Neutral Citation Number: 2007 IEHC 44

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2006 No. 208 JR]**

**BETWEEN**

**AIDAN READE**

**APPLICANT**

**AND**
**JUDGE REILLY AND**
**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENTS**

**Judgment of Mr. Justice Charleton delivered on the 26th day of February, 2007**

**Facts**
1. The applicant seeks an order compelling Judge Reilly to hear a case in which he is accused of two offences contrary to s. 3 and s. 15 of the Non-Fatal Offences Against the Person Act, 1997. The offences with which he is charged are stated in two District Court summonses as follows:-

> "1. That you, the said accused did, on the 25/07/2004 at Black Rose Studios, Menlough, Galway in the said District Court area of Mount Bellew, falsely imprisoned Karen Gleeson. Contrary to s. 15 of the Non-Fatal Offences Against the Person Act, 1997,
>
> 2. That you, the said accused did, on the 25/07/2004 at Black Rose Studios, Menlough, Galway in the said District Court area of Mount Bellew, assaulted one Karen Gleeson causing her harm. Contrary to s. 3 of the Non-Fatal Offences Against the Person Act, 1997."

2. I need to refer to some of the facts of this case. Since May, 2004, Karen Gleeson, according to her statement given to the Gardaí in the aftermath of this alleged assault, lived with the applicant. She had also lived there for four or five months from the summer of 2003. Aidan Reade and Karen Gleeson had been going out for about a year and a half prior to the alleged assault. In her statement she complains of Mr. Reade's temper and of having received about seven beatings. Early on the morning in question they were apparently both in bed when a text message came through for Karen Gleeson. There apparently was a row over the noise, over who should have the phone and whether the text was from someone who might cause him jealousy. She alleges that he got on top of her, put his hand around her throat, slapped her across the face, dragged her off the bed, told her to leave the house, then pulled her back by the hair and generally abused her. She claims that when she went out the door she realised that her face "was covered in blood". She then rang the Gardaí and it is claimed that the assault recommenced with him leaning on her elbows and hitting her. This was interspersed with a barely rational conversation and then, according to Ms. Gleeson, an assault began again where she was tied up with a dressing gown cord and imprisoned. She claims to have hit the redial button, to the Garda station, whereupon the Gardaí possibly came to the door, knocked on it and then went away having received no answer. Another interlude of beating occurred and then the Gardaí arrived. Karen Gleeson made an immediate complaint. She had bruising to her arms, chin and head. For his part, Aidan Reade claims that Karen Gleeson was jealous, suspected an affair and became hysterical with him in the bedroom and house on the morning on which he is supposed to have assaulted her. His account is that some cuts were caused by her teeth braces in the course of him trying to keep her quiet by putting his hand over her mouth. Statements have also been disclosed raising an issue as to the behaviour of Karen Gleeson towards other people. Of course, I can resolve none of the facts of this. I have no idea as to whether any of this happened or whether, if any of it did, it was assisted by the usual cause of excess alcohol consumption.

**Issues**
3. The applicant was summonsed to appear before Mount Bellew District Court on 3rd March, 2005. What happened on that day was that the learned District Judge was fixing a list of trial dates and it was therefore sensible of him to see whether or not this was a case in respect of which he could accept jurisdiction. He asked the prosecuting Garda whether he could look through the relevant statements. After a couple of minutes perusal he indicated that he would accept jurisdiction in the case. The defence solicitor then made an application for details of telephone logs between Mount Bellew Garda Station and Ballinasloe Garda Station. The matter was put in for trial on 1st December, 2005. In the interim there was correspondence in relation to telephone records and photographs of the injuries to Ms. Gleeson. On 1st December, 2005, the trial commenced with the evidence of Karen Gleeson. After some minutes of her evidence the learned District Judge intervened and stated that he was sorry but he was stopping the trial because, as far as he was concerned, it did not fall within his jurisdiction. In other words, it was not a minor offence. The matter was adjourned to 5th January, 2006, for the service of a book of evidence, so that a trial could take place before a jury in Galway Circuit Court.

