

1954

Present : de Silva J.

K. SIMON PERERA, Appellant, *and* M. RASANAYAKAM
(Public Health Inspector), Respondent

S. C. 1,188—M. C. Colombo, 41,314

Housing and Town Improvement Ordinance (Cap. 199)—Section 13 (1) (b)—Offence thereunder—Continuing fine—Circumstances when it may be imposed.

Under Section 13 (1) of the Housing and Town Improvement Ordinance a person who commits any offence set out in clauses (a), (b), (c), (d), (e) or (f) "shall be liable on summary conviction to a fine not exceeding Rs. 300, and to a daily fine of Rs. 25 for every day on which the offence is continued after conviction".

Held, that a continuing fine cannot be imposed for an offence under the Section unless there is some indication in the charge itself or evidence is led in the case that the offence is being continued.

APPEAL from a judgment of the Magistrate's Court, Colombo.

H. W. Jayewardene, for the accused appellant.

M. M. Kumarakulasingham, for the complainant respondent.

Cur. adv. vult.

July 30, 1954. DE SILVA J.—

The charge against the accused appellant reads as follows:—
 ‘ that you did on the 28th day of November, 1952, at
 within the division aforesaid being the owner of the said
 premises 90 Sedawatte within the limits of Kolonnawa Town deviate
 from the approved plan No. 125B/48 without having first obtained the
 approval of the Special Commissioner, Kolonnawa Town, in breach of
 section 13 (1) (b) of Housing and Town Improvement Ordinance of
 Chap. 199 of the L. E., and thereby committed an offence punishable
 under section 13 of the said Ordinance.’ The accused who originally
 pleaded not guilty to this charge later withdrew that plea and tendered
 a plea of guilty. The Magistrate convicted the accused and on a subse-
 quent day made the following order: “I fine the accused Rs. 50 and
 continuing fine of Rs. 10 p.d.”. The accused has appealed from this
 order on the ground that the offence that he was charged with is not a
 continuing one and that the Magistrate therefore had no power to impose
 a daily fine of Rs. 10.

According to section 13 (1) of the Housing and Town Improvement Ordinance a person who commits any offence set out in clauses (a), (b), (c), (d), (e) or (f) “shall be liable on summary conviction to a fine not exceeding Rs. 300, and to a daily fine of Rs. 25 for every day on which the offence is continuing after conviction”. The offence under clause (b) is deviation from any plan or specification approved by the Chairman without his written permission. The accused was charged with having committed the offence under clause (b) on 28th November, 1953. There is no indication in the charge that he was continuing the offence thereafter. Nor was any evidence led to show that he was continuing to deviate from the approved plan. It may also be possible that although a person deviated from an approved plan on a particular date yet later on he brought the building into conformity with that plan. Therefore unless there is some indication in the charge itself or evidence is led in the case that the offence is being continued the Magistrate is not justified in imposing a continuing fine. In the case of *Punchihewa v. Nicholas Appuhamy*¹ Schneider J., while setting aside the imposition of a continuing fine for an offence under section 13 (1) (b), observed, “The fine for the offence of not bringing the building into conformity with the approved plan after the conviction in this case cannot be imposed until it has been proved to the satisfaction of the Court that the accused failed after the conviction to bring the building into conformity with the approved plan.” In regard to the above observation of Schneider J.,

¹ (1920) 8 C. W. R. 247.

there is nothing objectionable, if I may say so with respect, in fixing a continuing fine at the time of the conviction itself, provided, there are reasonable grounds to believe that the offence is being continued. Such a procedure is not repugnant to the provisions of section 13 (1). But the continuing fine cannot be recovered unless the Court is satisfied at the time the application is made to recover it that the offence had in fact been continued after the conviction. Although the continuing fine is to be recovered later yet the imposition of it at the time of the conviction might adversely affect the accused even though the offence is not continued. It would be to his advantage if the opportunity is afforded to him at the trial itself to establish that he has already ceased to commit the offence. This opportunity would in effect be denied to him if a continuing fine is imposed without any intimation to him that he is continuing the offence.

Accordingly I set aside the order imposing a continuing fine but the rest of the sentence will stand.

Sentence reduced.
