

Present: Loos A.J.

1919.

JAINADEEN v. GEOMONIS.

137—P. C. Matugama, 976.

*Non-summary inquiry by Magistrate—Trial by the same Magistrate—
Bias.*

When a Magistrate held a non-summary inquiry and forwarded the case to the Attorney-General for instructions—

Held, that it was not proper for him to try the case summarily.

THE facts appear from the judgment.

Croos-Dabrera, for accused, appellant.—A Magistrate holding non-summary proceedings is in the position of a prosecutor, and should not, as a rule, try summarily a charge on the same facts (*Fernando v. Anna Bai*¹). In this case the Magistrate had completed the inquiry and forwarded the record to the Attorney-General with his opinion. A Police Magistrate, who is also a District

¹ (1918) 5 C.W.R. 184.

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Judge, should exercise his discretion under section 152 (3) of the Criminal Procedure Code immediately after hearing the evidence of the complainant or other witness as required by section 149. He cannot do so when all the evidence has been recorded and the prosecution closed (*Queen v. Uduman*¹). A charge under section 443 of the Penal Code cannot be tried summarily by a Police Magistrate under section 152 (*Danhia v. Donhamy*²). These irregularities have caused a substantial miscarriage of justice, and cannot be cured by the provisions of section 425 of the Criminal Procedure Code.

March 26, 1919. Loos A.J.—

In this case the accused was charged with the theft of one hundred and twenty diamond-rubber sheets, and the Magistrate proceeded to take non-summary proceedings.

Being then of opinion, apparently, that a case had been made out against the accused, he forwarded the case to the Attorney-General, presumably in order that the accused might be committed for trial. On the receipt of the record from the Attorney-General the Magistrate proceeded to try the case summarily.

In the first place, I do not think it is proper that the Magistrate, who had apparently made up his mind that the accused was guilty, and sent the case to the Attorney-General for committal, should thereafter have proceeded to try the case afresh, for in non-summary proceedings he is practically the prosecutor in the case. In the next place, the Magistrate has apparently lost sight of the cases reported in 2 Br. 230, 5 C. W. R. 184, and 4 N. L. R. 1.

The conviction of the accused appears to me to be bad according to law. The proceedings are accordingly quashed, and the case remitted for trial before another Magistrate.

Set aside.

¹ (1900) 4 N. L. R. 1.

² (1901) 2 Browne 230.