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[FULL BENCH.]

Present: Wood Renton C.J. and Ennis and De Sampayo JJ.

MADAR LEBBE *v.* KIRI BANDA *et al.*

1,518-23—P. C. Kandy, 203.

Criminal Procedure Code, section 152 (3)—Police Magistrate acts as Magistrate, and not as District Judge, when exercising the powers conferred by this section—He may act under this section even when accused is charged with offences some of which are triable summarily and others by a District Court.

A Police Magistrate who is also a District Judge, when exercising the punitive powers conferred upon him by section 152 (3) of the Criminal Procedure Code in respect of offences triable by a District Court and not summarily by a Police Court, acts as a Police Magistrate, and not as a District Judge. If the offence is one triable by the Police Court, the Police Magistrate has jurisdiction without any reference to section 152 (3), and if he arrogates to himself higher punitive powers by purporting to act under that provision, the infliction of any punishment beyond the Police Court limit does not by itself vitiate a conviction, but it is an irregularity which may be cured as regards the sentence by the interference of the Supreme Court in revision.

There is no objection to a Police Magistrate applying section 152 (3) to a case where an accused is charged with several offences, some of which are triable summarily by the Police Court and others are not, provided he inflicts no higher punishment in respect of the lower offences than he has ordinary jurisdiction to impose.

NON-SUMMARY proceedings were taken against the accused under sections 140, 144, 146, and 439 of the Ceylon Penal Code. On an adjourned trial date the accused were informed by the Police Magistrate that they would be tried summarily by him in his capacity as District Judge, under section 152 (3) of the Criminal Procedure Code. After trial they were convicted under sections 140 and 144, and acquitted under sections 146 and 439. The first accused was sentenced to six months' rigorous imprisonment under section 140, and two years' rigorous imprisonment and a fine of Rs. 2,500, in default an additional six months' rigorous imprisonment, under section 144. The second, third, fourth, and sixth accused

were sentenced to six months' rigorous imprisonment under section 140 and two years' rigorous imprisonment under section 144. The fifth accused was bound over to be of good behaviour and to keep the peace for six months.

Bawa, K.C. (with him *Dias*), for the accused, appellants.—The charge under section 140 of the Penal Code being one triable by a Police Court as well as by a District Court, it was not competent for the Police Magistrate to try such charge as District Judge under sub-section (3) of section 152 of the Criminal Procedure Code.

Counsel referred to 1,423-1,424—P. C. Balapitiya, 41,272, [1] and to 1,087—P. C. Kandy, 97.[2]

In any event, where accused are charged with several offences, all the offences must be " triable by a District Court, and not summarily by a Police Court, " to enable the Magistrate to act under section 152 (3).

In this case the offence under section 140 was triable by a Police Court, and under section 144 was not triable summarily by a Police Court. In such a case as this, it is not open to a Magistrate to act under section 152 (3). The term " offence " in section 152 (3) includes the plural, according to the Interpretation Ordinance. But it cannot be made to refer to some only of the offences with which the accused are charged. Where there are many offences, we must read " offences " instead of the word " offence. "

V. Grenier, Crown Counsel, for the Crown (not called upon).

Cur. adv. vult.

October 29, 1915. Wood Renton C.J.—

This case was fully argued before me on October 22, and I should have had no difficulty in giving my decision at the close of that argument. But I thought it desirable to refer to a Bench of three Judges the question, in regard to which I understood that my brother Ennis had taken a view different to the one adopted by myself in cases of this character, namely, whether the Police Magistrate could exercise the punitive powers of an Additional District Judge conferred upon him by section 152 (3) of the Criminal Procedure Code in regard to charges with which he had power to deal summarily. I gathered that the opinion of my brother was that this question should be answered in the affirmative. The further argument before three Judges has sufficed to show, however, that the supposed conflict of judicial opinion upon this point does not exist, and has also served to disclose a practical method of dealing with the difficulty which had not hitherto occurred to me. It is clear from the language of section 152 (3) of the Criminal Procedure Code, and we are all agreed, that a Police Magistrate cannot deal under that sub-section with charges within his own original jurisdiction, and where he does so, the Supreme Court has

[1] *S. C. Mins., Sept. 21, 1915.*

[2] *18 N. L. R. 374.*

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the right, if it thinks proper, to interfere. But on the other hand, as my brothers Ennis and De Sampayo, in decisions hitherto unreported, and to which my attention had not been called, have pointed out, there is nothing to prevent the Supreme Court from treating the trial as if it had been a summary trial by the Police Magistrate as such, and from affirming the conviction, with such modification, if any, as to the sentence as may be necessary to bring it within the original Police Court jurisdiction. In the present case the sentences are concurrent. The sentence passed on each of the appellants under section 140 of the Penal Code is only one of six months' imprisonment. I do not, therefore, feel called upon to interfere.

At the argument before the Bench of three Judges the appellants' counsel argued that, where, as here, accused persons were charged with offences, some of which are, while others are not, triable by the Police Court summarily, a Police Magistrate could not act under section 152 (3) of the Criminal Procedure Code even in regard to the latter. I did not reserve this point, and I have repeatedly over-ruled it in unreported cases in connection with the recent riots with which I have had to deal.

