

Court

THE SUPREME COURT OF THE FEDERATION OF MALAYA.

REGISTRAR'S CIRCULAR NO. 2/50.

Difficulty has arisen in cases where an offence under the Penal Code is compoundable only with leave of the Court. The principles on which such leave should be given need not be discussed in detail, but it is clear that a major factor which would affect the Court's decision would be the existence of a number of previous convictions for similar offences. Where such previous convictions exist, the prosecution may frequently oppose, and rightly oppose, the giving of leave to compound. But if the Court asks the prosecution for details of the grounds of their opposition, they are immediately in a dilemma, since, if the Court is informed of the existence of the previous convictions, it will then by reason of such information be unable properly to try the case and trial by any other President or Magistrate will become necessary. In some cases the situation is even more complex. If there is a dispute as to what actually occurred, it may be necessary for the Court to hear evidence in order to make a finding as to the facts on which it must base its decision whether or not to give leave to compound and the hearing of this evidence may amount to hearing the whole, or practically the whole, of the prosecution's case. There is authority that the decision to give or withhold leave to compound is a judicial act and involves the use of judicial discretion. It must, therefore, be made on adequate material. Logically, this would seem to involve that the material parts of the prosecution's case must be heard, and possibly also evidence in rebuttal by the defence, that the prosecution is then at liberty to prove the previous convictions, and that with this material in front of him the President or Magistrate must then decide whether or not the case should be compounded. If he decides that it should not, it will then be necessary to try the accused de novo before another President or Magistrate. This is obviously highly undesirable. The provisions of the statute with regard to compounding are designed to reduce, and not to increase, the volume of proceedings in Court. As a practical solution of the difficulty, the Chief Justice suggests to Presidents and Magistrates that, if the prosecution opposes leave to compound, the Court may reasonably suppose them to have some substantial ground for doing so. Such a ground may be previous convictions for similar offences, or the prevalence of similar offences in the district, or particular circumstances of aggravation in the offence itself. If, bearing in mind these points, the Court is disposed to refuse leave to compound, it may properly do so without hearing evidence and making express findings on each issue suggested to it.

It is further to be borne in mind that, in crimes of violence involving serious injury, there is always a risk that a proposed composition is not in fact a friendly settlement of differences, but the result of threats or terrorism by the offending party or his friends. This factor should be given due weight in estimating the general atmosphere of the case and deciding the question whether composition should be allowed.

A. H. A. H.
REGISTRAR.

The Federal Registry, Supreme Court,
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