4. This case raises issues as to the distinction between minor and non-minor offences and the manner in which the courts should properly dispose of same. The applicant has argued that where, as in this case, the DPP has elected for trial before the District Court, that the judge has no choice in the matter and must abide by the jurisdiction chosen for him. Secondly, he has argued that the judge's decision of 3rd March, 2005, remained binding on him and he had no power to go back on it. Thirdly, given that the learned District Judge was hearing the evidence which he had previously read, it is argued that if there is a power to change an order that the District Court would accept jurisdiction in a criminal case it can only be done on evidence. Fourthly, it is argued that the procedure was unfair, that the applicant was hoping that the charges against him would have been disposed of in December, 2005, whereas, if an order is not granted by this court, he how has to face into the uncertainty of a jury trial.

**The District Court**
5. Historically, criminal offences were tried by a jury. The composition of juries over the centuries had reflected the desire of the establishment to remain in control of the criminal process. The Juries Act, 1927, provided for men to serve on juries, unless a woman applied for an exemption she could not serve, and for those citizens who served on a jury to be property owners. This scheme was challenged in *DeBurca v. The Attorney General* [1976] I.R. 38. In the aftermath of that case the Juries Act, 1976 introduced wide ranging reforms. It provides for women to serve on juries in the ordinary way. The requirements that a juror should own property to a certain rateable evaluation has been removed by this Act. Where an offence is not being tried with a jury it is disposed of in a summary manner. The place of trial is the District Court which only has such jurisdiction in respect of the trial of offences as it is given by statute. Since most of the legislation that brings into force European Directives makes the breach of them a criminal offence, these are tried in the District Court. Expressly, s. 3(3) of the European Communities Act, 1972, does not allow for the creation of an indictable offence by regulation, hence, absent a statutory provision, the ordinary manner of bringing European Regulations and Directives into force is by regulation which almost invariably create the remedy of a criminal prosecution for a breach. The jurisdiction

of the District Court, therefore, grows ever wider, year by year. In *The State (McEvitt) v. Delap* [1981] I.R. 125, from p. 129, O'Higgins C.J. gave the following helpful analysis of how the jurisdiction of the District Court grew:-

> "As considerable confusion appears to exist with regard to the exercise of summary jurisdiction, it may be helpful to look briefly at its development and history. The jurisdiction to try offences in a summary manner is a jurisdiction which depends entirely on statute. According to O'Connor's Justice of the Peace (1915 ed., vol. 1, p. 3) it was first given to Justices of the Peace by the statute 11 Hen. 7, c. 3, in relation to a number of statutory offences. That statute was followed by 33 Hen. 8, c. 6, which provided for summary conviction in relation to the offence of carrying dags or short guns. In ensuing years the statutory extension of the summary jurisdiction of Justices spread to a large variety of offences — both common law and statutory. In the last century the Petty Sessions (Ireland) Act, 1851, and the Fines Act (Ireland), 1851, Amendment Act, 1874, and other statutes in relation to Dublin, regulated and prescribed the procedure for the exercise of summary jurisdiction by Justices. These various statutes became known collectively as the Summary Jurisdiction Acts. In relation to particular statutes which created an offence and/or provided for summary trial, it was sometimes enacted that the defendant should have an option to be tried by indictment or that the Justices could so opt (e.g., s. 2 of the Merchandise Marks Act, 1887, and s. 46 of the Offences Against the Person Act, 1861). In the absence of such a provision, no right to trial by jury existed where summary trial was directed. Where an offence was created by statute and was not expressly or by necessary implication (*Cullen v. Trimble* (1872) 7 Q.B. 416) made subject to summary jurisdiction, it could only be tried by a jury as an indictable misdemeanour (Russell on Crime, 7th ed., p. 11; *R. v. Hall* (1891) 1 Q.B. 747 ).
>
> On the establishment of the State, the District Court of Justice became (inter alia) the court of summary jurisdiction in relation to criminal matters. By s. 77A of the Courts of Justice Act, 1924, it was given all the jurisdiction which had been vested "by statute or otherwise in Justices or a Justice of the Peace sitting at Petty Sessions." This effectively transferred to the District Court of Justice the criminal jurisdiction formerly exercisable by Justices of the Peace under the Summary Jurisdiction Acts. In addition, s. 77B of the Act of 1924 gave that court summary jurisdiction in relation to specified indictable offences if the Justice was of the opinion that the offence was a minor one and the accused (on enquiry having been made of him) did not object. This latter provision was repealed by the Criminal Justice Act, 1951, and was replaced by s. 2 of that Act which empowers the District Court to try summarily 21 scheduled and indictable offences if the District Court be of the opinion that the facts alleged or proved constitute a minor offence, and if the accused, "on being informed by the Court of his right to be tried with a jury," does not object. Special provision is made for the Attorney General's consent also in relation to certain specified types of offence."

