

1946

Present : Cannon J.

KHAN, Petitioner, and FERNANDO (P. C.), Respondent.

*In revision, M. M. C. Kandy, 38,127.**Accused's plea of guilty—Magistrate a virtual party to case—Irregular procedure—Right of accused to change plea before sentence.*

Where an accused person made an unqualified admission of guilt before a Magistrate who was a virtual party to the case—

Held, that, in the circumstances, the accused's plea should not have been taken before that Magistrate.*Held, further*, that an accused person has the right to change his plea before sentence is passed.**T**HIS was an application to revise a conviction recorded by the Magistrate of Kandy.*S. Alles* (with him *S. R. Wijayatilake*), for the accused, appellant.

March 25, 1946. CANNON J.—

A military driver apparently from Northern India was brought before the Magistrate on three charges framed under the Motor Car Ordinance. They involved the obstruction of the motor car of Mr. Malalgoda, the presiding magistrate. The record states that the charges were explained to the defendant by an interpreter and the defendant then said "I am guilty", and the magistrate recorded his plea. The magistrate then directed that the case should be remitted to another magistrate, apparently

for sentence, as the presiding magistrate was a virtual party to the case. The defendant was at this time unrepresented. When the case was called before the other magistrate the defendant who was represented by a proctor informed the Court that he wished to withdraw his plea of guilty because he had not appreciated the full meaning of the charges. This magistrate, describing the application as an "afterthought" on the part of the defendant, refused the application and sentenced him to a fine of Rs. 60 on his original plea.

In the circumstances, the accused's plea should not have been taken before Mr. Malalgoda. The matter is brought here in revision. The application may have been an afterthought but it is well established that an accused person has the right to change his plea before sentence, and decided cases were in fact discussed in a case where the point arose and which is reported in 41 N. L. R. 560.

The conviction and sentence must be set aside and the case remitted to another magistrate for a fresh trial.

Fresh trial ordered.
