[IN REVISION.]

1943 *Present :* **Moseley A.C.J.**

WICKREMESINGHE, Appellant, *and* FAY, Respondent.

M. C. Badulla, 8,074.

Revision—Attorney-General's refusal to sanction appeal—Application to revise—Heavy onus on application—Magistrate's decision to try a case summarily—Reasons—Criminal Procedure Code, s. 152 (3).

'Where a Magistrate exercises his power to try a case summarily under section 152 (3) of the Criminal Procedure Code, the exercise of the power may be justified on the ground that the facts are simple.

A heavy onus rests upon an applicant who moves to revise a case, when the Attorney-General has refused to sanction an appeal. It is incumbent upon him to make out a strong case amounting to positive miscarriage of justice in regard to either the law or the Judge's appreciation of the facts.'

THIS was an application for revision by the complainant.

N. Nadarajah, K.C. (with him *C. S. Barr Kumarakulasingham* and *H. W. Jayewardene*), for the complainant, petitioner.

H. V. Perera, K.C. (with him *E. F. N. Gratiaen*), for the accused, respondent.

Cur. adv. vult.

June 9, 1943. MOSELEY A.C.J.—

The accused-respondent was charged on the following counts:—

(1) criminal trespass, punishable under section 434 of the Penal Code;

(2) assaulting a public servant in the execution of his duty, punishable under section 344 ;
(3) simple hurt, punishable under section 314 ;
(4) grievous hurt, punishable under section 324.

The respondent was acquitted. The petitioner applied to the Attorney-General to sanction an appeal. The application was refused. He now moves this Court to exercise its powers in revision. It is not disputed that the Supreme Court has the power of revision, in a proper case, notwithstanding the refusal of the Attorney-General to sanction an appeal.

The petitioner bases his application on a point of law as well as on the facts, in respect of which it is contended as well that the learned Magistrate misdirected himself. I may say at once that in regard to the facts and the alleged misdirection, a very strong case would, in my opinion, have to be made out before this Court would, in such circumstances as these, set aside an order of acquittal and order a new trial. In *The King v. Noordeen et al.*[1], Wood Renton J. expressed his opinion that "a very heavy onus rests upon the applicant who comes before the Supreme Court, for the purpose of inviting it in effect to override the deliberate refusal of the Attorney-General to sanction an appeal. It is incumbent upon him, I should say, to make out a strong case amounting to positive miscarriage of justice in regard to either the law or the Judge's appreciation of the facts". I respectfully associate myself with that view and I am unable to find that the petitioner, as far as the facts are concerned, has shown that there has been a miscarriage of justice.

The point remaining for consideration is in regard to the assumption by the learned Magistrate of his powers as District Judge. There were, in the first place, only three charges, viz., Nos. 1, 2, and 3 pressed against the accused. After the medical evidence and that of the petitioner had been recorded, the latter's Counsel moved to add count No. 4. This charge is in respect of an offence punishable only by a District Court. Up to that point the proceedings had been summary, and there were now two courses open to the Magistrate. He could commence non-summary proceedings or, since he is also a District Judge, could, if he was of opinion that the offence might be tried summarily, so try it as provided by section 152 (3) of the Criminal Procedure Code. He decided upon the latter course, making this note :—" . . . . I will try it as D. J.", and proceeded to do so.

Learned Counsel for the petitioner contends that, in view of the complex nature of the offence alleged in the added count, it was not a proper case for summary trial. I do not find any substance in this contention. There is no more complexity in the fourth charge than there is in the second which admittedly is triable summarily by a Magistrate. The further objection is taken that the Magistrate, in assuming jurisdiction under section 152 (3) has not stated his reasons adequately. The note made by the learned Magistrate in this connection is on the printed form which is provided to meet the case of a summary trial by a Magistrate who is also a District Judge, and on this form the Magistrate has expressed

[1] *13 N. L. R. 115.*

his opinion that the case may properly be tried summarily for the following reasons :—" The facts are simple and the case can be dealt with expeditiously ". In *Silva v. Silva* [1], de Sampayo J. observed : " It is not enough for the Police Magistrate to form the opinion that the offence may be tried summarily by him, but he must record the reasons for his opinion. " In *S. C. No. 742-757—P. C. Negombo, 23,506* [2], it was held that the importance of dealing with cases of this description promptly is not by itself a good reason, but Wood-Renton C.J. added : " The exercise of the power can be justified upon another ground, namely, that in spite of the number of the accused, the case is essentially a simple one. " In the present case the learned Magistrate has given the same additional reason, namely, that the facts are simple. As may be gathered from my previous observations, I am in agreement with that opinion. It seems to me, therefore, that the applicant has failed in discharging the burden cast upon him, namely, to make out a strong case amounting to a positive miscarriage of justice in regard to either the law or the facts. The application is therefore dismissed.

Application refused.