

1956

Present : Sinnetamby, J.

P. KARIYAWASAM (Inspector of Labour), Appellant, and
S. A. RAFEEK, Respondent

S. C. 639—M. C. Balapitiya, 13,919

Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 19 of 1954—Prosecution thereunder—Power of Assistant Commissioner to sanction it—Sections 46, 64, 68—Evidence Ordinance, s. 114 (d)—Criminal Procedure Code, s. 393.

Where a prosecution under the Shop and Office Employees (Regulation of Employment and Remuneration) Act was sanctioned by an Assistant Commissioner of Labour—

Held, that an Assistant Commissioner was entitled to sanction the prosecution unless the Commissioner gave direction to the contrary. In such a case, it is not necessary for the complainant to prove that no limitation was placed upon the power of the Assistant Commissioner.

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

V. T. Thamotheram, Senior Crown Counsel, for the complainant-appellant.

N. E. Weerasooria, Q.C., with *D. E. V. Dissanayaka* and *E. D. Wikramanayake*, for the accused-respondent.

Cur. adv. vult.

October 30, 1956. SINNETAMBY, J.—

The accused-appellant was charged in this case under the Shop and Office Employees (Regulation of Employment and Remuneration) Act, with having kept his shop open after hours and with serving a customer who had come there to purchase goods. The learned Magistrate found that the accused had contravened the provisions of the Act but, nevertheless, proceeded to acquit him on the ground that the prosecution had not been sanctioned by the Commissioner of Labour as required by section 64 of the Act. The appeal is against this finding.

It would appear that the prosecution was in fact sanctioned by the Assistant Commissioner. The proceedings do not show that any exception was taken to the prosecution till the final stages of the trial presumably when Counsel addressed the Court. Section 68 of the Act provides that the word "Commissioner" includes "subject to any direction given by the Commissioner under section 46 (2) any Deputy or Assistant Commissioner". I reproduce the entirety of section 46 from which it is apparent that there is a distinction drawn between a Deputy or Assistant Commissioner and an officer appointed under sub-section 3 :

Section 46.—(1) The Commissioner of Labour shall be the officer-in-charge of the general administration of this Act.

(2) Subject to any general or special directions of the Commissioner, any Deputy or Assistant Commissioner of Labour may exercise, perform or discharge any power duty or function of the Commissioner under this Act or under any regulation.

- (3) There may be appointed such number of officers and servants as may from time to time be required for the purpose of carrying out or giving effect to the provisions of this Act.
- (4) The Commissioner may either generally or specially authorise any officer appointed under sub-section (3) to exercise, perform or discharge any power, duty or function of the Commissioner under this Act or under any regulation.

Sub-section 2 empowers a Deputy or Assistant Commissioner to exercise the function of a Commissioner subject to the proviso that it can be modified or restricted by general or special direction of the Commissioner. Sub-section 4 does not give this general power to the officer appointed under sub-section 3 but such officer can exercise that power only if he is specially authorised to do so. It will thus be seen that a Deputy or Assistant Commissioner derives his authority by virtue of his office but this is subject to a limitation which may be placed upon it. The special officer, on the other hand, derives his power from the authority granted to him by the Commissioner. Before, therefore, such a special officer can exercise the functions of a Commissioner he must first show that he has the authority. It is obvious that in such a case a prosecution launched with the sanction of such an officer must on the face of it show that the officer had the authority granted to him.

The case of the Deputy Commissioner is otherwise. Normally he can exercise the functions of a Commissioner unless prevented from doing so by special directions. Where, therefore, a prosecution is authorised by an Assistant Commissioner it would be reasonable to infer that no limitation had been placed upon his powers. His act is an official act and in my view the presumption created by section 114, illustration D, of the Evidence Ordinance would apply. Section 114, illustration D, is to the following effect:—

“The Court may presume that judicial and official acts have been regularly performed.”

If therefore an official purports to act by virtue of his office there is presumption that he did so regularly without any limitation being placed upon his powers. He derives his power by virtue of his office unlike a person appointed under section 46 (3) where the right is derived from the authority that is given. In my view therefore it was not necessary for the prosecution to prove the negative fact that no limitation had been placed upon the normal powers which an Assistant Commissioner is empowered to exercise.

Learned Crown Counsel drew my attention to section 393 of the Criminal Procedure Code in regard to the delegation of the Attorney-General's powers. Under that section the Solicitor-General and Crown Counsel derive their authority on a special or general direction from the Attorney-General. In that respect it is somewhat similar to the case of a special officer appointed under section 46 (3). But even in such a case where no objection was taken at the trial the Supreme Court has applied the

principlo embodied in section 114, illustration D, of the Evidence Ordinance following the maxim, "omnia præsumuntur rite esse acta." (Vide *5 Balasingham's Notes 19*).

I accordingly hold that the prosecution was in order and duly sanctioned. I therefore set aside the order of acquittal and remit the case to the magistrate for him to deal with the accused according to law.

Acquittal set aside.
