CHAPTER III

LIMITATIONS ON THE ABRIDGED PROCEDURE

THE NEED AND utility for diminutive legal procedure for the trial of petty offences has already been emphasised. Under the existing law and practice the acceptability of the abridged system of trial can evidently be seen through the operation of guilty plea procedure in the summons and summary cases. In the warrant cases the trial procedure can also be cut short, if the accused chooses to offer a plea of guilty.[1] However, the courts are not prone to deploy the procedure in serious cases because of the serious consequences that may entail as a result of hasty action,[2] nor does the accused proffer a guilty plea so readily because he does not want to lose a chance which may accrue to him because of the failure of the prosecution to prove the guilt beyond a reasonable doubt.

Notwithstanding the legality of the shortened mode of trial procedure the courts are cautious in the use of the procedure and even in the cases where recourse to abridged trial procedure of guilty plea is valid the courts have an option to ignore it, and resort to a full fledged trial if the exigencies and circumstances of a case deem it proper that a regular trial be held. This attitude can validly be seen in warrant cases.

As utmost caution is exerted in the use of abridged trial procedure, it has yielded limitations on the exercise of the power of summary jurisdiction. Permissiveness has not been shown for the use of this power if its exercise is inconsistent with the judicial sense of fairness. Accordingly, any impropriety resulting out of the action of the court itself has co-extensively been dealt with as an illegality.

The abridgement of trial procedure has come up as a necessity. The provisions in the Code are also directed to fulfil the need of meeting litigious situations in an expeditious manner in cases where the matter is of simpler nature. The use of simplified procedure for simpler situations is the logical consideration. It is easier to sort out the issue of culpability

1. S. 255 (2), the Code of Criminal Procedure 1898.
2. The observation is based on an interview with the District and Sessions Judge, Shri R.B. Agarwal, (now a Judge of the Delhi High Court), and other Judges of the Delhi Sessions Court. Shri Agarwal observed that as a trial judge of the sessions court he never resorted to the use of shortened mode of trial procedure.

if the disclosed set of facts pointedly indicate the guilt towards the person brought in for trial. It is to be reiterated that such situations do occur only in petty offences where the proof of guilt is glaringly apparent. Moreover, the fact of glaring evidence being with the prosecution is also within the knowledge of the accused person, who finds it easier to mouth a guilty plea rather than to resent it. In the petty offences the consequential effect of advancing the guilty plea is also not serious in terms of punishment. As the incidence of social harm and also the quantum of punishment remain trifling, as compared to other cognizable crimes the readiness of the court to adopt a shortened procedure is also understandable.

Under section 530 (q) of the Code of Criminal Procedure a summary trial for an offence vitiates the entire proceedings if the law does not empower the court to deal with the subject-matter summarily. *Balwant Singh* v. *Emeror*[3] can be instanced as an improper exercise of summary powers inasmuch as the court assumed jurisdiction by minimising the gravity of the charge. In the instant case the complaint disclosed the offences of rioting and house tresspass with preparation to cause hurt and assault, but the court in order to dispose of the matter sought to reduce the charge merely to house tresspass so as to bring it within the competence of its jurisdiction. Likewise, *Sahadeviah* v. *Venkatamma*[4] was decried as bad example of clutching the summary jurisdiction by reducing the charges of serious offences to minor ones.

The judicial attitude is favourably inclined to the exercise of summary jurisdiction in those offences which are of petty nature. The *bona fide* exercise of the discretion in situations where a magistrate convicts an accused of an offence falling within his jurisdiction has been permitted, even though the facts found constituted more serious offence which did not fall within his jurisdiction.[5] In *Emperor* v. *Ayyam*[6] the court took the view that if the magistrate deliberately ignores certain aggravating circumstances to assume jurisdiction it would be improper to do so on his part and the interference may be called for provided that "such a course was required in the interests of justice but not otherwise and the reason for setting aside would be, not that they were void *ab initio*, but because they