6. The possibilities for confusion which arise in the proper exercise of jurisdiction derive from the Constitution and from the form of modern statutes. This case provides a good example of that.

**Legislative Provisions**

7. Prior to the enactment of the Constitution, legislative provisions usually gave jurisdiction to the District Court without providing also for the possibility of a trial on indictment before a jury. In 1951 there were a huge number of criminal offences which were triable only before a jury because the Acts creating these offences specified penalties that were outside the jurisdiction of the District Court. In addition, certain common law offences were not triable except in front of a jury. Many of these had their penalties set by what were, in effect, sentencing statutes in the 19th century. The Criminal Justice Act, 1951 was designed to relieve the burden of the Circuit Court and Central Criminal Court by ensuring that jurisdiction could, in proper cases, be assumed by the District Court to try a wide range of minor offences summarily. It therefore scheduled a series of enactments for this purpose, which could be added to by the Minister for Justice; this provision was later replaced by s. 19 of the Criminal Procedure Act, 1967. Section 2(2) of the Criminal Justice Act, 1951, as substituted by s. 8 of the Criminal Justice (Miscellaneous Provisions) Act, 1997, provides:-

> "[(2) The District Court may try summarily a person charged with a scheduled offence if—
>
> (a) the Court is of opinion that the facts proved or alleged constitute a minor offence fit to be so tried summarily,
>
> (b) the accused, on being informed by the Court of his right to be tried with a jury, does not object to being tried summarily, and
>
> (c) the Director of Public Prosecutions consents to the accused being tried summarily for such offence.]"

8. In more modern times this provision has been bypassed in favour of a legislative formula which creates an offence and then provides a penalty that is within the jurisdiction of the District Court, if it is tried summarily, or a much larger penalty if the accused is found guilty on indictment before a jury. One of the earliest examples of this form of legislative enactment was s. 7(a) of the Prohibition on Forcible Entry and Occupation Act, 1971. The offences with which the applicant is charged in this case also adopt that legislative scheme. Sections 3 and 15 of the Non-Fatal Offences Against the Person Act, 1997, provide as follows:-

> "3.—(1) A person who assaults another causing him or her harm shall be guilty of an offence.
>
> (2) A person guilty of an offence under this section shall be liable—
>
> ( a ) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding [€1904.61] or to both, or
>
> ( b ) on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.
>
> 15.—(1) A person shall be guilty of the offence of false imprisonment who intentionally or recklessly—
>
> ( a ) takes or detains, or
>
> ( b ) causes to be taken or detained, or
>
> ( c ) otherwise restricts the personal liberty of, another without that other's consent.

(2) For the purposes of this section, a person acts without the consent of another if the person obtains the other's consent by force or threat of force, or by deception causing the other to believe that he or she is under legal compulsion to consent.

(3) A person guilty of an offence under this section shall be liable—

( a ) on summary conviction, to a fine not exceeding [€1904.61] or to imprisonment for a term not exceeding 12 months or to both, or

( b ) on conviction on indictment, to imprisonment for life."

9. The ordinary interpretation given to sections such as these is that the option of trial on indictment or summarily is with the DPP. Unlike under s. 2 of the Criminal Justice Act, 1951, as amended, the accused has no say in the matter. The reality of what happens is that an official in Director of Public Prosecution's office looks at the file and makes an estimate of the maximum sentence the particular offence will attract and then directs a summary trial or a trial on indictment. The case is then processed in accordance with that direction. I infer that that is what happened here.

10. The problems which arise in this kind of case relate to how legislation which is cast in this way is to interact with Article 38 of Bunreacht na hÉireann. Articles 38.1, 38.2 and 38.5 of the Constitution provide as follows:-

"1. No person shall be tried on any criminal charge save in due course of law.

2. Minor offences may be tried by courts of summary jurisdiction. …

5. Save in the case of the trial of offences under s. 2, s. 3 or s. 4 of this Article no person shall be tried on any criminal charge without a jury."

