

Bil:(143)dIm.RSC.No.39/54.

Jabatan Kehakiman,
Mahkamah Tinggi,
Kuala Lumpur.

10hb. Ogos, 1972.

Kapada Semua -

Penolong Kanan Pendaftar/Penolong Pendaftar, Mahkamah2 Tinggi.
Pendaftar Kanan/Pendaftar, Mahkamah2 Seshen.
Yang di-Pertua Khas/Yang di-Pertua Kanan/Yang di-Pertua
Mahkamah2 Seshen.
Mejisteret2, Mahkamah Mejisteret.

PEKELILING PENDAFTAR NO: 5/1972

REF: P.P. v MAH YONG CHOON

I am directed by the Honourable the Chief Justice
.... to forward a copy of a Judgment delivered recently by Pawan Ahmad J.
pointing out errors in a Malacca Magistrate's Court Summons Case.

2. The Honourable the Chief Justice has directed that
all Magistrates do study the judgment carefully in order that they
will not fall into similar errors which cast a bad reflection on the
Judicial Service and, in particular, the efficiency of the officer
concerned.



(MOKHTAR BIN HAJI SIDIN)
PEM: PENDAFTAR.

s.k.

Semua Setiausaha2 Kapada Tuan2 Hakim.

SCL/FS

14 AUG 1972
K 021

IN THE HIGH COURT IN MALAYA AT MALACCA

Criminal Revision No. 5 of 1972

In the matter of Sections 31 & 35 of
the Courts of Judicature Act, 1964

AND

In the matter of Sections 320 & 324 of
the Criminal Procedure Code (S.S.)

AND

In the matter of Malacca Magistrate's
Court Summons Case No. 1179 of 1972

BETWEEN

Public Prosecutor

AND

Mah Yong Choon.

J U D G M E N T

I have called for the Record in Malacca Magistrate's Court Summons Case No. 1179 of 1972 and decided to exercise my powers of revision as several unsatisfactory features have come to my notice as a result of my going through the Record.

The accused person mentioned in the charge sheet appeared before the Magistrate's Court, Malacca on the following two charges:

1. That you on 25.6.72 at about 11.40 a.m. at Jalan Ayer Leleh, Melaka, in the State of Melaka, being the rider of M/Cycle No. MC 6025, did ride the said vehicle on the road without being the holder of a driving licence authorising you to ride such vehicle, an offence under section 25 (1) of the Road Traffic Ordinance, 1958, and punishable under section 146 (1) (d) of the said Ordinance.
2. That you on 25.6.72 at about 11.40 a.m. at Jalan Ayer Leleh, Melaka, in the State of Melaka, being the rider of M/Cycle No. MC 6025, did ride the said vehicle on the public road without there being in force in relation to the use of the said vehicle by you such a Policy of Insurance or such a security in respect of Third Party Risks, an offence under section 74 (1) of the Road Traffic Ordinance 1958 and punishable under section 74 (2) of the said Ordinance.

The age of the accused is not stated anywhere on the charge sheet or in the notes taken down by the Magistrate. However, it is abundantly clear that the Magistrate did realise that the accused

person who appeared before him was a juvenile but in spite of this no effort appears to have been made to elicit the age of the juvenile. On going through the form Polis 52 which is attached to the charge sheet, I find that the age, as ascertained by P.C. 7862 at the time of detection of the offence, was 15 years. The Court will thus proceed on the basis that the person accused was a young person of the age of fifteen.

Having become aware that the offender was a juvenile it was the duty of the Magistrate to have proceeded with the case by sitting in chambers as is required under section 3A (5) of the Juvenile Courts Ordinance. There, however, is no indication on the record to this effect.

It was the duty of the Magistrate to satisfy himself that the offences which were the subject matter of the two charges were "Petty Offences" within the meaning of section 3A (1) of the Juvenile Courts Ordinance, 1947. It is perhaps unfortunate that the Magistrate either did not know of this provision or just did not care to look up the list which specifies the classes of offences for the purpose of this Ordinance (See L.N. 435/1952; L.N. 775/1953 & L.N. 304/1956). From this list it would be seen that the second charge is not a 'Petty Offence' and the Magistrate therefore had no jurisdiction to try the offender on this charge.

As both the offences were committed in the course of the same transaction and as the offence in the second charge was not within his jurisdiction, the Magistrate should have promptly acted under the provision of section 3A (3)(b) and transferred the case to the Juvenile Court for trial. If this had been done the complication which followed would not have arisen.

The Record indicates that the offender was found guilty and convicted on the two charges. On the first charge he was fined \$100/- or in default 4 weeks' imprisonment and on the second charge he was fined \$300/- or in default 12 weeks' imprisonment and further

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disqualified from driving for one year. Here I must pause to state that it was wrong for the Magistrate to have used the word "convicted" as section 12(3) of the Ordinance clearly stipulates that the word "convicted" shall cease to be used in relation to children and young persons. Again it was wrong for the Magistrate to have imposed a sentence of imprisonment in default of fine as section 15 (2) of the Ordinance clearly prohibits a young person being sentenced to be imprisoned if he can be suitably dealt with in any other way.

The offender was dealt with on 3.7.72 and it is clear that he was unable to pay the fine. The Record indicates that he was thus remanded at the Remand Home, Bukit Bahru "until the fine is paid." Under what provisions of the legislation this remand order was made I am at a loss to understand. As I understand it, the remand home is merely a place for detention and not a place where an offender can be sent to serve a term of imprisonment in default of payment of fine.

From the Magistrate's notes it will be seen that "the defendant could not pay fine so 3.7.72 fixed for defendant's case to be tried by the Juvenile Court." Here again I am unable to understand what authority the Magistrate had for sending a case to the Juvenile Court after he had already tried a case and made a final order. If he realised subsequently that he had gone wrong it was his bounden duty to admit his mistake and forward the Record to this Court for revision.

As the Magistrate acted without jurisdiction as regards the second charge, the trial on that charge is a nullity and it follows therefore that any order made on that charge should be quashed. As I have already indicated earlier, as both the charges form part of the same transaction, the offender should have been tried in the Juvenile Court. For this reason the order made by the Magistrate on the first charge is set aside. It will now be for the prosecution to decide on the steps that should now be taken in this case. The bond entered into

... of the fine will be expunged.

It is the duty of a Magistrate to satisfy himself on the question of jurisdiction before the charge is even read out. If this had been done in the present case, all the unnecessary inconvenience and embarrassment that had resulted to the offender could have been avoided. Any repetition of this sort of mistake will be viewed seriously.

Sd.....

(PAKHAN AHMAD B. IBRAHIM RASHID)
Judge,
High Court.

Malacca,

22nd July, 1972.