CHOTABHAI PRABHUBHAI PATEL *v.* THE LOCAL AUTHORITY, BA

[Appellate Jurisdiction (Hyne, C.J.) October 18th, 1954]

S. 213 of Penal Code—whether applicable to amended charge.

The appellant was charged with offences contrary to the provisions of the Public Health Regulations.

The offences took place on the 31st July, 1953, and the charge was preferred on the 21st December, 1953.

At the hearing before the 1st Class Magistrate at Ba on the 23rd April, 1953, leave was requested to amend the charges. On the 4th May, 1954, some of the amendments were allowed and later the accused was convicted upon the amended charges.

The only ground of appeal was that the convictions were bad in law because the complaint was not laid within six months from the time when the alleged cause of complaint arose.

On appeal from the Magistrate's Court.

HELD.—Since the charge originally before the Court was in time, the amended charge was not bad in law.

A. D. Patel for the appellant.

P. Rice for the respondent.

HYNE, C. J.—On the hearing of the appeal, learned Counsel for the appellant said he relied on section 213 of the Criminal Procedure Code, which reads as follows:—

> "Except where a longer time is specially allowed by law, no offence, the maximum punishment for which does not exceed imprisonment for six months and/or a fine of fifty pounds, shall be triable by a magistrate's court, unless the charge or complaint relating to it is laid within six months from the time when the matter of such charge or complaint arose."

It was also submitted that while it must be agreed that the first charge was preferred on 21st December, 1953, this charge was in fact withdrawn on the 4th May, 1954, and that the so-called amendment is not an amendment at all.

He submitted that the amendment resulted from splitting up the first charge, which he said was not only defective, but altogether bad. He contended that the Magistrate could not do so, and that the charges were entirely new, and since they are dated the 5th May, 1954, they contravened section 213 and could not be entertained.

Mr. Rice, for the respondent, submitted that the charges were not withdrawn but merely amended, and that authority for amendment is to be found in section 208. The first paragraph of this section is as follows:—

> "Where, at any stage of a trial before the close of the case for the prosecution, it appears to the court that the charge is defective, either in substance or in form, the court may make such order for the alteration of the charge, either by way of amendment of the charge or by the substitution or addition of a new charge, as the court thinks necessary to meet the circumstances of the case."

This section is very wide and permits amendment at any stage of a trial before the close of the prosecution case. A perusal of the record shows quite clearly that application to amend was made before the case for the prosecution closed.

Under the section the Court can amend the charge, or substitute or add a new charge.

The original complaint charged defendant with adding to and altering the ground plan.

Regulation 115 of the Public Health Regulations creates several separate offences and not one offence put in the alternative. The charge as originally preferred is therefore bad for uncertainty.

This became apparent to Counsel for the respondent and he was in my opinion fully entitled to invoke the provisions of section 208 of the Criminal Procedure Code. The original charge was split into two parts, and a new count added relating to the erection of a building without the permission of the local authority. Such amendments and additions were, in my view, necessary to meet the circumstances of the case, and were rightly allowed by the learned magistrate.

The question for determination is whether the amendment is in effect a new charge, and consequently could not be proceeded with as it was laid more than six months after the cause of complaint arose.

As I see it, the charge is not a new charge. It is related to the original charge, and in fact derives from it. There is nothing as Counsel for the respondent said, in section 213, which requires an amendment to a charge preferred to be made within six months from the time when the matter of charge or complaint arose; nor is there anything in section 208 which either expressly or impliedly requires the making of an amendment within six months.

The second charge was an altered charge, which could only be preferred because there was already a charge before the Court. As the charge originally before the Court was in time, the appellant cannot succeed.

Appeal dismissed.