

1964

Present : T. S. Fernando, J.

S. PONNUDURAI, Appellant, and M. DE. S. RATNAWEERA  
(Labour Officer, Department of Labour), Respondent

*S. C. 282/1963—M. C. Colombo, 15568/A*

- (i) *Employees' Provident Fund Act, No. 15 of 1958—Sections 15 and 37—Regulation 7 made under s. 46—Prosecution for offence of failure of employer to pay contributions due from employees—Forum.*
- (ii) *Secondary evidence—Procedure—Evidence Ordinance, ss. 63 (5), 66.*

(i) In a prosecution in the Magistrate's Court of Colombo for failure on the part of the accused, an employer, to pay to the Employees' Provident Fund, in conformity with the requirement of section 15 of the Employees' Provident Fund Act, his contribution for a month in respect of three employees—

*Held*, that, although the place of work of the employer and the employees was situated at Jaffna, Regulation 7 of the Regulations made by the Minister by virtue of the powers vested in him by section 46 of the Act requires every employer who is liable under the Act to pay contributions to send them to the Central Bank of Ceylon, which is situated in Colombo. Accordingly, the failure of the employer in the present case to pay at Colombo constituted the offence, and the Magistrate's Court of Colombo was the proper Court to entertain the plaint.

(ii) When secondary evidence of the contents of a document is led in terms of section 63 (5) of the Evidence Ordinance, a witness who gives an oral account of the contents of the document may refresh his memory by referring to an extract made by him of the contents of the document. In such a case, the admission of the extract in evidence as a document does not render the evidence of the witness inadmissible.

<sup>1</sup> (1957) 61 N. L. R. 80.

**A**PPEAL from a judgment of the Magistrate's Court, Colombo.

*M. Tiruchelvam, Q.C.*, with *V. Kumaraswamy* and *Mark Fernando*,  
for the accused-appellant.

*D. W. Abeyekoon*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

October 13, 1964. T. S. FERNANDO, J.—

The accused-appellant was convicted in the Magistrate's Court of Colombo on three counts which alleged the commission by him of three offences in contravention of section 15 of the Employees' Provident Fund Act, No. 15 of 1958, and punishable under section 37 of the same Act. The three offences related to alleged failures on the part of the accused-appellant to pay to the Employees' Provident Fund his contribution for a specific month in respect of three specified employees.

Two questions of law were raised before me, one of these being a question of the want of jurisdiction in the Magistrate's Court of Colombo which was not raised in the Magistrate's Court and which has not been specified even in the petition of appeal. After hearing argument for both sides I dismissed the appeal but, in view of the technical nature of the questions, decided to set down later my reasons for the dismissal. Those reasons are shortly stated hereunder :—

In regard to the question of want of jurisdiction in the Magistrate's Court, it was argued that the obligation cast by the Act on an employer was to pay to the Fund and that there is no indication where the Fund was located. In these circumstances, counsel contended, the offence was committed where the place of work of the employer and the employees was situated, viz., at Jaffna. I am indebted to Mr. Colvin R. de Silva, one of the senior counsel of this Court who was present in Court at the time of the argument, for drawing my attention to Regulation 7 of the Regulations made by the Minister by virtue of the powers vested in him by section 46 of the Act and published in Gazette No. 11,573 of October 31, 1958 which disposes of the objection relating to absence of jurisdiction. Regulation 7 requires every employer who is liable under the Act to pay contributions to send them to the Central Bank of Ceylon. That Bank, it is well-known and not disputed, is situated in Colombo. The failure to pay at Colombo therefore constituted the offence, and the Magistrate's Court of Colombo was the proper court to entertain the complaint.

The other question related to the admission in evidence of the document P1, an extract made by a witness of part of the contents of certain books or records kept by the accused at his place of business. It was contended on the accused's behalf that an extract compiled by a witness after examination of books or records does not constitute secondary

evidence of the contents of those books or records. As the notice mentioned in section 66 appears to have been given in this case, secondary evidence of the documents could have been led by the prosecution. Section 63 (5) of the Evidence Ordinance embraces within the definition of secondary evidence oral accounts of the contents of a document given by some person who has himself seen it. Although P1 was admitted in evidence as a document, what happened in Court was substantially the giving by the witness of an oral account of the contents of the documents he had seen and examined at the place of work of the accused. P1 was utilised by the witness for nothing more than refreshing his memory. The second question of law was also therefore of no avail against the order of conviction.

*Appeal dismissed.*

