

1948

Present : Dias J.

THE ATTORNEY-GENERAL, Petitioner, *and* **DHARMASENA**,
Respondent.

S. C. 592—In revision M. C. Gampaha, 41,483.

Personation—Parliamentary elections—Triable summarily—Section 152 (3), Criminal Procedure Code—Parliamentary Elections Order in Council, sections 54 and 58.

The offence of personation created by section 58 (1) (a) of the Ceylon Parliamentary Elections Order in Council, 1946, may be tried summarily by a Magistrate under the provisions of section 152 (3) of the Criminal Procedure Code.

APPPLICATION to revise an order of the Magistrate of Gampaha.

V. T. Thamotheram, C.C., for the Attorney-General.

S. Walpita, for the accused, respondent.

Cur. adv. vult.

January 19, 1948. DIAS J.—

The accused, Subasinghe Arachchige Dharmasena, was charged under section 58 of the Ceylon (Parliamentary Elections) Order in Council 1946, with having, on August 28, 1947, being the day fixed for the election of a member for the House of Representatives to represent the electoral district of Mirigama, applied for a ballot paper in the name of Walpola Kankanamalage Chandradasa.

Section 54 of the Order in Council provides that every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person . . . shall be guilty of the offence of "personation".

Section 58 (1) (a) of the Order in Council provides the punishment for the offence of "personation" by declaring it to be a "corrupt practice" and by enacting that every person who commits the offence of "personation" shall on conviction by a District Court be liable to a fine not less than Rs. 250 and not exceeding Rs. 1,000, or to rigorous imprisonment for a term not exceeding twelve months, or to both such fine and such imprisonment.

The accused on being charged pleaded "Guilty", and the Magistrate having assumed jurisdiction under section 152 (3) of the Criminal Procedure Code sentenced him to pay a fine of Rs. 100.

The Attorney-General moves for the revision of the proceedings on the grounds (a) that an offence under section 58 of the Order in Council

should not be dealt with under the summary procedure provided by section 152 (3), and (b) that, in any event, the sentence is illegal, because the minimum fine provided for the offence of "personation" is Rs. 250.

It is clear that the offences created by section 58 of the Order in Council are non-summary. The words "shall on conviction by a District Court" clearly imply that.

Section 152 (3) of the Criminal Procedure Code, however, provides that where the offence appears to be one triable by a District Court and not summarily by a Magistrate's Court, and the Magistrate, being also a District Judge having jurisdiction to try the offence, is of opinion that such offence may properly be tried summarily, he may try the same summarily following the procedure laid down by Chapter XVIII., and in that case, he shall have jurisdiction to impose any sentence which a District Court may lawfully impose.

A Divisional Bench in *Madar Lebbe v. Kiribanda*¹ laid down that a Magistrate when he invokes the powers in section 152 (3) acts as a Magistrate and not as a District Judge, although he has power to impose a sentence which a District Judge can impose. There are various decisions of the Supreme Court which declare that, while some offences may properly be dealt with summarily under section 152 (3), there are other offences which should not be so dealt with.

I can see no reason why an offence under section 58 of the Order in Council may not be tried summarily under section 152 (3) of the Criminal Procedure Code. It was suggested that where a Magistrate under section 152 (3) summarily convicts a person of the offence of "personation", the disabilities created by section 58 (2) may not ensue. I do not agree. What section 58 (2) says is that "every person who is convicted of a corrupt practice shall, by conviction, become incapable for a period of seven years of the date of his conviction of being registered as an elector, or of voting at any election under this Order, or of being elected or appointed as a Senator or Member of parliament". Where a person has been lawfully convicted of a corrupt practice by a District Judge on an indictment, or by a Magistrate wielding powers lawfully under section 152 (3), that person is one "who is convicted of a corrupt practice". That being so, the legal disabilities follow as a necessary consequence. The first submission of the Attorney-General, therefore, fails.

The second submission of the Attorney-General must be upheld. The law provides a minimum fine. Had the Magistrate taken the trouble to consult the Order in Council, he would have seen that a fine of Rs. 100 for the offence of personation is quite illegal. I would go further. I do not think this is a case which can adequately be punished by a mere fine at all. Offences of personation are hard to detect and difficult to prove. When such an offender has been brought to book, it is expedient in the public interest that the punishment should fit the crime.

I quash the order imposing the fine, and I direct that the accused shall undergo a term of rigorous imprisonment for four months. Subject to this the conviction is affirmed.

Sentence varied.