

1896.  
November 7.

MURUGASU *v.* CHOKKEN *et al.*

*P. C., Jaffna, 17,223.*

*Withdrawal of case—Crown costs—Ordinance No. 22 of 1890, s. 236, sub-section 3.*

When a prosecution is withdrawn with the consent of the Police Magistrate it is improper to order the complainant to pay Crown costs.

The offence of criminal breach of trust cannot be compounded under section 356 of the Criminal Procedure Code.

In revision.

THE facts of the case appear in the judgment.

No counsel appeared.

7th November, 1896. WITHERS, J.—

The record of these proceedings has been called for the purpose of satisfying this Court whether the Magistrate's order therein of the 5th August last is a legal or proper order ; if it is neither legal nor proper, to determine what order should be made in the matter. On the 29th June last one Vedivale Murugasu complained to the Police Court of Jaffna that two persons named Veliyar Sotam and Veliyar Sadappen did on or about the month of July last, at Vannarponne, dishonestly appropriate ten pagodas of gold entrusted to them for making certain articles of jewellery, which it was alleged that they promised to make and deliver within ten days of the date the pagodas were entrusted to them. The complainant was examined that day, and order was made directing that summons should be issued to the defendants. On the 8th July last complainant and first accused appeared before the court ; the second accused was absent though summons had been served on him. On the first accused undertaking to produce the second accused before the Court on the day adjourned for the inquiry, the inquiry was adjourned to the 20th July. All the parties appeared on that day, but the matter was postponed because the parties were not ready, whatever that may mean in a criminal case.

The inquiry was accordingly adjourned to the 30th July. On that day all the parties again appeared, but the case was again adjourned to the 5th August. On the 5th August the parties appeared before the Court, and this is the minute of the order brought upon revision : " Complainant moves to withdraw the case.

“ Allowed, and accused acquitted. Complainant to pay Rs. 3 for “ Crown cost.” The complainant then moved this Court by petition to discharge that part of the order which directed him to pay Crown cost. This seemed to me in the circumstances an improper order, and I accordingly called for the case, directing that the Magistrate should explain his order if he thought fit.

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WITNESS, J.

The Magistrate justifies his order under sub-section 3 of section 236 of Ordinance No. 22 of 1890. In his letter of 26th September, 1896, he observes: “ Complainant failed to proceed with and to “ prosecute the case, although he was allowed sufficiently reasonable “ time to do so, and he was therefore liable to pay Crown costs “ under the sub-section referred to.” But no such reason was given making the order at the time it was made, and the Judge’s own minute shows not that this complainant was not ready to proceed with the case within such time as the Magistrate deemed reasonable, but that the complainant moved to withdraw the case and the Judge allowed the motion. More than that, he acquitted the accused. Hence in my opinion this order is clearly improper, and I accordingly discharge it.

The Magistrate was further called upon to explain the other part of his order which sanctions the complainant’s withdrawal of this case, and acquits the accused. The justification of this part of the order is contained in the Magistrate’s letter to the Registrar of the 12th October last. He regards this withdrawal of the case with leave as a compounding of the offence, and they came to very much the same thing. He submits that section 228, Ordinance No. 22 of 1890, allows a Magistrate by implication to permit parties to compound all cases summarily triable before him. This section enacts that if the complainant does not appear on the day appointed for the attendance of the accused in a case where summons has been issued on complainant, the Police Magistrate shall acquit the accused unless for some reason he thinks proper to adjourn the hearing for some other day. In other words, he argues that if a Magistrate is permitted to acquit an accused when the complainant does not appear, he is permitted when the complainant does appear in a case within his jurisdiction where summons has issued, to allow the complainant to compound the offence. This is a strange inference, and such an interpretation has only to be stated to be condemned. The liberty of compounding offences is to be found in the 356th section of the Criminal Procedure Code. This section enumerates what offences may be compounded with and without the permission of the Attorney-General. It makes no mention of the offence of criminal breach of trust, which was the offence charged by the complainant against

**1896.** the two persons before mentioned. Section 356 specially enacts  
*November 7.* that no offence not mentioned in this section shall be compounded.  
**WITHERS, J.** The entire order of 5th August is therefore illegal and must be set  
aside, and a day must be appointed for inquiry into the charge,  
sufficient notice being given to the parties complainant and  
defendant to call such witnesses as they may be advised in  
support of the prosecution, and if needs be of the defence.

