

1948

*Present : Dias J.***MARUTHAPPEN, Appellant, and ASHTON, Respondent.***S. C. 1,037—M. C. Hatton, 10,109.**Jurisdiction—Criminal trespass with intention to annoy—Right of Rural Court to try such offence—Rural Courts Ordinance, No. 12 of 1945, s. 10 (b).*

Where criminal trespass was alleged against the accused in that he unlawfully remained upon certain premises, not with the intent to commit any offence, but merely with the intention to annoy the person in occupation of the premises—

*Held*, that the jurisdiction of the Rural Court to try such an offence was ousted by the words of Column 3 of the Second Schedule to the Rural Courts Ordinance.

**A**PPPEAL from a judgment of the Magistrate of Hatton.

*L. G. Weeramantry*, for the accused, appellant.

*E. F. N. Gratiaen, K. C.*, with *D. W. Fernando*, for the complainant, respondent.

*Cur. adv. vult.*

February 6, 1948. DIAS J.—

The accused appellant was convicted of the offence of criminal trespass and was sentenced to six weeks rigorous imprisonment.

The only point taken on appeal is that the Magistrate had no jurisdiction to try this case which, it is submitted, is within the exclusive jurisdiction of the Rural Court as provided by section 10 (b) of the Rural Courts Ordinance, No. 12 of 1945.

The charge against the appellant was that he being a labourer employed on Mottingham estate, Maskeliya, and having been given a month's notice terminating his employment, refused to leave the estate but continued to occupy his quarters to the annoyance of the Superintendent. In *Selwanayakam Kangany v. Henderson*<sup>1</sup> such conduct has been held to amount to criminal trespass.

It is urged that this offence, however, is not triable by a Magistrate's Court, but is exclusively triable by the Rural Court.

Section 10 (b) of Ordinance No. 12 of 1945 provides :—

“ The criminal jurisdiction of a Rural Court shall extend to the trial of such of the following offences as may have been committed within the local jurisdiction of the Rural Court :—

(a) . . . .

(b) The offences for the time being included in the Second Schedule to this Ordinance, that is to say, such of the offences under the provisions of law enumerated in the first column of that Schedule as are specified or described in the corresponding entries in the second column of that Schedule, but subject in the case of each of those offences to *any* limitations, *restrictions* or *conditions* set out in respect of that offence in the third column of that Schedule.

(c) . . . .

Turning to the Second Schedule we find “ Section 433 ” referred to in Column 1 which in Column 2 is described as “ Criminal Trespass as defined in section 427 of that Code ” meaning the Penal Code. In Column 3 under the heading “ Limitations, restrictions, and conditions ” against this item are the words “ A Rural Court shall have jurisdiction *only* in cases where *the* offence intended to be committed is an offence within the criminal jurisdiction of a Rural Court ”.

<sup>1</sup>(1946) 47 N. L. R. 337.

The offence of Criminal Trespass as defined by section 427 of the Penal Code contains four separate and distinct species of the offence, namely :—

- (a) Criminal trespass by entering into or upon property :—
  - (i.) Whoever *enters* into or upon property in the occupation of another *with intent to commit an offence*.
  - (ii.) Whoever *enters* into or upon property in the occupation of another *with intent to intimidate, insult, or annoy* any person in occupation of such property.
- (b) Criminal trespass by unlawfully remaining on property :—
  - (i.) Whoever having lawfully entered into or upon property in the occupation of another, *unlawfully remains* there *with intent to commit an offence*.
  - (ii.) Whoever having lawfully entered into or upon property in the occupation of another, *unlawfully remains* there *with intent thereby to intimidate, insult or annoy such person*.

It is clear that in cases where the criminal trespass alleged against an accused is that he entered into or upon land or unlawfully remained on land, not with the intent to commit any *offence*, but merely with the intention of *insulting or annoying* the person in occupation, the jurisdiction of the Rural Court to try such an offence is ousted by the clear words contained in Column 3 of the Second Schedule. In this case the appellant was not alleged to have committed criminal trespass with the intent to commit any *offence*, but merely to annoy the Superintendent.

The point of law therefore fails. I affirm the conviction and sentence.

*Appeal dismissed.*

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