objection on section 9 of the Interpretation Ordinance. Crown Counsel then moved for time to cite authorities and the trial was postponed for 8th November 1958.

On that day the Magistrate after hearing counsel for the prosecution and the defence refused the application of Crown Counsel to amend the charges and called upon the prosecution to elect which of the three charges set out in the report under section 148 (1)(b) he meant to proceed with. Crown Counsel then drew the attention of the Magistrate to section 187 of the Criminal Procedure Code and submitted that the function of framing the proper charges against an accused person was vested by the Criminal Procedure Code in the Magistrate, and invited him to frame the correct charges, if the charges already framed by his predecessor were wrong, and said he was willing to lead evidence in support of the altered charge or charges framed by him. This the Magistrate declined to do. In the course of his order he said :

“ The Crown Counsel states that he is not electing to proceed with anyone of the charges but wants the Court to frame the charge. The framing of such a charge has not become necessary after the accused had already been charged on 8.7.58. This Court is not a prosecuting Court as in the case of non-summary offences. The Court as a Court of summary trial cannot with reason tell the accused that he shall face this charge and no other when all the charges as they stand are on the same set of facts.

“ In view, therefore, of the position taken by Mr. Tittawella, that he is not electing to proceed with anyone of the charges, I take it that he does not desire to place any evidence before Court for the trial of this accused in respect of anyone of the charges to which the accused had pleaded not guilty. In these circumstances I have no alternative but to acquit and discharge the accused. I make that order accordingly.”

The present appeal is from this order. The learned Magistrate was clearly wrong in acquitting the accused in the instant case. If on the submissions made by defence counsel he formed the opinion that the charges framed and read to the accused by his predecessor on 8th July 1958 needed alteration he should have altered them in the exercise of the powers vested in him by section 172 of the Criminal Procedure Code and proceeded with the trial. He acted wrongly in refusing to do so when Crown Counsel suggested that course and offered to place before the Court the available evidence on the charges as altered by him. The statutory obligation of framing the correct charge or charges in a case summarily triable is one that rests on the Magistrate. His action in asking the Crown Counsel to elect on which charge he proposes to proceed is not warranted by any provision of the Criminal Procedure Code.

The only question that arises for decision in this appeal is whether section 9 of the Interpretation Ordinance is a bar to a prosecution of the accused under each of the laws referred to in the respective charges. That provision is designed to prevent a person being punished twice for the same offence. It does not concern the trial of more than one offence at the same trial. That is a matter regulated by the Criminal Procedure Code. The rule laid down in section 9 is that when an act or omission constitutes an offence under two or more laws the offender is liable to be prosecuted under either or any of those laws but shall not be liable to be punished twice for the same offence.

Now in the instant case the accused is charged with committing the offence of mischief an offence punishable under section 409 of the Penal Code. The elements of that offence are—

- (a) an intent to cause, or a knowledge that he is likely to cause, wrongful loss (i.e. loss by unlawful means of property to which the person losing it is legally entitled—section 21 (2), Penal Code),
- (b) causing the destruction of any property, or any such change in any property, or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously.

He was also charged (i) with wilfully defacing the identification plates of an omnibus No. 33 § 1177, and (ii) with obscuring a part of the identification plates of that omnibus. The elements of each of these offences are not exactly the same. The prosecution is not seeking to have the accused punished twice for the same offence. It is seeking to have him tried for more than one offence at the same trial. That is, as I have

already stated, a matter regulated by the Criminal Procedure Code. For an act to constitute an offence under a law it must satisfy the requirements of that law. Section 9 therefore applies to offences which though punishable under different laws consist of the very same ingredients. The view I have taken is in accord with that taken by this Court in the case of the *King v. Haramanis*<sup>1</sup>.

I quash the order of acquittal and direct the Magistrate to proceed with the trial on the charges framed by his predecessor and read to the accused on 8th July 1958 altering them where, in the exercise of the discretion vested in him by section 172 of the Criminal Procedure Code, he thinks it necessary to do so, either *ex mero motu* or on the application of the prosecution.

*Acquittal set aside.*

