

1953

Present : **Pulle J.**

S. THAMBIPILLAI, Appellant, and MANMUNAI SOUTH AND ERUVIL CO-OPERATIVE AGRICULTURAL PRODUCTION AND SALES SOCIETY, LTD., Respondent.

*S. C. 1,399—M. C. Batticaloa, 13,398*

*Co-operative Societies Ordinance (Cap. 107) as amended by Co-operative Societies (Amendment) Act, No. 21 of 1949—Section 50A—Money due to Co-operative Society—Procedure for recovering it—Sentence of imprisonment cannot be imposed on defaulting debtor.*

When the Registrar of Co-operative Societies orders a person to repay money due to a co-operative society, section 50A (2) of the Co-operative Societies Ordinance as amended by the Co-operative Societies (Amendment) Act, which provides machinery for the recovery of the money under section 312 (2) of the Criminal Procedure Code, does not empower a Magistrate to sentence the debtor to a term of imprisonment if he makes default in payment.

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

Appellant in person.

*Ananda Pereira*, Crown Counsel, as *amicus curiae*.

December 2, 1953. PULLE J.—

The appellant was the storekeeper of a Co-operative Agricultural Production and Sales Society. By a writing dated the 6th June, 1951, the Registrar of Co-operative Societies made an order under section 50A of the Co-operative Societies Ordinance, No. 16 of 1936 (Cap. 107) as amended by the Co-operative Societies (Amendment) Act, No. 21 of 1949, requiring the appellant to pay a sum of Rs. 12,798 being the value of 1,422 bushels of paddy found to be short while in the custody of the appellant. The order further stated that if the sum was not paid by the 8th July, 1951, "it may be recovered as a fine of the Magistrate's Court as provided in section 50A of the Ordinance referred to above".

On the 14th August, 1951, the liquidator of the Society filed the order and moved that the amount be recovered as a fine in terms of section 50A (2) of the Ordinance. On the same day, however, a summons was issued requiring the appellant to answer to the complaint that by his failure to pay the money he had committed an offence punishable under section 50A (2).

The only point taken on behalf of the appellant before the learned Magistrate was that the order of the Registrar was *ultra vires*. This submission was not accepted and the appellant was sentenced to six months' imprisonment.

The appellant argued his case in person and I am indebted to Mr. Ananda Pereira, Crown Counsel, for assisting me as *amicus curiae*. In my opinion section 50A (2) merely provides the machinery for the recovery of the money under section 312 (2) of the Criminal Procedure Code and does not empower a Magistrate to sentence a person against whom an order is made by the Registrar and who has made default in payment to a term of imprisonment. If reference is made to analogous provisions in other statutes one finds that the legislature expressly provides for imposing a term of imprisonment upon a failure to pay. See section 8 of the Maintenance Ordinance and section 80 (1) of the Income Tax Ordinance.

Section 50A (2) corresponds in substance to section 50 of the Stamps Ordinance. Dealing with the latter section Ennis J. said in the Divisional Bench case of *Gunawardene v. Gunasekera*<sup>1</sup>: "The contention of the appellant that the appellant was liable to imprisonment under the procedure prescribed in section 50 and is, therefore, entitled to appeal is not, in my opinion, tenable, as imprisonment in default of payment is quite distinct from the procedure for the recovery of a fine. It is a substitution of one form of punishment for another which section 50 does not contemplate."

For the reasons stated above I have already made order quashing the sentence of imprisonment.

*Sentence of imprisonment quashed.*

<sup>1</sup> (1922) 1 T. C. L. R. 90.