

1967

Present : T. S. Fernando, A.C.J.

L. ABRAHAM PERERA, Petitioner, and W. J. B. PERERA, Respondent

*S. C. 377 of 1967—Application to revise an order made in
Case No. 11036 of the Rural Court of Pinwatte*

*Rural Court—Order of acquittal entered by it—Appeal therefrom to District Judge—
Reversal of acquittal then—Remedy of complainant—Rural Courts Ordinance
(Cap. 8), ss. 26 (1), 41 (1), 41 (5)—Courts Ordinance (Cap. 6), s. 5.*

Where a District Judge, purporting to act in the appellate jurisdiction conferred on him by section 42 of the Rural Courts Ordinance, sets aside an order of acquittal in contravention of the proviso to section 41 (1) and returns the record of the case to the Rural Court with a direction to the President to impose a lawful sentence, the sentence imposed thereafter by the President may be quashed in revision by the Supreme Court notwithstanding the provisions of section 41 (5) which debars an appeal to the Supreme Court from an order of the District Judge on appeal.

APPPLICATION to revise an order of the Rural Court, Pinwatte.

F. N. D. Jayasuriya, for the accused-petitioner.

Desmond Fernando, for the complainant-respondent.

Cur. adv. vult.

December 7, 1967. T. S. FERNANDO, A.C.J.—

The petitioner was charged in the Rural Court of Pinwatte with the commission of an offence punishable under section 26 (1) of the Rural Courts Ordinance, No. 12 of 1945 (Cap. 8). The offence was alleged

¹ (1959) 62 N. L. R. 68.

² (1965) 69 N. L. R. 212.

to have been committed by the petitioner inasmuch as he did carry on a dangerous or offensive trade, to wit, the smoking and manufacturing of rubber sheets without a permit from the Chairman of the Village Committee.

The learned President of the Rural Court, after trial, made order on the 19th May 1967 acquitting the petitioner. The complainant (who is the respondent in the proceedings in revision before me) appealed to the District Judge in terms of section 41 of the Rural Courts Ordinance, and that judge by his order of the 11th July 1967 set aside the verdict of acquittal entered in the Rural Court and purported to convict the petitioner on the ground that the President had misdirected himself on a material question of law. He returned the record of the case to the Rural Court with a direction to the President to impose a lawful sentence. Accordingly, on receipt of the record, the learned President, on the 4th August 1967, in the presence of the petitioner, imposed on the latter a fine of Rs. 25, in default of payment of which the petitioner is to undergo rigorous imprisonment for two weeks.

On behalf of the petitioner it is claimed, and this claim is not disputed by counsel for the respondent, that upon an appeal from an order of a Rural Court it is not competent for the District Judge on appeal to interfere with an order of acquittal. The proviso to section 41 (1) of the Ordinance is too clear to permit a contrary contention to be advanced.

Section 41 (5) bars any appeal to this Court from the decision of a District Judge on any appeal preferred to the latter under section 41, except in accordance with the procedure indicated in sub-section (5). The petitioner therefore seeks the intervention of this Court by an exercise of the powers of revision vested therein. Counsel for the respondent has contended that this Court is not empowered to revise an order of a District Judge acting in the appellate jurisdiction conferred on him by section 42 of the Rural Courts Ordinance, and that the petitioner's remedy, if any, may be by way of an application for interference by this Court by way of a mandate in the nature of *certiorari*. The point relating to this Court's jurisdiction in the instant case is not free from all difficulty, but it is clear enough that the immediate order by which the petitioner is aggrieved is not the order of the District Judge on appeal, but the sentence imposed on him by the Rural Court on the 4th August 1967. Even though that sentence resulted directly from the order of the District Judge on appeal, it is claimed that what is sought to be revised is the order of the Rural Court sentencing the petitioner. A Rural Court is itself a court contemplated by the Courts Ordinance (Cap. 6)—vide section 3—, and I think this claim of the petitioner should be upheld.

For the reason so briefly indicated I would quash the sentence imposed on the petitioner by the Rural Court.

Sentence quashed.