

1951

Present : Swan J.

MENDIS SINGHO, Appellant, and ATTAPATTU
(Inspector of Police), Respondent

S. C. 745—M. C. Gampaha, 56,845

Criminal Procedure Code, s. 152 (3)—Assumption of jurisdiction thereunder—Power of Court to try case de novo as Magistrate.

Once a Magistrate who is also a District Judge has assumed jurisdiction as a District Judge and tried a case in that capacity he should deliver judgment. He is not entitled to try the case *de novo* as Magistrate even though the offence in question is summarily triable by a Magistrate's Court.

¹ S. C. Minutes of 30.1.51—S. C. 1200/M. C. Matara, No. 19949.

² (1929) 30 N. L. R. 410.

APPPEAL from a judgment of the Magistrate's Court, Gampaha.

Asoka Obeyesekera, with *R. Wanasundera*, for the accused appellant.

V. G. B. Perera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 10, 1951. SWAN J.—

In this case the learned Magistrate has been guilty of an irregularity which, in my opinion, vitiates the entire proceedings. The charge was one of mischief under Section 412 of the Penal Code. The case first came up on August 21, 1950, before Mr. F. E. Alles, Magistrate of Gampaha. After recording the evidence of the chief witness for the prosecution, the learned Magistrate who was also an additional District Judge decided to assume jurisdiction as District Judge and so informed the accused. The accused was then charged from the charge sheet and he pleaded not guilty. Trial was fixed for October 2, 1950. After two postponements the case came up for trial on December 4, 1950, before Mr. Gunawardene, Additional Magistrate, who was also an Additional District Judge. He proceeded to try the case in the latter capacity. After hearing the evidence for the prosecution and for the defence and the trial was concluded, and after learned Counsel for the defence had addressed the Court, the learned District Judge made the following order:—"I find at this stage that Section 412 is summarily triable by D. C. as well as M. C.. I therefore charge accused from S. F. (1). Accused states 'I am not guilty.' Trial December 11, 1950."

At the second trial Mr. Gunawardene purported to act as Magistrate and after hearing the evidence for the prosecution and the defence convicted the accused and sentenced him to pay a fine of Rs. 75.

The course adopted by the learned Magistrate appears to me to be entirely irregular. Once he had assumed jurisdiction as a District Judge and tried the case in that capacity he should have delivered judgment. Whether or not he was right in assuming such jurisdiction was a matter that this Court alone could have considered either on appeal or by way of revision or review. I do not think he had any right to try the case *de novo* as Magistrate.

Learned Crown Counsel who appeared for the respondent agreed that the procedure was irregular and vitiated the proceedings. The only further question I have to consider is whether I should order a re-trial. I do not think I should. On the facts I would say that the charge of mischief under Section 412 cannot be sustained.

I therefore quash the conviction and acquit and discharge the accused.

Appeal allowed.