

BALAME QAREQARE

v.

REGINAM

[SUPREME COURT, 1972 (Grant J.), 3rd, 24th August]

Appellate Jurisdiction

Criminal law—practice and procedure—preliminary inquiry—no evidence offered—accused entitled to discharge only—not operating as a bar to further proceedings or as an acquittal—Criminal Procedure Code (Cap. 14) ss.71, 192(1), 222, Part 6, Part 8 — Penal Code (Cap. 11) ss.306(c) (i), 340(1).

Criminal law—preliminary inquiry—no evidence offered—power of magistrate limited to ordering discharge, not acquittal—Criminal Procedure Code (Cap. 14) ss.71- 192(1), 222, Part 6, Part 8.

Section 192(1) of the Criminal Procedure Code, which enables a prosecutor to withdraw a complaint with the consent of the court, has no application to a preliminary inquiry under Part 8 of the Code. There is no provision for a prosecutor to withdraw a charge the subject of a preliminary inquiry and no power vested in a magistrate to acquit an accused person of such a charge. On a Preliminary Inquiry the Director of Public Prosecutions may enter a *nolle prosequi* by virtue of section 71 of the Code which operates as a discharge, or alternatively the prosecution may offer no evidence and by virtue of section 222 the court shall order the discharge of the accused. In neither case does the discharge operate as a bar to further proceedings, or as an acquittal. Appeal to the Supreme Court against an order of discharge made by a magistrate on a Preliminary Inquiry.

K. Chauhan for the appellant.

R. Davies for the respondent.

24th August 1972

GRANT J.:

This appeal was dismissed on the 3rd day of August 1972 for the reasons which I now give.

On the 22nd day of November 1971 the appellant elected to be tried in the Supreme Court on thirteen counts of Fraudulent False Accounting contrary to Section 340(1) of the Penal Code and one count of Larceny By Servant contrary to Section 306(c) (i) of the Penal Code and the presiding Magistrate adjourned the case to the 20th day of December 1971 for the holding of a preliminary inquiry. As a result of three subsequent applications for adjournment on the part of the prosecution the holding of the preliminary inquiry was put back to the 2nd day of February 1972, on which date counsel for the Crown offered no evidence against the appellant who was discharged.

The appellant appealed against the order of discharge on the ground that the learned Magistrate erred in law in not acquitting him, three additional grounds of appeal not being proceeded with on the hearing.

I think that the appellant may to some extent have been misled by the fact that counsel for the Crown, when offering no evidence against him, also stated that the Crown sought to withdraw the charge with leave, which was not a course open to the Crown. While Section 192(1) of the Criminal Procedure Code enables a prosecutor to withdraw a complaint with the consent of the Court, this applies only in the case of a trial before a Magistrate's Court under Part VI of the Criminal Procedure Code and has no application to a preliminary inquiry under Part VIII of the Criminal Procedure Code, the discretion vested in the Court to acquit an accused person if a withdrawal is permitted under this section being similarly restricted. There is no provision for a prosecutor to withdraw a charge which is the subject of a preliminary inquiry and no power is vested in a Magistrate to acquit an accused person of a charge in respect of which a preliminary inquiry is being held.

In the case of a preliminary inquiry the Director of Public Prosecutions may, by virtue of Section 71 of the Criminal Procedure Code, enter a nolle prosequi at any stage thereof before verdict, which operates as a discharge of the accused person but not as a bar to any subsequent proceedings and not as an acquittal. Alternatively, by virtue of Section 222 of the Criminal Procedure Code, the prosecution may offer no evidence against an accused person on the holding of a preliminary inquiry and close the case for the prosecution, whereupon, there being no evidence against the accused person sufficient to put him on his trial the Court shall order him to be discharged, which is not a bar to any subsequent charge and does not operate as an acquittal.

The presiding Magistrate held that, as the prosecution had closed its case without offering any evidence against the appellant sufficient to put him on his trial, Section 222 of the Criminal Procedure Code applied and he thereupon discharged the appellant. By so doing the presiding Magistrate dealt with the matter correctly and in accordance with the only course of action open to him.

Appeal dismissed.