

[IN REVISION.]

Present: **Howard C.J.**

PITCHAPULLAI *et al.* v. LEEMBRUGGEN.

M. C. Hatton, 97-99.

Plea of guilt—Plea not an unqualified expression of guilt—Accused's right to withdraw plea.

Where a plea of guilt entered by an accused is expressed in terms which leave room to doubt whether the plea is unqualified, the accused is entitled to withdraw the plea.

A PPEAL from a conviction by the Magistrate of Hatton.

L. A. Rajapakse (with him *S. Aiyar* and *M. Balasunderam*), for the accused, petitioners, in applications for revision in *M. C. Hatton*, Nos. 97, 98, 99, and Nos. 101, 102, 103, 104, 107, 108, 110, 111, 112, and for the accused, appellants, in *S. C.* Nos. 147, 148, 149, 150, 151, 152, 153.

M. T. de S. Amerasekere, K.C., Solicitor-General (with him *Nihal Gunasekera, C.C.*), for the Crown, respondents, in applications for revision in *M. C. Hatton*, Nos. 97, 98, 99, 101, 102, 103, 104, 107, 108, 110, 111, 112, and *S. C.* Nos. 147 to 153.

Cur. adv. vult.

March 14, 1940. HOWARD C.J.—

The points that arise for decision in these cases are the same and in these circumstances Counsel on both sides have asked that they should be taken together. In applications for revision in *M. C. Hatton*, Nos. 97, 98 and 99 the petitioners pray that the Court may be pleased to quasi the proceedings had against them on January 30, 1940, and thereafter make order directing the continuation of the trial in accordance with the

law. In applications for revision in M. C. Hatton, Nos. 101, 102, 103, 104, 107, 108, 110, 111 and 112, and in appeals M. C. Hatton, Nos. 100, 102, 103, 104, 107 and 108, the petitioners pray that the Court may set aside the convictions and sentences entered against them and make order allowing the appellants to withdraw their pleas of guilt and make such other orders as may seem meet and proper to the Court. In cases Nos. 97 and 98 each of the petitioners on January 30, 1940, who on January 20, 1940, had pleaded "not guilty", stated "I am guilty. I will leave the estate in a week". The Magistrate thereupon made order as follows: "Call case on February 7 at Nuwara Eliya". In case No. 99 the accused made the same statement and the Magistrate thereupon made order as follows: "Call case at Nuwara Eliya on February 7. Sentence deferred until then". No further orders have been made by the Magistrate in these three cases.

In the other cases the Magistrate on January 30, 1940, made the same order as in cases Nos. 97 and 98. On February 7, 1940, Counsel for each of the accused applied to withdraw the latter's plea of guilty. This application was refused and the Magistrate then found each of the accused guilty on his own plea and convicted them and sentenced them to a term of one month's rigorous imprisonment. On behalf of the various accused Mr. Rajapakse has contended that the Magistrate was wrong in law in refusing to allow the accused to withdraw their pleas of guilty. The Acting Solicitor-General admits that, if the pleas of guilty were qualified, they could be withdrawn. He also admits that the wording of those pleas and the affidavits of the accused in support of their petitions permit of some doubt as to whether the pleas in law amounted to unqualified admissions of guilt. In these circumstances he suggests that the matter should be referred to the Magistrate for report. I am of opinion that the pleas are so phrased that it is a matter of inference as to whether they are unqualified admissions of guilt. It is conceivable that they amount to a plea of guilty on the condition that a week is allowed for the accused to leave the estate. If this inference is correct the plea of guilty was not unqualified. In these circumstances the doubt as to whether the pleas are unqualified must be resolved in favour of the accused. I therefore, hold that the accused should in these cases have been permitted to withdraw their pleas and substitute pleas of "not guilty".

Even if the pleas were unqualified it is maintained by Mr. Rajapakse that they could be withdrawn. The Magistrate has not recorded a formal conviction of the accused in any of these cases. In these circumstances the judgment of Bertram A.C.J. in *Fernando v. Costa*¹, is authority for the proposition that such pleas could at the option of the accused be withdrawn and treated as never having been made. *Roosemalecocq v. Sally*², is a further authority for the same proposition. In cases Nos. 100, 101, 102, 103, 104, 107, 108, 110, 111 and 112 the convictions and sentences must be set aside and the cases remitted to be tried by a different Magistrate.

In cases Nos. 97, 98 and 99 the proceedings are also quashed and the cases remitted for trial by a different Magistrate.

Quashed.

¹ 5 C. W. R. 225.

² 37 N. L. R. 139.