

FAIZ MOHAMMED

v.

REGINAM

[SUPREME COURT, 1963 (Knox-Mawer Ag. P.J.), 17th July, 2nd August]  
Appellate Jurisdiction

Criminal law—procedure—consent of accused necessary for trial in magistrate's court—trial without consent—nullity—Criminal Procedure Code (Cap. 9) s. 78—First Schedule—Penal Code (Cap. 8) ss. 305 (1) (c) (i), 300 (a) (ii).

Where offences are only triable by the Magistrate's Court with the consent of the appellant as required by the First Schedule of the Criminal Procedure Code their trial in the Magistrate's Court without that consent is a nullity.

*Appeal against conviction.*

*Sherani* for the appellant.

*Gajadhar* for the Crown.

KNOX-MAWER Ag. P.J. [2nd August, 1963]—

The appellant appeared before the Magistrate's Court of the 1st Class at Sigatoka, on 10th May last, when a formal charge signed by a police officer was presented to and signed by the learned Senior Magistrate in accordance with section 78, Criminal Procedure Code. This charge contained two counts, the first of fraudulent conversion contrary to section 305 (1) (c) (i) of Penal Code, the second of embezzlement contrary to section 300 (a) (ii) of Penal Code.

Under the First Schedule of the Criminal Procedure Code both the offences were only triable by the Magistrate's Court with the consent of the appellant. It appears from the record that the trial thereupon proceeded before the lower Court without this consent having been taken. It is conceded by the Crown that the trial is thereby rendered a nullity.

For this reason the appeal succeeds. The conviction and sentence must be set aside. Having regard to the earlier delays in this matter and to the fact that the appellant has already served a term of imprisonment, this Court will not order a *venire de novo* in this case.

*Appeal allowed.*

Solicitors for the appellant: *Sherani & Co.*

*Solicitor-General* for the Crown.