

1967

Present : Alles, J.

I. K. WIJEWARDHENA, Appellant, and THE INSPECTOR OF POLICE, PANADURA, Respondent

*S. C. 632/1966—M. C. Panadura, 93889*

*Charges of criminal trespass and intentional insult—Jurisdiction of Magistrate's Court—Objection that alleged offences were committed in a Conciliation Board area—Burden of proof—Conciliation Boards Act No. 10 of 1958, as amended by Act No. 12 of 1963, ss. 3 (2), 3 (3), 14 (1) (b).*

Where, in a prosecution in a Magistrate's Court for an offence specified in Part I of the Schedule to the Conciliation Boards Act, it is submitted on behalf of the accused that the Court has no jurisdiction to entertain the prosecution in view of the provisions of section 14 (1) (b) of the Conciliation Boards Act, the burden is on the accused to show that the area in which the offence is alleged to have been committed has been declared to be a Conciliation Board area.

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

*M. M. Kumarakulasingham*, with *F. N. D. Jayasuriya*, for the accused-appellant.

*Wakeley Paul*, Crown Counsel, with *S. W. B. Wadugodapitiya*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

<sup>1</sup> (1960) 62 N. L. R. 169 at page 182.

September 13, 1967. ALLES, J.—

Plaint was filed in this case charging the accused-appellant and his wife in the Magistrate's Court of Panadura on three counts. On the first count they were charged with committing criminal trespass by entering Ward No. 1 of the Panadura Hospital and remaining there to the annoyance of Dr. S. Weeratne, an offence punishable under section 434 of the Penal Code; on the 2nd and 3rd counts the appellant alone was charged on two counts under section 484 of the Penal Code with intentionally insulting Dr. Weeratne and Dr. M. V. O. Peiris of the same Hospital. After a lengthy trial, the appellant and his wife were acquitted on the charge of trespass but the appellant was convicted on the charges of insult and sentenced to pay fines of Rs. 100 on each of the two charges.

The case was a sequel to an incident which had taken place in Ward No. 1 of the Panadura Hospital on 11th July, 1965. On that day, Mangala Wijewardhena, the son of the appellant and his wife had met with a motor accident in which he and one Attanayake were injured. The two injured persons were admitted to the Hospital about 12 noon that day and attended on by Dr. Weeratne. Dr. Weeratne had completed examining Mangala Wijewardhena's injuries about 12.40 p.m. and sent him to the dressing room and commenced to attend on Attanayake. In the meantime, the appellant and his wife had come to the Hospital. It would appear that they had come to the Hospital soon after the visiting hours, which were from 12 noon to 1 p.m. By that time, Mangala had been brought to the ward from the dressing room. He had multiple injuries on his face and hands and also an injury on his head which had apparently escaped the notice of the Doctor. The appellant pointed out this injury to the Doctor and Dr. Weeratne examined the injury and found it to be a trivial one and only skin deep and told the appellant that he would attend to the injury after he had attended to another patient who had been admitted to the Hospital with a history of an assault with a club and asked the appellant to leave the Hospital since it was after visiting hours. The appellant then turned abusive and started creating a disturbance in the ward and uttered insulting words to Dr. Weeratne in the presence of the attendants, patients and nurses. The appellant refused to leave the ward and as Dr. Weeratne was summoned to treat another patient in the medical ward and as the appellant and his wife were continuing to create a disturbance he summoned Dr. Peiris. When Dr. Peiris came to the ward, he too told the appellant that the injury was a trivial one and that Dr. Weeratne would attend to the patient, whereupon the appellant began to abuse him too in insulting language. The Police who had been summoned by Dr. Weeratne then arrived and when Sub-Inspector Isurupala requested the appellant and his wife to leave the Hospital, they refused to do so. Another witness, Advocate C. M. Fernando who had arrived at the Hospital to see Attanayake, says that the appellant and his wife were creating a disturbance.