**The Law**

11. Article 38.5 gives every accused person the right to be tried by a jury except where the charge relates to a minor offence or, as is not relevant here, a military tribunal or the Special Criminal Court. It is defining a minor offence that causes the problem. If a case does not fit within this category then the District Court can have no jurisdiction to deal with it, despite having apparently been given that jurisdiction by statute. The test which is applied is to look to the nature of the offence, the charge that is alleged and the facts that the prosecution propose to attempt to prove against the accused and to discover the effective penalty that is likely to be imposed; *The State (Rollinson) v. Kelly* [1984] I.R. 248, *Melling v. Ó Mathghamhna* [1962] I.R. 1. In circumstances where only the District Court has jurisdiction and, as is usually the case with the modern limit, it is specified that the penalty cannot exceed 12 months imprisonment or a fine of €3,000, there can be no issue as to which court has jurisdiction. It is the District Court alone and, absent a constitutional challenge brought in the High Court, that is the matter. However, many modern statutes, as quoted above, give dual jurisdiction to the District and Circuit Court and the problem is the choice of jurisdiction. A particular offence may attract, on indictment, life imprisonment, as is the case in s. 15 of the Non-Fatal Offences Against the Person Act, 1997, and the facts may be such that even though the charge is laid in a summary manner, the District Judge may think that the case is so bad that it should or might attract a penalty beyond what he is capable of imposing. It is then that the case ceases to be minor and the jurisdiction of the District Court for the summary trial of the offence is at an end.

12. There are some offences where the moral turpitude attending to this commission means that a summary trial must always be impossible. No matter how apparently excusable, the mere fact of facing a conviction for murder or manslaughter, or for rape, would mean that a summary disposal is never possible. In those circumstances the effective penalty test is not, or itself, determinative. A wife who kills her husband after years of abuse stands a reasonable chance of receiving a suspended sentence for manslaughter but, nonetheless, such a conviction requires that it be dealt with other than summarily. As a matter of fact the sole jurisdiction to deal with murder and rape rests in the Central Criminal Court. The jurisdiction to deal with manslaughter is vested in the Circuit Criminal Court. The Central Criminal Court can deal with other offences in respect of which jurisdiction is given to the Circuit Court and the District Court provided they are included in the same indictment as an offence in respect of which the Central Criminal Court has been given jurisdiction, such as murder or rape; *The People (DPP) v. Quilligan and O'Reilly* [1993] 2 I.R. 305. Where a person is tried with an indictable offence, summary accounts may be included and disposed of by the Circuit Criminal Court or Central Criminal Court; see ss. 4P and 4N of the Criminal Procedure Act, 1967 as inserted by s. 9 of the Criminal Justice Act, 1999. Most offences, however, are of a variable nature. Arson maybe regarded as a terrible crime, but it could consist of anything from burning down a historic building to setting fire to an empty garden shed. Similarly, drug pushing, as it popularly known, may involve an organised crime gang in the importation of tonnes of controlled drugs or, at the other end of the scale, the offence may be committed by a student sharing a cannabis cigarette with a friend.

13. In *The State (Rollinson) v. Kelly* [1984] I.R. 248 Henchy J. doubted that certain offences, by reason of their moral turpitude, could ever to tried summarily. He instanced genocide murder and rape. In *Conroy v. The Attorney General* [1965] I.R. 411, Walsh J. indicated that the moral quality of the Act is among the tests that may be useful in determining whether or not an offence is or is a minor one. At p. 436 Walsh J. stated:-

"The court cannot accept the submission made on behalf of the Attorney General that the only test of what is or is not a minor offence is the test of the punishment it may attract. The moral quality of the act is a relevant though secondary consideration. But between the positions of grave and minimal moral guilt there is a large field which must be left to the discretion of the Oireachtas for consideration as a factor in determining whether to make an offence a minor one or not. That consideration will be reflected in the punishments which an offence may attract either by the express will of the Oireachtas in an Act or at common law without qualification by the Oireachtas."

