

1951

Present : Basnayake J.

EASTERN BUS CO., Appellant, and INSPECTOR OF LABOUR,
BATTICALOA, Respondent

S. C. 675—M. C. Batticaloa, 10,435

Criminal Procedure Code—Summons on Company—How served—Proper officer—Section 45 (3)—" Or other like officer ".

By Section 45 (3) of the Criminal Procedure Code: " In the case of a company or association of persons whether incorporated or not the summons may be served on the Secretary or other like officer of the same ".

Held, that service of summons on the Managing Director of a company was not a sufficient compliance with the requirements of the Section.

APPPEAL from a judgment of the Magistrate's Court, Batticaloa.

C. S. Barr Kumarakulasinghe, for the appellant.

A. Mahendrarajah Crown Counsel, for the Attorney-General.

September 28, 1951. BASNAYAKE J.—

On 4th July, 1950, Dharmalingam Balasingam, Inspector of Labour, Batticaloa, instituted, with the sanction of the Controller of Labour, legal proceedings against the Eastern Bus Company, Ltd. in respect of offences committed under the Wages Boards Ordinance, No. 27 of 1941.

¹ (1921) 22 N. L. R. 289 and see *Letchimanpillai v. Kandia* (1928) 30 N. L. R. at p. 281.

On a special motion by the prosecution summons was served on the Managing Director of the Company who appeared in obedience to it and pleaded not guilty.

Later, objection was taken to the proceedings on the ground that as the prosecution of the Managing Director did not have the sanction of the Controller of Labour as required by section 54 of the Wages Boards Ordinance, the Court had no jurisdiction to try the Managing Director.

The learned Magistrate overruled the objection holding that the summons had been correctly served on the Managing Director who in his opinion came within the words "other like officer" in section 45 (3) of the Criminal Procedure Code. Thereafter the charge was amended, despite objection by the appellant, to read as follows:

" In your capacity as Managing Director of the Eastern Bus Company, Batticaloa, who are accused in this case, you have been summoned before this Court under the provisions of section 45 (3) of the Criminal Procedure Code as the lawful representative of the accused company to answer to the following charges against the company, viz., that you being an employer in a trade, to wit, the Engineering Trade, for which trade a Wages Board has been established by order published in *Government Gazette* No. 9,272 dated the 19th day of May, 1944, did on or about the 1st day of June, 1950, in the premises of the Eastern Bus Company Ltd., Batticaloa, within the jurisdiction of this Court in breach of section 44 (1) (b) of the Wages Boards Ordinance, No. 27 of 1941, dismiss from employment one E. Hendrick, a worker employed by the said employer in the said trade, by reason merely of the fact that the said worker had given information with regard to the matters under the said Wages Boards Ordinance, No. 27 of 1941, to Selliah Velauthampillai, Assistant Commissioner of Labour, Batticaloa, an officer appointed under section 47 of the said Wages Boards Ordinance and that you have thereby committed an offence punishable under section 44 of the Wages Boards Ordinance, No. 27 of 1941, or in the alternative that you did at the same time and place in breach of section 44 (1) (d) of the Wages Boards Ordinance, No. 27 of 1941, dismiss from employment E. Hendrick, a worker employed by the said employer in the said trade, by reason merely of the fact that the said employee is entitled to benefits under the decision of the said Wages Boards for the engineering trade and that you have thereby committed an offence punishable under section 44 of the said Wages Boards Ordinance No. 27 of 1941. "

The amended charge was read to the appellant and the trial proceeded, the learned Magistrate holding that the accused was still the Eastern Bus Company.

An accused person cannot under our law be convicted of an offence unless he has had an opportunity of being heard. Our Criminal Procedure Code contains provisions designed to achieve that end. The first question that arises for consideration is whether the Eastern Bus Company has been duly summoned and was afforded, in the manner prescribed by law, an opportunity of being heard. Clearly the summons has not

been served on the Secretary. Where summons is not served on the "Secretary" section 45 (3) requires that it should be served on an "other like officer". The word "like" to my mind indicates that the other officers contemplated by the section are officers *ejusdem generis* of Secretary. The Managing Director of a company is not of the same genus as its Secretary, who is usually a paid servant of the company. In view of the qualification imposed by the word "like", the persons contemplated by the words "other like officer" cannot therefore be persons belonging to a category different to that of the Secretary. They must be persons of a like status, such for instance as the Manager and Assistant Secretary.

As to the meaning of the word "officer" in Company Law, there is no hard and fast rule. Its meaning would depend on the context in which it occurs, but generally speaking the Managing Director of a company or even its Directors are not understood to be its officers in the sense in which its Secretary is its officer.

In the English Companies Act of 1948 the expression is defined so as to expressly include a Director, Manager, or Secretary. Our Companies Ordinance contains no such definition.

For the above reasons I am of opinion that summons has not been duly served on the Eastern Bus Company Ltd., and that the conviction is bad as the trial has taken place in its absence. The presence of the Managing Director in court cannot regularise the failure to serve summons on the Company and secure its attendance in the way prescribed by the Criminal Procedure Code.

The appeal is allowed and the conviction and sentence of the appellant are quashed.

Appeal allowed.
