

1949

Present : Wijewardene C.J.

M. G. PERERA, Petitioner, and INSPECTOR OF
LABOUR, MATUGAMA, Respondent

S. C. 85—Application for Revision in M. C. Kalutara, 553

*Wages Boards Ordinance—Prosecution—Sanction of Commissioner of Labour—
Must refer to particular charges—Failure not curable—Ordinance 27 of
1941—Section 54.*

The sanction for a prosecution required by section 54 of the Wages Boards Ordinance, No. 27 of 1941, must refer to the particular charges made in the written report of the complainant and cannot be made in general terms. A defect in the sanction cannot be cured by the application of the provisions of section 425 of the Criminal Procedure Code.

APLICATION to revise an order of the Magistrate, Kalutara.

H. V. Perera, K.C., with *C. Seneviratne*, for the petitioner.

A. C. Alles, Crown Counsel, on notice.

Cur. adv. vult.

¹ cf. *V. D. Keesel, Theses, 671.*

May 27, 1949. WIJEYEWARDENE C.J.—

The complainant, an Inspector of Labour, filed a written report under section 148 (1) (b) of the Criminal Procedure Code charging the accused on two counts. The first count was that the accused “being an employer in trade, to wit, the motor transport trade did on or about September 10, 1947, at Maggona in breach of section 21 of the Wages Board Ordinance fail to pay to one G. D. Lewis Singho, a Class B worker in the motor transport trade, employed by the said employer in the said trade, the minimum time rate of wages in respect of work done by the said worker during the month of August, 1947, in accordance with the decisions of the Wages Board and that he has thereby committed an offence punishable under section 39 (1) of the said Wages Board Ordinance”. The second count was in identically similar terms, but referred to the accused’s failure to pay the minimum wages to one W. M. Gunaratne Banda for August, 1947.

The Magistrate held that the charges were proved but dealt with the accused under section 325 (1) (a) of the Criminal Procedure Code. In the course of his judgment he said :—

“In my opinion the accused has not been dishonest in not making the payments to these two lorry drivers. He appears to have withheld this payment at the basic rates upon a certain view of the law he has taken ; and when called upon by the Commissioner of Labour he has deposited with the latter the total amount of the under-payment. The view taken by the accused appears to be arguable. In the circumstances the law will be sufficiently vindicated if I act under the provisions of section 325 of the Criminal Procedure Code in warning and discharging the accused”.

The question I have to consider is whether the prosecution in this case has been instituted in contravention of section 54 of the Wages Boards Ordinance, No. 27 of 1941. That section reads—

“No prosecution for any offence under this Ordinance shall be instituted in any Court except (a) with the written consent of the Controller, and (b) within one year of the commission of the offence”.

The designation “Controller of Labour” has been changed into “Commissioner of Labour” by Ordinance No. 22 of 1945.

In this case I find in the record a typed writing signed by the Acting Commissioner of Labour which reads as follows :—

“I, Acting Commissioner of Labour, do hereby, in terms of section 54 of Ordinance No. 27 of 1941, sanction the prosecution of New Bullers Road, Colombo, upon the following charges :

Charge 1. Breach of section 21 of Ordinance No. 27 of 1941—an offence punishable under section 39 (1) of the said Ordinance.

Charge 2. Breach of section 21 of Ordinance No. 27 of 1941—an offence punishable under section 39 (1) of the said Ordinance”.

It will be noted that this sanction is in very general terms and does not state that the offences have been committed in respect of payments due to G. D. Lewis Singho and W. M. Guneratne Banda or in fact to any employee in the motor transport trade at Maggona. It does not state that the offences were in respect of wages due for August, 1947, or that the offences were committed on or about September 10, 1947. There is nothing to show that the sanction refers to the particular charges made in the written report of the complainant. There would have been no difficulty if the sanction was endorsed on the written report, as it is usually done. The record does not show how and when the sanction was presented to the Court. There is nothing to connect the sanction with the report. The report itself is undated. This defect was cured by the prosecution calling evidence to show that the report was handed to the Chief Clerk of the Magistrate's Court on September 2, 1948, about a week before the expiry of the period of limitation. Even then, no evidence was led to show that the sanction was handed with the report. There is no evidence in the case to show that the Commissioner of Labour sanctioned this prosecution. In view of the remarks of the Magistrate cited by me earlier this appears to me to be particularly a case in which a Court should be satisfied that the Commissioner of Labour gave his mind to the particular facts connected with the charges made and that he sanctioned the prosecution. Of course, if the sanction was properly drawn up or was endorsed on the report, the Court would have been satisfied without any further evidence. The defect I have referred to cannot be cured by the application of the provisions of section 425 (b), as that section refers to a sanction required by section 147 of the Code. Nor do I think it possible to have recourse to section 36 of the Courts Ordinance. To do so would be to extend the operation of section 425 (b) of the Criminal Procedure Code, when the legislature itself had restricted its scope by reference to sanctions under section 147 of the Code (*vide* Bertram C.J's observations in *Cornelis Hamy v. Thoronis et al.*¹).

For the above reason I quash the finding of the Magistrate and discharge the accused.

Accused discharged.