14. Arising from the decision of the High Court in *The People (DPP) v. Joseph Dougan* [1996] 1 I.R. 544, it is argued that the District Court cannot, it is said, usurp the function of the Director of Public Prosecutions by rejecting jurisdiction in a case that he decided to try summarily. That case was decided in relation to the possibility of a purely summary offence. If a purely summary offence attracted a penalty which seemed to be beyond the range of effective penalties that would make it a minor offence, or was a grave moral wrong in addition to that, then, it was decided, the District Court had no option but to exercise its jurisdiction and proceed to trial. Because the District Court is precluded by Article 34.3.2 of the Constitution from exercising any jurisdiction as to the validity of any

law having regard to the provisions of the Constitution, to decline jurisdiction would be effectively to decide that the law providing for such a summary trial was unconstitutional. Geoghegan J. ruled that the District Court could not do this. At p. 551 he stated:-

> "Counsel for the defendant argues that an inoperative section is not the same thing as an unconstitutional section. But such a proposition needs very careful examination as it could mean that every time that a District Court judge considered that there was a constitutional infirmity in a particular section he could regard it as inoperative and inapplicable. In my opinion, this would be tantamount to a District Court judge deciding on the constitutionality of a statutory provision and that he is not entitled to do under the Constitution."

15. The ruling in that case, that a District Judge is obliged to assume jurisdiction notwithstanding his doubt in a purely summary case that the penalty may be excessive of what is permitted for a minor offence under the Constitution, does not mean that the Director of Public Prosecutions may not get it wrong in deciding that a case should have a summary trial, as opposed to one on indictment. The Director of Public Prosecutions conscientiously exercises an administrative function under the Prosecution of Offences Act, 1974. That function includes deciding who is to be prosecuted, for what offence and in which court. The judicial function, in contrast to that, whether the trial is summary or on indictment, always involves the setting of an effective and appropriate penalty if the accused has been found guilty.

16. Further, the duty of the District Court in dealing with offences which have a dual mode of trial necessarily involves the court in assessing the facts and the potential penalty that a conviction may attract. The only way to give effect to Article 38.5 is by the District Court assuming the jurisdiction to ensure that the accused is afforded his or her constitutional right to a trial by jury where, on a judicial assessment of the facts, the charge is not a minor one.

17. In my view there are three cases which establish this beyond doubt. In *The State (McDonagh) v. O'hUadhaigh* (Unreported, High Court, 9th March, 1979,). McMahon J. stated:-

> "If the facts proved indicate that the offence is not a minor offence, then clearly it is the duty of the court to discontinue the trial. If the statement of the facts alleged to the Justice indicate a minor offence he has jurisdiction to enter upon a summary trial of the offence but in my view if the evidence shows that in fact that the offence is not a minor one he would be acting in excess of jurisdiction if he continued the trial."

18. The position of the District Justice in these circumstances would be that adverted to in the judgment of Henchy J. in *The State (Holland) v. Kennedy* [1977] I.R. 193. The learned judge said at p. 201 of the report:-

> "The respondent District Justice undoubtedly had jurisdiction to enter on the hearing on this prosecution. But it does not necessarily follow that a court or a tribunal, vested with powers of a judicial nature, which commences as a hearing within jurisdiction will be treated as continuing to act within jurisdiction. For any one of a number of reasons it may exceed jurisdiction and thereby make its decision liable to be quashed on certiorari. For instance it may fall into an unconstitutionality, or it may breach the requirements of natural justice, or it may fail to stay within the bounds of the jurisdiction conferred on it by statute."

19. In *The State (McEvitt) v. Delap* [1981] I.R. 125, Henchy J. did not give the majority judgment. Reliance, instead, has been placed upon the judgment of O'Higgins C.J. in that case. All three members of the court, however, agreed in the result and Henchy J. offered compelling reasons why a District Judge should not hear a case which is a non-minor offence, or if he has started to hear it he should disengage as soon as the facts indicated the nature. At p. 132 Henchy J. stated:-

> "It follows that a person who is charged with an offence under s. 3 of (The Prohibition of Forceful Entry and Occupation Act, 1971) will fall to be tried either similarly in the District Court or on indictment in the Circuit Court; the line of distinction between the one court and the other is necessarily the gravity of the offence.
>
> If, as is the case here, the circumstances of the offence charged plainly show it to be a minor offence, it must be assumed from the provision in the act of a penalty for a summary conviction that the legislature intended that the District Justice will try the case summarily as part of the exercise of the constitutional jurisdiction of the District Court to try minor offences, rather than send it forward for trial as if it were not a minor offence.
>
> If this were a case where it had not been agreed that the offence was a minor one, the Distinct Justice could make a provisional or *prima facie* ruling that it was a minor one, if the prosecution's opening statement of the circumstances justified such a tentative conclusion. But if, as the hearing proceeded, it appeared that the offence was not a minor one, the District Justice would have to desist from the summary hearing and, instead, take the necessary steps to allow a conversion of the case into the procedure laid down by the Criminal Procedure Act, 1967 for the preliminary examination of an indictable offence."

