

1958

Present : Weerasooriya, J.

**DHARMARATNE, Appellant, and INSPECTOR OF POLICE,
HATTON, Respondent**

S. C. 1,143—M. C. Hatton, 8,643

Criminal Procedure Code—Section 152 (3)—Improper assumption of jurisdiction thereunder—Accused acquitted in appeal on facts—Must the case be sent back for non-summary inquiry?

Where the evidence is insufficient to justify the conviction of an accused-appellant, the Supreme Court may refuse to send the case back for non-summary investigation even if the trial Court had, despite the complicated nature of the evidence, improperly assumed jurisdiction under section 152 (3) of the Criminal Procedure Code and tried the accused summarily.

APPEAL from a judgment of the Magistrate's Court, Hatton.

E. F. N. Gratiaen, Q.C., with *E. L. P. Mendis*, for accused-appellant.

George Candappa, Crown Counsel, for Attorney-General.

Cur. adv. vult.

September 17, 1958. WEERASOORIYA, J.—

The accused was convicted by the Magistrate of Hatton on two charges of criminal breach of trust in respect of a sum of Rs. 1,321·68 and abetting an unknown person to commit the offence of forgery, and sentenced to a term of nine months' rigorous imprisonment on each charge, the sentences to run consecutively. The present appeal is filed against these convictions and sentences.

[His Lordship then considered the evidence and, after setting aside the convictions, continued :—]

There remains to be considered the submission made by Mr. Gratiaen, without prejudice, however, to the merits of the appeal on the facts, that having regard to the complicated nature of the evidence in this case the Magistrate improperly assumed jurisdiction under section 152 (3) of the Criminal Procedure Code and tried the accused summarily. Learned Crown Counsel too adopted this submission and asked that the case be sent back so that non-summary proceedings be taken against the accused in respect of the charges brought against him.

While I am in agreement with this submission, it does not seem to me that the wrong decision of the Magistrate to deal with the case summarily necessarily had the effect of taking away from him the jurisdiction to try it and that this Court is left with no alternative but to remit the case for a non-summary investigation in accordance with law. In *Perera v. Thedias (Inspector of Police)*¹ my brother Gunasekara refused to send the case back for a non-summary investigation where the evidence was insufficient to justify the conviction of the accused. Although the circumstances in which he made that order were not quite the same as in the present case, I would respectfully adopt that case as a precedent for not sending the case back. I am also of the view that in the present case the appropriate order to make is to acquit the accused. I set aside the convictions of the accused and the sentences passed on him and I acquit him.

Appeal allowed.

¹ (1955) 57 N. L. R. 368.