

1971

Present : Sirimane, J.

S. M. RASHEEM, Appellant, and Y. B. EKANAYAKE (Labour Officer),
Respondent

S.C. 643/70—M. C. Kandy, 61325

Industrial Disputes Act (Cap. 131)—Sections 31 D (1), 40 (1) (g), 43 (1), 43 (4)—Order made by Labour Tribunal—Failure of employer to comply with it—Procedure for punishment of such offence.

Where an employer who has been ordered by a Labour Tribunal to deposit a sum of money for the benefit of a workman is prosecuted for failing to comply with the order in contravention of section 40 (1)(g) of the Industrial Disputes Act, there is no burden on the prosecution to prove before the Magistrate,

independently of any evidence led before the Labour Tribunal, that the accused was in fact the employer of the workman. In such a case, the status of the parties has already been determined by the Labour Tribunal and, by virtue of section 31 D (1) of the Act, "shall not be called in question in any Court".

When an employer is sentenced to pay a fine under section 43 (1) of the Industrial Disputes Act, there is provision at the same time in section 43 (4) to ensure that the workman gets the benefit of the order he has obtained from the Labour Tribunal.

APPEAL from a judgment of the Magistrate's Court, Kandy.

F. C. Perera, for the accused-appellant.

Kumar Amarasekera, Crown Counsel, for the Attorney-General.

August 1, 1971. SIRIMANE, J.—

The accused was charged with having committed an offence under the Industrial Disputes Act, in that he, being an employer, failed to comply with an order made in respect of him by a Labour Tribunal, in contravention of section 40 (1) (g) of the Industrial Disputes Act (Chapter 131).

The accused pleaded not guilty. At the trial certain officers of the Labour Tribunal, Kandy, produced the order in the relevant Labour Tribunal case (P 1) in which the accused, as the employer of one Jabar, had been ordered to deposit a sum of Rs. 596 with the Assistant Commissioner of Labour, Kandy, for the benefit of the workman.

The accused was served with summons before the inquiry by the Labour Tribunal, although he chose to ignore it. He was also sent a copy of the order (P 1) by registered post.

At the trial, the accused took up the position that he was only a trustee of the mosque at which the workman was employed, and that he was not the employer.

Counsel for the appellant submits that the prosecution should prove before the Magistrate independently of any evidence led before the Labour Tribunal that the accused was in fact the employer of the workman.

I do not think this is necessary. The status of the parties has already been determined by the Labour Tribunal. Under section 31 D (1), such an order is "final and shall not be called in question in any Court". An appeal against such an order to the Supreme Court is only on a question of law. I think the intention of the legislature when enacting section 40 (1) (g) was to ensure that orders of a Labour Tribunal are complied with by employers and not flouted with impunity.

The appeal must therefore fail.

The learned Magistrate has imposed a fine of Rs. 500 under section 43 (1) of the Act. He had the power to do so, but the order does not help the workman at all. There is provision in section 43, subsection (4) to ensure that the workman gets the benefit of the order he has obtained from the Labour Tribunal.

I affirm the conviction, but alter the sentence as follows :—the accused is sentenced to pay a fine of Rs. 50, in default, two (2) weeks' simple imprisonment. In addition to that sentence, I make order that the accused should pay the sum of Rs. 506 as ordered by the Labour Tribunal in (P 1) within two months of the record reaching the Magistrate's Court. I need hardly add that if this sum is not paid as ordered, it may be recovered as a fine.

Conviction affirmed.

Sentence altered.