The appellant gave evidence and denied that he had used the insulting words referred to in the charges at the Doctor and stated that the Police officers who came to the Hospital for investigation abused him and his wife.

The learned Magistrate in a considered judgment has disbelieved the appellant and his witnesses and held that the appellant did use the abusive words referred to in the charges. I see no reason to interfere with the findings of the Magistrate both on the facts and the law that the appellant was guilty of the offences of which he was convicted. The case has been bitterly contested in the trial court; the Doctors and the Police officers have been severely cross-examined; evidence was led on behalf of the defence and Counsel have addressed the Magistrate both on questions of fact and on the law applicable to the case. There were several dates of trial and the Magistrate, after a careful analysis of the evidence, has found the appellant guilty of the charges of insult.

At the argument of the appeal, learned Counsel for the appellant raised the question of jurisdiction; he submitted that the Magistrate's Court of Panadura has no jurisdiction to entertain the Police plaint in view of the provisions of section 14 (1) (b) of the Conciliation Boards Act No. 10 of 1958 as amended by Act No. 12 of 1963. That section states that—

“Where a Panel of Conciliators has been constituted for any village area no prosecution for any offence specified in Part I of the Schedule to this Act as is alleged to have been committed in such village area shall be instituted in, or be entertained by, any court unless the person instituting such prosecution produces a certificate from the Chairman of such Panel that the alleged offence has been inquired into by a Conciliation Board and has not been compounded.”

The offences of criminal trespass and intentional insult are offences mentioned in Part I of the Schedule to the Act and the expression “village area” has the same meaning as in the Village Councils Ordinance (Cap. 257). Under section 3 (2) of the Conciliation Boards Act, the Minister of Justice by Notification appearing in Government Gazette No. 13,956 of 21.2.64 notified that he intended to constitute a Panel of Conciliators for the Panadura Urban Council area and under section 3 (3) called for recommendations in regard to persons who are to be appointed to the Panel of Conciliators of such area. Presumably after receiving such recommendations, the Minister by Order published in Government Gazette No. 14,276 of 1.1.65 appointed certain persons to be members of the Panel of Conciliators constituted for the Panadura Urban Council area. In the Village Councils Ordinance referred to earlier, the term “village area” has been interpreted to mean a portion of a divisional revenue officer's division declared to be a village area by Order under section 3 or deemed by virtue of any written law to be a village area under the Ordinance. There is however no evidence led in this case that the Panadura Civil Hospital falls within the Panadura Urban Council area nor is there any evidence that the Panadura Urban Council area has been

declared to be a Conciliation Board area. I am not prepared to take a judicial notice of these facts ; it was incumbent on the party relying on such evidence to place that evidence before Court. The preliminary objection to the jurisdiction of the Magistrate's Court therefore fails.

On the question of sentence, although I agree that it is necessary that doctors should be able to maintain discipline in a large institution like a hospital without interference from the members of the public, I think this is eminently a case in which the Court should have acted under section 325 of the Criminal Procedure Code. The accused is not a person with a criminal record, nor is he one whom one usually associates with criminals ; he is a proprietary planter and a man of respectability ; it is in evidence that he has been a benefactor of this Hospital donating radio equipment worth over Rs. 2,000 ; he had a previous unfortunate experience in this same Hospital when a servant boy of his was brought to the Hospital after an accident, discharged a few days later and again rushed back to the Hospital from where he was conveyed to the General Hospital and died after an operation. On this occasion his only son had been entered to the Hospital after an accident, there was a head injury unnoticed by the Doctors and he was naturally anxious for the welfare of his son and must have been undergoing severe mental stress when this unfortunate episode occurred. I hold that the charges have been proved but without proceeding to conviction I order that the accused be discharged conditionally to be of good behaviour for a period of one year on his entering into a personal bond in a sum of Rs. 500. The fines already paid should be returned to the appellant.

*Accused discharged conditionally.*

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