

1958

Present : Sinnetamby, J.

HENDRICK SINGHO, Appellant, and WANIGATILLEKA *et al.*,
Respondents

S. C. 913—M. C. Rakwana, 61;191

Appeal—Order upholding a plea of autrefois acquit—“Final order”—Criminal Procedure Code, ss. 187, 188 (2), 190, 191, 330, 331, 338 (1).

An order upholding a plea of *autrefois acquit* is a final order within the meaning of section 338 (1) of the Criminal Procedure Code and an appeal therefrom does not require the sanction of the Attorney-General.

APPPEAL from an order of the Magistrate's Court, Rakwana.

A. H. C. de Silva, Q.C., with *E. Gunaratne* and *N. U. Wirasekera*, for Complainant-Appellant.

K. Shinya, for Accused-Respondents.

Cur. adv. vult.

July 17, 1958. SINNETAMBY, J.—

This is an appeal by the complainant against an “acquittal” by the Magistrate of the respondents who were charged in this case with theft or, in the alternative, with retention of stolen property knowing or having reason to believe that the property was stolen. It would appear that in an earlier case, viz., *M. C. Rakwana* Case No. 61,172, the second respondent and another person were charged by the Divisional Revenue Officer as complainant with committing the same offences in the alternative in respect of the same property. The learned Magistrate upheld a plea of “*autrefois acquit*” which the accused preferred in this case and the appeal is against that order.

A preliminary objection was taken by learned Counsel for the respondents at the hearing of the appeal and it was agreed that this objection should first be decided before the arguments were heard on the main case. The objection is that the appeal being against an acquittal should be with the sanction of the Attorney-General and, inasmuch as no sanction had been obtained, this Court is precluded from entertaining it. The learned Magistrate himself has used the word “discharge” in his order but, as has been frequently pointed out, it is not the word used by the learned Magistrate that determines the question.

Much argument was addressed to me on the meaning to be attached to the words “discharge” and “acquittal” and it was sought to bring the order of the learned Magistrate under one or the other of these categories. If it amounted to an order of “acquittal” within the meaning of section 190 of the Criminal Procedure Code the sanction of the Attorney-General was necessary but if it amounted to a “discharge”

within the meaning of section 191 an appeal would lie without such sanction—*Sumangāla Thero v. Piyatissa Thero*¹. It seems to me, however, that an order made on a plea under sections 330 and 331 of the Criminal Procedure Code amounts neither to an acquittal under section 190 nor a discharge under section 191 of the Code. Section 190 deals with a situation that arises after an accused person has been charged under section 187. A “Trial” as the term implies involves an adjudication on the matters in respect of which the parties are at issue. It seems to me that this point is reached only when the accused is charged. If he pleads guilty the questions in issue are resolved immediately in favour of the prosecution: if he does not the trial of these issues commences. Indeed section 188 of the Code supports this view. Sub-paragraph (2) is in the following terms:

“If the accused does not make such statement (i.e. admission of guilt) the Magistrate shall ask him if he is *ready for trial* and,

(a) if the accused replies that he is ready for trial proceed to try *the case* in the manner hereinafter provided.

(b)”

Section 191 of the Code empowers a Magistrate to discharge an accused at any previous stage of *the case*, i. e. before a verdict is given of conviction or acquittal or perhaps even before a charge is framed. In other words section 190 is applicable only to situations in which a trial has commenced, i.e. after a plea has been recorded and not to an earlier stage of the proceedings. A “discharge” prior to the framing of the charge may or may not be a discharge within the meaning of section 191 but would certainly be a final order within the meaning of section 338 (1) of the Code in respect of which an accused is entitled to prefer an appeal without the sanction of the Attorney-General. Section 330 (1) of the Code provides, in respect of a previous conviction or acquittal, that an accused person shall “not be liable to be tried again”. An order of discharge on such a plea would therefore not amount to an order of acquittal under section 190 but would be a discharge in the nature of a final order to which section 338 (1) would apply. The preliminary objection to the hearing of this appeal must in my view fail.

I accordingly make order that the appeal be listed for hearing in due course on the main question, viz. whether the learned Magistrate came to a right decision on the plea of “*autrefois acquit*”.

Preliminary objection overruled.

¹ (1937) 39 N. L. R. 265.