3. A.I.R. 1939 All. 693; also *Empress* v. *Abdul Karim* I.L.R. 4 Cal. 18; v. *Kailash Chunder Pal* v. *Joynuddin* 5, C.W.N. 252, *Debi Ram* v. *K.E.* A.I.E. 1924 All. 675, *Bishu Shaik* v. *Saber Mollah*, 6 C.W.N. 713, contra-*Empress* v. *Lachmi Narain* 1887 A.W.N. 103; *Q.E. Vallabh Gopal* 1 Bom. L.R. 683; *Gudar* v. *Emp.*, A.I.R. 1933 Oudh. 50.
4. A.I.R. 1950 Mys. 21.
5. *Queen Empress* v. *Gundya* I I.L.R. (13) Bom. 502 (1889).
6. I.L.R. 24 Mad. 675; See also, In *re Perianna Muddali*, A.I.R. 1942 Mad. 31; *K.E.* v. *R. Bhagwanta*, 4 Bom. L.R. 267; *Sripat Rai* v. *Emperor*, A.I.R. 1931 All. 10 *Jogabandhu Mittra* v. *State*, A.I.R. 1955 Cal. 177; *Dawson* v. *K.E.*; A.I.R. 1925 *Rang.* 45 *Sheikh Habbu* v. *Sh. Kariman* 17 Cr. L.J. 473.

were improper and the interests of justice required them to be set aside."[7] Accordingly, the proposition is that if a magistrate entirely overlooks some fact which would carry the case beyond his jurisdiction and tries the accused for a lesser offence he is not held to have acted without jurisdiction.[8] The question whether he has or has not entirely overlooked the circumstances would be one of fact.

In *Kailash Chandra Pal* v. *Joynuddin*[9] the magistrate after examining the complaint concluded that it was false and exaggerated. He also disregarded the offence actuallly complained, but proceeded to try the case summarily on a lesser charge. This conduct of the trial court was not sustained by the High Court as being proper. It was held that the trial court is bound to proceed and regulate the trial proceedings on the basis of the offence as disclosed by the facts and not by its own assertion of taking certain facts to frame a lesser charge with a view to assuming jurisdiction.

The exercise of summary jurisdiction is dependent on the attitude of of the trial court towards the matter. If the court has acted in excess of jurisdiction believing initially that it was competent to do so and the resultant effect of the decision has not affected the accused adversely, the exercise of the discretion is regular. But if the court seeks to clutch the jurisdiction primarily for expeditious disposal of the case the concern to interfere in the matter becomes evident.

The disclosure of serious and heinous offences in the complaints altogether preclude the use of summary procedure. In *Muhammed Abdulla* v. *The Crown*[10] the first information report was prepared for an offence under sections 147/332 of the Indian Penal Code and the original challan was also for these offences. It was on the public prosecutor's report, after the challan had been put in the court, that the original offences were dropped and were substituted by another challan under section 151 of the Indian Penal Code with a view to resort to abridged trial proceedings. The use of criminal process was designed to suit the interests of the prosecution and the discretion to substitute a lesser offence for the graver one was at the instance and the choice of the prosecutor. An endorsement of the prosecutor's discretion could not validate the court action in proceeding with the trial under the lesser offence. The impropriety of the court actually lay in permitting the prosecution what it desired to do. The court did not care to act on the material placed before it in the first instance. Likewise, in *Barkat Khan* v. *The Empress*,[11] there was a complaint for having committed robbery which the magistrate reduced to that o

7. *Supra* n. 6.
8. *K. Rowther* v. *S. Asari*, A.I.R. 1927 Mad. 307; *Rangayya* v. *Somappa* A.I.R. 1925 Mad. 367.
9. 5 C.W.N 252 (1900-1). See also *R.S. Sharma Iyer* v; *Emperor* 14 Cr. L.J. 462.
10. I.L.R. 15 Lah. 610 (1933).
11. 5 P.R. (Cr.) 1887.

hurt in order to try the case summarily. The conviction was set aside and a retrial was ordered. A right to minimise an offence by shutting the eyes to the facts disclosing graver offence with a view to resort to the use of abridged procedure imports an element of impropriety in the dispensation of justice,[12] and it tends to become illegal because in doing so the court absolves itself of the normal duties. Thus the preponderant view is that it is generally not open to the courts to reduce the offence so as to enable them to clutch at a jurisdiction to try the case summarily.