20. In *Feeney v. District Justice John Clifford* [1989] I.R. 668 the accused pleaded guilty to summary offences and the District Court assumed jurisdiction. The applicant in that case had therefore become the convict in respect of the charges on his plea of guilty. The Supreme Court held that it was impossible for the District Court to then decline jurisdiction, in that case because of the other convictions of the accused and the need to impose an effective penalty in respect of the charges before the court. McCarthy J. stated at p. 679:-

> "Once there has been a plea of guilty to what appears to be, on the facts alleged, a minor offence fit to be tried summarily, there can be no going back on the conviction that necessarily follows the plea of guilty; the District Justice cannot hold the plea in some form of forensic limbo until he had heard the evidence material to the penalty; yet there must be many such instances."

21. Section 5 of the Criminal Justice Act 1951 was amended by s. 12(1) of the Criminal Justice Act 1984 so that the District Court could impose a 12 month penalty followed by a 12 month penalty, up to a maximum of 24 months provided this aggregate were reached through the disposal of separate charges arising out of genuinely separate offences; see *Meagher v. O'Leary* [1998] 4 I.R. 33. Provided the District Court is therefore dealing with two burglaries, as opposed to one burglary split up into separate charges with a view to maximising the penalty, its aggregate jurisdiction is now formidable. The test for a District Judge, in hearing these offences, is to examine each of them separately to see whether they are, in terms of the tests outlined, genuinely a minor offence. If one is minor and the other non-minor, jurisdiction should be refused in respect of the non-minor offence. From a logistics point of view, it can be suitable to give the prosecution an opportunity to see whether they would then wish all of the offences to be tried on indictment. The fundamental duty, however, is a duty to the accused to ensure that his right to trial by jury is upheld. In *The State*

*(O'Hagan) v. Delap* [1982] I.R. 213, O'Hanlon J. reached the same conclusion as Henchy J. in *The State (McEvitt) v. Delap* as to the duty of the District Judge where it appears, on the hearing of a case, that any prior view that was held that the charge a minor one becomes misplaced. At p. 217 he stated:-

> "I am of opinion that when a District Justice has elected to try a case summarily, and has embarked on the trial, circumstances may arise which entitle him, or may even make it necessary for him, to reverse his pervious decision and allow the case to go forward to the Circuit Court where a higher range of sentence may be imposed."

**Conclusion**

22. Article 38.5 of the Constitution provides that persons accused of criminal offences have a right to be tried by a jury, except where the case is one subject to military law, where it is within the jurisdiction of a Special Criminal Court or where it is a minor offence. In the first instance, modern statutes which create an offence and give an option of different penalties on summary disposal or disposal on indictment require the Director of Public Prosecutions to decide on the mode of trial. That decision is always subject to judicial scrutiny. The duty of insuring that Article 38 of the Constitution is implemented in the trial of offences rests with every judge sworn to try criminal cases. Even if a judge in the District Court takes a preliminary view that the papers he has before him or her discloses a minor offence, the court is still under a constitutional imperative to insure that the case is tried with a jury should it emerge on a further perusal of the facts, or on hearing the evidence at the actual trial itself, that the case involves a non-minor offence. That duty continues up to the point of conviction, at which time the power to decide that an offence being tried summarily is not a minor one is spent.

23. In this case, the learned District Judge appraised himself of the facts and made a preliminary decision that it was a minor offence. In hearing the case, the evidence of the alleged injured party caused him to change his mind. In deciding to discontinue hearing the case and to send it forward for trial to the Circuit Court he acted both properly and in discharge of his constitutional duty to ensure the proper disposal of criminal offences under Article 38 of the Constitution. I do not equate a perusal of papers with a plea of guilty. The District Judge was not only at liberty, but was obliged, to change his mind on realising that what was before him could not be disposed of summarily as a minor offence. This did not require an additional hearing, or a change in the nature of the evidence. Whereas the applicant, as the accused in that case, may regard it as unfair that his trial was not disposed of when it was listed, the constitutional scheme requiring that non-minor offences be tried before a jury meant that the learned respondent was ensuring, as a judge, that his constitutional rights as a person accused of a crime were upheld.