1915.

Present : ENNIS J.

THE KING *v.* JAYASINGHA.

1,087—P. C. Kandy, 97.

Criminal Procedure Code, section 152—Magistrate also District Judge—Acts as Magistrate even when acting under section 152 (3)—Has enhanced powers of punishment—Magistrate may try one offence summarily as Police Magistrate and another under section 152.

A Magistrate acting under section 152 acts throughout as Magistrate and not as District Judge. If the offence is one ordinarily triable by a District Court only the Magistrate may, if he is also a District Judge and considers that the offence may properly be tried summarily, try the case summarily as Magistrate. The effect of the section is to give the Magistrate jurisdiction in cases in which he would not otherwise have jurisdiction, and in such cases he has enhanced powers of punishment.

If a Magistrate has jurisdiction to try an offence summarily, he could not under the third paragraph of section 152 get any enhanced powers of punishment; that paragraph applies only where the offence is one "not summarily triable by a Police Magistrate."

A Police Magistrate may, in the same case, exercise jurisdiction for the trial of one offence as Magistrate and for the trial of another offence under section 152 of the Criminal Procedure Code.

IN this case the accused was charged and convicted on six counts connected with the disturbances in Kandy. There were two counts under section 140 of the Penal Code, one under section 142, one under section 144, one under sections 146 and 410, and one under section 148. The learned Magistrate was also a District Judge, and tried the case summarily under section 152 of the Code of Criminal Procedure. He sentenced the accused to six months' rigorous imprisonment on each of the first two counts, the sentences to run concurrently, and to one year's rigorous imprisonment on each of the other counts, the sentences to run concurrently.

Bawa, K.C. (with him *A. St. V. Jayewardene* and *E. G. P. Jayetilleke*), for appellant.

Schneider, Acting Solicitor-General (with him *Grenier, Crown Counsel*), for the Crown.

August 27, 1915. ENNIS J.—

[His Lordship set out the facts, and continued]:—

Objection has been taken that the Court could not exercise jurisdiction as a Police Court for the trial of one offence and jurisdiction under section 152 as a District Court for the trial of another

offence. Further objection was taken that it could not exercise District Court powers of punishment for an offence over which it had jurisdiction as a Police Court. In my opinion the first point is unsound and the second point right. A close perusal of section 152 shows that a Magistrate acting under section 152 acts throughout as Magistrate and not as District Judge. If the offence is one which a Police Court can try summarily, the Magistrate is to exercise the jurisdiction and powers ordinarily vested in Police Courts. If the offence is one ordinarily triable by a District Court only (*i.e.*, on the case being committed to the District Court for trial) the Magistrate may, if he is also a District Judge and considers that the offence may properly be tried summarily, try the case summarily as Magistrate. The effect of the section is to give the Magistrate jurisdiction in cases in which he would not otherwise have jurisdiction, and in such cases he has enhanced powers of punishment. This view of the matter is supported by a case decided by Lawrie A.C.J. and reported in *Koch's Reports 19*.

Several cases have been cited in support of the objections: *W. Don Andris v. N. Hin Appuhamy*,[1] *Peiris v. Wijetunge*,[2] and an unreported case (527—P. C. Galle, 32 [3]). These cases were all cases of offences which were ordinarily triable by the Police Court as well as the District Court. The Magistrate had power to try them summarily as Police Magistrate, and if he considered his ordinary powers of punishment insufficient it would be his duty to commit to the District Court for non-summary trial. An offence triable by a Police Court or District Court appears to be one less serious, than an offence triable by a District Court alone. If, then, the Magistrate had jurisdiction to try summarily, he could not under the third paragraph of section 152 get any enhanced powers of punishment, for that paragraph expressly states that it applies only where the offence is one "not summarily triable by a Police Court." This being so, the sentence imposed on the last two counts, under sections 146 and 410 and section 148, are in excess of the Magistrate's powers. The imposition of a sentence beyond his powers does not affect the Magistrate's jurisdiction to try the case, notwithstanding that, inferentially, it raises the supposition that he considered his ordinary powers of punishment insufficient. In this case the Magistrate elected to try summarily at the express request of the prosecution, and for the reason, *inter alia*, that he considered it desirable in the interests of justice to dispose of the cases as speedily as possible, as there were a large number awaiting trial. Moreover, for two of the offences charged the Magistrate could and did exercise his enhanced powers of punishment, and by directing the sentences to run concurrently he has in effect not imposed a total sentence beyond his powers. In the circumstances the accused has not been prejudiced

[1] *1 Br. 42.*

[2] *4 Bal. 85.*

[3] *S. C. Mins., June 26, 1915.*

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by the Magistrate exceeding the limits of punishment on two counts, and it would be unnecessary to direct a trial by non-summary proceedings.

[His Lordship proceeded to discuss the facts of the case and acquitted the accused.]

Accused acquitted.