Another limitation imposed on the use of the abridged procedure results on account of any disability accruing to the accused. This contemplates a situation where the procedure is made use of obviously to deprive the accused of his right of appeal.[13] This can happen if upon the conviction of the accused the court awards a sentence which falls within the non-appellable catcgory,[14] although the circumstances of the case may warrant severer punishment. The practice of awarding sentences, not commensurate with the gravity of the offence as disclosed by the facts with an obvious policy to deny the accused his right to appeal, in order to help the administration of justice in getting the pile of arrears reduced is current amongst the trial courts. Such practices are not viewed favourably. In *Empress* v. *Abdool Karim* [15] the magistrate assumed summary jurisdiction on a charge of unlawful assembly armed with a deadly weapon and inflicted only three months' sentence. The resultant effect of the sentence was the deprivation of right of appeal [16] against a conviction on a serious charge. It was deemed improper and the proceedings were declared void. However, the judicial approval of magisterial action can be found if the facts of a case disclose simultaneously two offences out of which one can be tried summarily ; and the magistrate prefers to try the accused for the lesser one and consequently awards the lesser sentence. [17]

An inherent disability with which an accused might be suffering also calls for cautions and a detailed approach. In such cases the use of shortened mode of procedure to fasten criminal liability is considered unjust.

12. *Mewa Lal* v. *Emperor* 1929 A.I.R. All. 349; *Tofzal Hussain* v. *Hunt* 1930 A.I.R. Cal. 711; *Bisu Shaikh* v. *Saber Mallah* (1902) I.L.R. 29 Cal. 409. *Sardar Khan* v. *Empress* 5 P.R. (Cr.) 1887.
13. Initiative taken by the court to take congnizance of an offence of its own and try the case summarily in the absence of a complaint has also been deemed improper see *Kanhaya Lal* v. *Emp.* 2 Cr. L.J. 187. *Q.E,* v. *Erugadu* I.L.R. 15 Mad. 83. *Muhammad Abdulla* v. *The Crown* (1933) I.L.R. 15 Lah. 610. *Subramania Maistry* v. *Nachiar Ammal* A.I.R. 1931 Mad. 233.
14. Ss. 413, 414 Cr. P.C. 1898.
15. I.L.R. 4 Cal. 18 (1879), *Cf. Ramanand Mahtou v. K. Mahtou* I.L.R.2 Cal. 236, *O, Manjhi* v. *K. Manjhi* 5 C.W.N. 372 where the splitting of charges and then discarding the charge which is not triable summarily with a view to assuming summary jurisdiction has been held to be not proper and legal.
16. Ss. 262 (2) read with Ss. 413, 414, Cr. P.C.
17. *Sheo Bhajan Singh* v. S.A. *Mosani* I.L.R. 22 Cal. 983 (1900).

The use of summary proceedings for expeditious disposal of matters against the mentally or physically disabled wrongdoers is unthinkable in a judicial system, because the quick procedure of the court would hardly enable these handicapped persons to understand the import of the allegations, as well as to enable them to make adequate arrangements to meet the challenge. Moreover, such offenders are to receive greater consideration and sympathy from the courts. A shortened trial procedure which is an stereotyped affair between the court and the accused does not help the matter to be decided with sympathy and other relevant considerations that may otherwise be required in the administration of justice. Accordingly, *In re A Deaf and Dumb Man*[18] the Bombay High Court found the use of summary mode an inconvenient procedure obviously because the infirmity of the accused prevented him to communicate his plea or his defence. The court was of the opinion that in such a case an attempt to locate the friends and relatives of the accused should have been made, and inquiries about his antecedents and ordinary mode of life and the manner in which he had communicated with in the ordinary affairs of life should also have been made previous to proceeding into the matter. Undoubtedly the above type of findings enjoin upon the court to do additional duties and discharge extra responsibilities. These cannot be contemplated to be within the range of abridged procedure. In imposing a limitation on the above type of situations the underlying judicial theme appears to remove those baneful effects of brevity which may cause prejudice to the rights and interests of the one who is confronted with a charge in a criminal proceeding, and who cannot adequately equip himself to meet the challenge or even accept the liability voluntarily.