The learned Police Magistrate has imposed upon the first accused-appellant a fine of Rs. 2,000, which exceeds the punitive jurisdiction of the District Court. That portion of the sentence must be modified by the substitution of a fine of Rs. 1,000. But otherwise I agree with the decision under appeal. I do not think that the Police Magistrate meant to say that he would have rejected the evidence of the Moorish witnesses if it had stood alone. He only says that he would have doubted its truth if there had been no mention of names by Abusalibu till the institution of these proceedings. But he points out, and the evidence justifies the observation, that the names of the accused were given by Abusalibu at once. In spite of the previous proceedings in 69-71—D.C. (Criminal), Kandy, No. 20,721, he accepts the corroborative evidence of the headman, and informs us that he regarded the first accused as a most unsatisfactory witness. It is unfortunate that the Police Magistrate should have referred to the caste of the accused in such a way as to lay a foundation for the suggestion that he considered it as creating some kind of probability of his guilt. But he has considered the whole of the evidence with great care, and I see no reason to think that his judgment was unconsciously influenced by any considerations of this character. Subject to the modification indicated above as to the fine of Rs. 2,000, I dismiss the appeals.

ENNIS J.—

On the point reserved for the Full Court I am in agreement with my Lord the Chief Justice, and have, in previous cases, expressed the same opinion.

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DE SAMPAYO J.—

I am of the same opinion on both the points argued before us. I have myself frequently dealt with cases in accordance with that view of the law. The fact to be emphasized is that the Police Magistrate acts in all cases as Police Magistrate and in conformity with the procedure laid down for the trial of cases in the Police Court. If the offence is one which is triable by the Police Court, the Police Magistrate has jurisdiction without any reference to section 152 (3) of the Criminal Procedure Code, and if he arrogates to himself higher punitive powers by purporting to act under that provision, the infliction of any punishment beyond the Police Court limit does not by itself vitiate a conviction, but is in my opinion an irregularity which may be cured as regards the sentence by the interference of the Supreme Court in appeal or in revision. Mr. Bawa, for the appellants, does not seriously contest this point, but he strenuously argues that where an accused is charged in the same proceedings with several offences, some of which are triable summarily by the Police Court and others are not, section 152 (3) is not applicable at all, and that if for the purpose of trying the latter offences summarily the Police Magistrate gives himself jurisdiction under that section, a conviction for all or any of the offences is wholly bad. The reasoning of counsel on this point is as follows. The Interpretation Ordinance, 1901, enacts that words in the singular number in the language of an Ordinance shall include the plural, and hence the word "offence" in section 152 (3), being taken to mean "offences" where several offences are embraced in the same prosecution, all of them must be offences triable by the District Court, and not by the Police Court. I do not think that this reasoning is sound. Undoubtedly the word "offence" in the above section includes "offences," but in the case put the plural must be taken distributively and not collectively. In my opinion there is no objection to a Police Magistrate applying section 152 (3) to a case where several offences of two descriptions of gravity are concerned, provided of course he inflicts no higher punishment in respect of the lower offences than he has ordinary jurisdiction to impose.

Varied.

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1,423-1,424—P. C. Balapitiya 41,272.

Zoysa, for accused, appellant.

Balasingham, for complainant, respondent.

September 21, 1915. DE SAMPAYO J.—

The accused were charged with the offences (1) of house trespass under section 437 of the Penal Code and (2) of criminal misappropriation of certain property under section 386. I think the Police Magistrate came to a right conclusion on the facts, but in appeal a legal objection is taken to the procedure adopted by him. An offence under section 437 of the Penal Code is not triable summarily by the Police Court, but is triable by the District Court, and an offence under section 386 is triable both by the Police Court and by

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the District Court. In this case the Police Magistrate, being also a District Judge, purported to act under section 152 (3) of the Criminal Procedure Code, and recorded his intention to try the accused summarily on both the above charges. The objection so far as it affects the charge under section 386, is well founded, because the above provision of the Criminal Procedure Code does not authorize a Police Magistrate, where he has already summary jurisdiction, to give himself higher punitive powers. But counsel for the accused-appellants further contended that the conviction itself is *ipso jure* vitiated. I cannot agree with him there, nor do I think that the decisions cited by him are intended to go that length. Misleading language is often employed to describe the nature of the proceedings authorized by section 152 (3). The Police Magistrate, for instance, is said "to act as District Judge," but this is wholly incorrect. The Police Magistrate acts and can only act as Police Magistrate, the only difference being that, being also District Judge, he has power to impose a sentence which ordinarily a District Judge may impose. This being so, the objection in such cases as the present can only be to the sentence and not to the conviction itself, and it is within the power of the Supreme Court in appeal to interfere with the sentence and sustain the conviction. The wrong application of section 152 (3) involves a mere irregularity, and where the sentence actually imposed is within the jurisdiction of the Police Court, and no real prejudice is caused to the accused by the proceedings, there is no reason for interference in any respect. I am obliged to counsel for the complainant-respondent for reference to the case 1,087—P. C. Kandy, No. 97 (*S. C. Min., August 27, 1915*), in which I find Ennis J. took the same view of the law. In the present case the Police Magistrate imposed in respect of each of the two offences a fine of Rs. 25, which is within his ordinary powers.

The appeal therefore fails, and is dismissed.