

1933

Present : Akbar J.

BANDARANAIKE v. RASANAYAKE et al.

187—188—P. C. Puttalam, 16,989.

Bias—Magistrate forming an opinion outside Court—Entry in Information Book—Trial before another Magistrate.

A Police Magistrate, who has been informed of the facts of a case outside Court and has made an entry in the Information Book, should not try the case himself.

A PPEAL from a conviction by the Police Magistrate of Puttalam.

L. A. Rajapakse (with him Athulathmudali), for first accused, appellant.

Sri Nissanka (with him Panditagoonawardena), for respondent.

July 21, 1933. AKBAR J.—

The first accused in this case is the Interpreter Mudaliyar of the Police Magistrate's Court and the second accused is the Court Sergeant of the same Court. They are both charged before this Magistrate with assaulting a person and they have been found guilty and fined Rs. 50 and Rs. 25, respectively.

A point of law was taken that the Magistrate was prejudiced and should have given effect to the objection taken by counsel that the accused should be tried by some other Magistrate. In spite of the objection he decided to hear the case because he was of opinion that not to try the case would have been "a gross dereliction of duty on his part", meaning, I believe, "dereliction of duty to the Government", but there is another duty that is of a higher sanction, namely, the interests of justice. It is quite clear from the evidence of the Sub-Inspector of Police in answer to questions in cross-examination that he informed the Police Magistrate of the occurrence about 9 A.M. that day and the Police Magistrate visited the station during the course of the day. What is more the Police Magistrate presumably read the information book because he wrote an opinion of the matter in the visitor's book and the information book. Counsel who appeared for the accused is to be commended for not asking what this comment was. Obviously, the Magistrate having looked at the information book must have formed his opinion which he expressed in the information book and it is not difficult to see that he must have followed this opinion, unconsciously perhaps, in his judgment, or otherwise it means that his opinion first formed was different to the one that he formed at the end of the trial.

There are several authorities which say that a Magistrate who has been prejudiced in this way should not try the case himself. This is the higher duty to which I referred above. See the cases *Rode v. Bawa*¹, *King v. Podisingho*², *1 Thambiah* 61 and *Peris v. Simanis*³. As regards

¹ 1 N. L. R. 373.

² 2 N. L. R. 62.

³ 16 N. L. R. 16.

the Magistrate's reference to the information book, see the case reported in *Bartholomeusz v. Velu*¹. The Magistrate here did make use of the information book but it has not been put in evidence.

The only difficulty I have is whether I should not set aside the whole conviction and leave it at that or whether I should order a fresh trial if the prosecutor wishes to proceed with this case. I think the interests of justice require that there should be a re-trial, if the prosecutor wishes to press the charge, and that it should be heard by a new Judge who should preferably be appointed from outside the district to hear the case.

The conviction and sentence are set aside.

Set aside.