Inappropriate use of abridged trial procedure also affects the legality of the proceedings. The propriety is to be determined in the light of the the facts of each case. In *Robert John Bradley* v. *Emperor*[19] the Lahore High Court laid a broad proposition that though the summary procedure is legal it is most inappropriate in cases in which the government servants are concerned as accused persons. A different view, however, was expressed by the Mysore High Court in *Chokla* v. *State of Mysore*[20] wherein the rationale of such wide a proposition was doubted. In the case of government servants the propriety of the use of shortened procedure is questioned on the ground that if an inadvertent error by the court yields conviction it may consequently entail further disability on the government servant by way of his dismissal from service. The non-use of abridged procedure in the case of a government servant accused of having committed an offence is therefore deemed to be a safer course. However, it may not be necessary to adhere to such safer course altogether. In each case the propriety or

18. 8 Bom. L.R. 849.
19. A.I.R. 1939 Lah. 188.
20. 1962 (2) Cr. L.J. 705.

impropriety of the proceeding can be examined with a view to determining whether or not the accused would be prejudiced to his rights and interests if a summary procedure is adopted. This may call for the examination of the serious character of the charge, the position occupied by an accused, the length of service and related matters. A determinative factor would be the ascertaining of the extent of prejudice that may be caused if summary procedure is resorted to.[21] If the trial and the end result of the proceedings are likely to effect the accused in more than one way *viz.*, departmental action, loss of office, *etc.*, the impropriety, hence the illegality in the abbreviated procedure becomes evident.[22]

It is essential that full facts be placed by the prosecution before the court which may have relevance in the quantum of punishment. In *Emperor* v. *Bashir*[23] the accused had already been bound down under section 109 of the Criminal Procedure Code in a personal bond. The accused was summarily tried for dishonestly receiving the stolen property. The accused already had a record of previous convictions. The police and the prosecution were aware of these facts. They also knew that owing to the previous convictions it would be possible to secure enhanced sentence. In a revision application the State sought to enhance the sentence which was denied. The court noted that the negligence of the prosecution to bring the fact to the notice of the trial court was deliberately engineered with a view to harassing the accused. The Court observed that :

> ...it is manifest that a summary trial is intended to be directed towards offences which are appropriate for such form of trial. While it may be legal to use the procedure in a particular case, it does not follow that it is desirable.[24]

The permissibility of the use of abridged trial procedure is thus based on the pivotal issue of desirability rather than on the legality alone. No definite formulations can be prescribed to judge the issue of desirability in a matter. It would depend on the facts and circumstances of the case. Few situations, as have come up before the court, have helped to deduce certain limitations. There may be more if it appears that the complexity of a situation involving intricate issues of law and fact cannot be solved with simplified procedure.[25] Petty cases, indeed, provide the best opportunity to make use of the abridged trial procedure, and it should remain confined to these.

21. *Supra* n. 20. Also *Subramanya* v. *The Queen* I.L.R. 6 Mad. 396.
22. *Supra* n. 20 and 21. Also *Sachidanand* v. *State* A.I.R. 1956 Alld. 212. *Emperor* v. *Rustamji* A.I.R. 1921 Bom. 370.
23. A.I.R. 1929 Alld. 267.
24. *Id.* at 268.
25. See *State* v. *Ramkhilari* 1960 A.L.J. 209. *Queen Empress* v. *Basant Lall* 4,C.W.N. 311, *Emperor* v. *Allabrakhio Bakshan* 13 Cr. L.J. 780; *Emperor* v. *T. Kewalram* 13 Cr. L.J. 771.