

1954 Present: **Rose C.J., Gratiaen J., Gunasekara J., Sansoni J.,  
Fernando A.J.**

A. G. DE MEL, Appellant, and R. C. DE NEISE  
(Inspector of Police), Respondent

*S. C. 1,286—M. C. Colombo, 23,870*

*Post Office Ordinance (Cap. 146)—Sections 71 (1) and 88 (1)—Applicability of Sections 11 and 152 (3) of Criminal Procedure Code.*

A Magistrate who is also a District Judge has power under Section 152 (3) of the Criminal Procedure Code to assume jurisdiction to try an offence punishable under Section 71 (1) of the Post Office Ordinance and which, by reason of Section 88 (1) of that Ordinance, is triable in a District Court. The reference to the District Court in Section 88 is permissive and not exclusive.

Section 152 (3) of the Criminal Procedure Code is a provision contemplated by proviso (b) of Section 11 of that Code.

**T**HIS appeal from a judgment of the Magistrate's Court, Colombo, was referred under Section 48 of the Courts Ordinance to a Bench of five Judges.

*M. M. Kumarakulasingham*, with *J. C. Thurairatnam*, for the accused appellant.

*T. S. Fernando, Q.C.*, Solicitor-General, with *Douglas Jansze* and *V. S. A. Pullenayagam*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

July 14, 1954. ROSE C.J.—

This appeal comes before us on a reference under Section 48 of the Courts Ordinance. The question that has been reserved for our decision is whether a Magistrate who is also a District Judge has power under Section 152 (3) of the Criminal Procedure Code to assume jurisdiction to try an offence punishable under Section 71 (1) of the Post Office Ordinance and which, by reason of Section 88 (1) of that Ordinance, is triable in a District Court.

In this matter there has been no certification by the Attorney-General under the proviso to Section 88, and the relevant part of that Section, as far as the present matter is concerned, reads as follows:—

“Offences under this Ordinance which, by reason of the amount of the penalties with which they are punishable are not within the summary jurisdiction of a Magistrate's Court, may be tried in a District Court, and such Courts, in cases where the punishment assigned to such offences exceeds the ordinary jurisdiction of a District Court, may award in respect of such offences so much of the punishment assigned thereto as District Courts are by law empowered to award.”

Learned Counsel for the appellant contends that the above section “mentions” the District Court as being the appropriate court for the trial of offences contra Section 71 of the Ordinance within the meaning of Section 11 of the Criminal Procedure Code, the relevant provision of which reads as follows :

“ Any offence under any law other than the Penal Code shall when any court is mentioned in that behalf in such law be tried by such court.”

He relies on *Attorney-General v. Sinnethamby et al.*<sup>1</sup>. It is to be noted that the matter under consideration in that case was whether a Magistrate who is also a District Judge could exercise his powers under Section 152 (3) of the Criminal Procedure Code in regard to an offence contra Section 58 (1) of the Ceylon (Parliamentary Elections) Order in Council, 1946. Section 58 reads as follows :

“ Every person who—

(a) commits the offence of . . . . shall be guilty of a corrupt practice and shall on conviction by a District Court be liable . . . .”

The learned Solicitor-General contends that “mentioned in that behalf” in the first sentence of Section 11 of the Criminal Procedure Code means mentioned to the exclusion of any other court. Upon this view of the matter there would seem to be no conflict between the case cited above and *Gunawardene v. Vythialingam*<sup>2</sup>, which held that on a proper construction of Section 43 of the Telecommunication Ordinance the jurisdiction of a Magistrate under Section 152 (3) of the Criminal Procedure Code remains unaffected in every case where the Attorney-General has not sought to exercise the special power conferred on him by the proviso to Section 43.

It is apparent that the provision with regard to the court of trial in Section 58 of the Elections Order in Council is mandatory and that it therefore follows that the first sentence of Section 11 of the Criminal Procedure Code is applicable, whereas the learned Judge in the case under the Telecommunication Ordinance considered that the reference to the District Court in that Ordinance was permissive and not exclusive. While the Telecommunication Ordinance is not under our direct consideration in the present matter, we would observe that we see no reason to dissent from his reasoning.

To come to Section 88 of the Post Office Ordinance with which we are here concerned, we consider that the reference to the District Court in this Section too is permissive and not exclusive. It follows from this

<sup>1</sup> (1948) 49 N. L. R. 385.

<sup>2</sup> (1950) 43 C. L. W. 75.

that the first sentence of Section 11 of the Criminal Procedure Code is inapplicable, and the matter is governed by the remainder of the Section which reads as follows :—

“ When no court is mentioned it may be tried by the Supreme Court or by any other court mentioned in that particular schedule provided that :

(a) . . . . .

(b) Except as hereinafter provided no Magistrate's Court shall try any of such offences . . . . .”

That being so, there can be no doubt—and it is not suggested to the contrary by learned Counsel for the appellant—that Section 152 (3) is a provision contemplated by sub-section (b) above.

For these reasons the question under reference must be answered in the affirmative and the appeal is dismissed.

GRATIEN J.—I agree.

GUNASEKARA J.—I agree.

SANSONI J.—I agree.

FERNANDO A.J.—I agree.

*Appeal dismissed.*

