

[IN REVISION.]

1940

Present : Moseley S.P.J.

SIRIWARDENE *v.* JAMES *et al.*

M. C. Ratnapura, 27,408.

Plea of guilt—Application to withdraw plea—Right of accused to do so before sentence.

A plea of guilt tendered by an accused may be withdrawn before sentence is passed.

AN application to revise a conviction by the Magistrate of Ratnapura.

G. P. J. Kurukulasuriya (with him *S. R. Wijatilaka*), for accused, petitioners.

U. A. Jayasundere, for complainant, respondent.

September 11, 1940. MOSELEY J.—

The petitioners in this case were charged with criminal trespass, an offence punishable under section 433 of the Penal Code. They pleaded not guilty and the case went to trial on April 25, 1940. After two witnesses had given evidence, the following note is made by the Magistrate—

“At this stage the accused severally withdrew their former pleas and now they severally plead ‘I am guilty’ to charge against them.”

They were convicted upon their own pleas and they then asked for six weeks’ time in which to leave the land as their house was not complete. Sentence was deferred till June 5, on which date each of the accused was sentenced to pay a fine of Rs. 25, in default three weeks’ imprisonment.

In the interval between conviction and sentence the accused moved to withdraw their pleas of guilty, and filed an affidavit which was sworn on May 30, in which they deposed that they were acting under a misapprehension as to the facts when they tendered their pleas of guilty. The Magistrate in making his order on June 26 expressed doubt as to whether he had the right to set aside the verdict of guilty which he had recorded on April 25 and to allow them to plead to the charge again and to proceed with the trial. He considered one authority which appears to have been brought to his notice, but held the view that it did not apply to the case before him and that he had no jurisdiction to set aside his own verdict.

The petitioners now ask that the convictions and sentences shall be revised. In the first place they claim that their pleas of guilty were not unqualified and that they were tantamount to a plea that if they were allowed time during which to vacate the premises they would plead guilty. With that contention I am unable to agree. It appears the Magistrate has correctly recorded the words of each of the accused, namely, “I am guilty” and the request for time during which to leave the land would appear to be rather in the nature of a concession which they asked for than of a qualification of their pleas.

It is then urged on their behalf that the convictions should be set aside inasmuch as the pleas were tendered under a misapprehension as to the facts and the question arises whether the Magistrate had power to entertain their request to withdraw their plea. The Criminal Procedure Code is silent upon this point, and Counsel for the petitioners submits that in such a case by virtue of the provisions of section 6 of the Code it is open to this Court to look to the provisions of the English law for guidance.

There has been brought to my notice a case reported in 8 *Cox Criminal Cases*, 237, in which a plea of guilty was allowed to be withdrawn although it would appear to have been confirmed by a verdict of a jury. Again in the case of *King v. Plummer* reported in 1902 King’s Bench Division 339,

it was held that a plea of guilty might be withdrawn at any time before judgment. It seems to me that the term "judgment" used in that case is synonymous with the word "sentence" and if that law may be applied as I conceive that it may, in the circumstances of this case, it would appear that the learned Magistrate was mistaken in the view that he had no power to set aside his finding of guilty.

In these circumstances, I think that the convictions and sentences should be set aside, and the case should go back for trial before another Magistrate.

Set aside.

