APPELLATE CRIMINAL.

Before U San Maung, J.

MAUNG CHIT PO AND ONE (APPLICANTS)

v.

THE UNION OF BURMA (RESPONDENT).*

H.C. 1948

Feb. 6.

Autre foi acquit—*S. 403 of the Code of Criminal Procedure—Offence under s. 19 (f), Arms Act—Acquittal for want of sanction under s. 29—Whether it bars a subsequent prosecution with sanction of the District Magistrate.*

Held: That where an accused person was acquitted in a trial for an offence under s. 19 (*f*) of Arms Act, on the ground of the absence of sanction of the District Magistrate, s. 403 of the Code of Criminal Procedure does not bar a subsequent prosecution with the sanction of the District Magistrate for the same offence, as the Court was not acting as a Court of competent jurisdiction when he took cognizance at the time of the first trial with sanction.

San Baw and others v. *The Crown*, 1 L.B.R. 340 (F.B.); *The Crown* v. *Ram Rakha*, I.L.R. 20 Lah. 373; B. B. Mitra's Code of Criminal Procedure, 10th Edn., p. 1273, followed.

U SAN MAUNG, J.—This is a report by the Sessions Judge, Shwebo, under section 438 of the Code of Criminal Procedure, with the recommendation that the proceedings of the Township Magistrate, Shwebo, in his Criminal Regular Trial No. 63 of 1947 may be quashed. As the facts of the case have been fully set out in the learned Sessions Judge's report it is not necessary for me to recapitulate them in detail. It would appear that in Criminal Regular Trial No. 30 of 1947 of the Township Magistrate, Shwebo, one Maung Chit Po and Maung Po Htin were prosecuted under section 19 (*f*) of the Arms Act by the police without the requisite preliminary sanction of the District Magistrate under section 29 of the Arms Act. The defect was discovered after charges were framed against

*Criminal Revision No. 245B of 1947 being the Review of the Order of the Township Magistrate of Shwebo in Criminal Regular Trial No. 63 of 1947 on the recommendation of the Sessions Judge of Shwebo in his order, dated the 1st November 1947, in Criminal Regular Trial No. 23 of 1947.

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these two persons, and, on an application made by the Court Prosecuting Inspector to withdraw the case against them, they were directed by the learned Township Magistrate, Shwebo, to be acquitted. Later, after the necessary sanction was obtained, the police again prosecuted Maung Chit Po and Maung Po Htin under section 19 (*f*) of the Arms Act before the same Magistrate. Then, while the trial (Criminal Regular Trial No. 63 of 1947) was proceeding before the Township Magistrate, Shwebo, Maung Chit Po and Maung Po Htin filed an application before the Sessions Judge, Shwebo, contending that the proceedings before the Township Magistrate, Shwebo, were illegal inasmuch as they could not be prosecuted again while their previous acquittal remained in full force. It would appear that they were unsuccessful in their attempt to persuade the learned Magistrate that the trial should not proceed against them. The learned Sessions Judge held that their plea of *autre foi acquit* should be allowed to prevail and that the proceedings of the Township Magistrate of Shwebo in his Criminal Regular Trial No. 63 of 1947 should be quashed.

Now, section 403 of the Code of Criminal Procedure provides that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, etc. There is no dispute regarding the fact that Maung Chit Po and Maung Po Htin were again tried in Criminal Regular Trial No. 63 of 1947 for the same offence for which they were tried in the previous case. However, there is ample authority for the proposition that when the Township Magistrate tried it in the previous case he was not acting as a Court of competent jurisdiction. Under the head-note "Court of competent jurisdiction"

in the Code of Criminal Procedure by B. B. Mitra the following passage occurs at page 1273 of the 10th Edition :

"Where the law requires a previous sanction (now complaint) under section 195 before a charge can be entertained by a Court, that Court is not a Court of competent jurisdiction until the sanction has been obtained or the complaint has been made. Therefore, the discharge or acquittal of the accused owing to the want of such sanction (complaint) does not bar a subsequent trial of the accused for the same offence after the requisite complaint has been made or sanction obtained."

In the case of *San Baw and nine others* v. *The Crown* (1), where it was held that an acquittal for preparation to commit dacoity is no bar to a subsequent trial on the same facts for collecting men to wage war against the King, when authority for the prosecution under Chapter VI of the Indian Penal Code had not been accorded at the time of the first trial, Thirkell White C.J., who delivered the judgment of the Full Bench, had the following observation to make :

"It seems to me that want of sanction in a case where sanction is requisite goes to the root of the jurisdiction of the Court, and it affects the competency of the Court. In the circumstances stated, the District Magistrate could not have framed a charge against the accused under section 122 of the Indian Penal Code. If he had done so, whether he had acquitted or convicted the accused, his proceedings would have been void under section 530, clause (*p*), of the Code of Criminal Procedure. In my opinion, it is impossible to hold that the District Magistrate was competent to try the offence, when owing to the want of sanction he had no power to take cognizance of it."

In the case of *The Crown* v. *Ram Rakha* (2), where a similar question had to be considered, Tek Chand J. observed :

"The question for consideration is as to what exactly is meant by the 'competency' of the Court to try an offence. Does

(1) I.L.B.R. 340 (F.B.). (2) I.L.R. 20 Lah. 373.

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it mean the status or character of the former Court to try the offence with which the accused is subsequently charged or does it also include within its purview cases in which the Court, though otherwise qualified to try the case, could not have done so because certain conditions precedent for the exercise of its jurisdiction had not been fufilled? The wording of the sub-section is by no means as clear as it might have been, but the preponderance of judicial authority in this Court as well as the other Courts in India is in favour of the latter view."

Now, section 29 of the Arms Act provides that no proceeding shall be instituted against any person in respect of an offence punishable under section 19; clause (*f*), without the previous sanction of the District Magistrate. Therefore, the Township Magistrate, Shwebo, in his Criminal Regular Trial No. 30 of 1947, was not acting as a Court of "competent jurisdiction" when he took cognizance of that offence, against Maung Chit Po and Maung Po Htin, under section 19 (*f*) of the Arms Act, without the previous sanction of the District Magistrate.

For these reasons, Maung Chit Po and Maung Po Htin cannot successfully raise the plea of *autre foi acquit* in Criminal Regular Trial No. 63 of 1947, and the proceedings of the Township Magistrate, Shwebo, in his Criminal Regular Trial No. 63 of 1947 call for no interference. The recommendation of the Sessions Judge, Shwebo, to quash these proceedings cannot, therefore, be accepted.