

**ENIS PERERA**

v.

**OFFICER-IN-CHARGE, PILIYANDALA POLICE**

COURT OF APPEAL.

H. A. G. DE SILVA, J. AND B. E. DE SILVA, J.

CA 364/84 – M.C. Moratuwa 12205.

MARCH 29, 1985.

*Jurisdiction of Magistrate's Court to try offence falling exclusively within the jurisdiction of Primary Court – Mischief – Judicature Act, No. 2 of 1978 section 33 (1) and (3), section 61 and regulations made thereunder – Mischief punishable under section 410 of the Penal Code – Order for compensation – Section 10, 17 (4) of the Code of Criminal Procedure Act.*

The accused was charged with committing mischief to vegetables of the value of Rs. 362.25 – an offence punishable under section 410 of the Penal Code. After trial he was convicted of this offence and ordered to pay compensation in a sum of Rs. 280.

The main questions were whether the Magistrate's Court had jurisdiction to try this case when the offence lay within the exclusive jurisdiction of the Primary Court and whether the order for payment of compensation was justified.

**Held –**

(1) The Regulations made by the Minister under section 61 read with section 33(1) of the Judicature Act give exclusive original criminal jurisdiction in respect of offences under section 410 of the Penal Code where the loss or damage does not exceed five hundred rupees to the Primary Court but not in the instances falling under section 23(3).

(2) The Magistrate of Moratuwa had jurisdiction to entertain and try the offence in the instant case as a Primary Court does not appear to have been established at Moratuwa and the Magistrate's Court exercises that jurisdiction.

(3) The order for payment of Rs. 280 as compensation is justifiable under section 17(4) of the Code of Criminal Procedure Act.

APPEAL from the Magistrate's Court of Moratuwa.

*L. de Alwis* for accused-appellant.

*Sunil de Silva*, Additional Solicitor-General with *S. J. Gunasekera*, S.C. for the respondent

*Cur. adv. vult.*

May 17, 1985.

**H. A. G. DE SILVA, J.**

The accused in this case was charged with causing mischief to the value of Rs. 362.25 to vegetables in the custody of one Geekiyanage Somapala, an offence punishable under section 410 of the Penal Code. After trial the accused was convicted of this offence and was ordered by the learned Magistrate to pay compensation in a sum of Rs. 280 to the virtual complainant. The accused has appealed from this conviction and sentence. At the hearing of this appeal the learned trial Judge's findings of fact were not canvassed. The learned Additional Solicitor-General, with learned Counsel for the accused agreeing, submitted that the conviction of the accused is a valid conviction though the exclusive original criminal jurisdiction in respect of the offence of mischief punishable under section 410 of the Penal Code purports to have been given to a Primary Court except in cases where the loss or damage exceeds Rs. 500 in value.

Section 33(1) of the Judicature Act, No. 2 of 1978 (which was certified on 2.11.1978 and came into operation on 2nd July 1979 vide G.G.E. 40/16 of 2.7.74) states that—

"Every Primary Court shall have exclusive original criminal jurisdiction in respect of such offences as may, by regulation, be prescribed by the Minister and the Minister may in that regulation specify in the case of each offence the limitations, restrictions and conditions in respect of each such offence."

Sub-section (3) enacts that—

"Anything in this section shall not preclude a Magistrate from convicting and passing sentence on any person found guilty after trial of any offence specified in sub-section (1)".

The purport of subsection (1) and (3) would be that while the exclusive jurisdiction to hear offences specified by the Minister in the regulations made under subsection (1) would be vested in the Primary Court, the Magistrate's Court would not be precluded from convicting and passing sentence in respect of persons found guilty after trial of any offence specified in the regulation by Minister under subsection (1) if the facts of the case establish such an offence though the accused may have been originally charged with an offence not specified in such regulations and in respect of which a Primary Court did not have jurisdiction. For example if an accused is charged with an offence of committing mischief of property valued at Rs. 750 under section 410 of the Penal Code but the evidence led at the trial discloses that the value of the property damaged is only Rs. 300, though exclusive jurisdiction to try offences under section 410 of the Penal Code where the damage does not exceed Rs. 500 has been given under subsection (1) to the Primary Court the Magistrate under subsection (3) would not be precluded in such a case of convicting the accused after trial.

Section 10 of the Code of Criminal Procedure Act, No. 15 of 1979 which was an enactment that came into operation on the same date as the Judicature Act, No. 2 of 1978 came into operation, has enacted that—

"Subject to the other provisions of this Code any offence under the Penal Code whether committed before or after the appointed date may be tried save as otherwise specially provided for in any law—

(a) by the High Court ; or

(b) by a Magistrate's Court where the offence is shown in the eighth column of the First Schedule to be triable by a Magistrate's Court."

According to the Eighth Column of the First Schedule to the Code of Criminal Procedure Act No. 15 of 1979, the Court other than the High Court by which an offence under section 410 of the Penal Code is triable in the Magistrate's Court. Therefore since both the Judicature Act and the Code of Criminal Procedure Act came into operation on the same date viz. 2nd July 1979 by Gazette No. 40/16 of 15.06.1979, the provisions of the Code of Criminal Procedure Act do not take precedence over the provisions of the Judicature Act and in

any event the Judicature Act being one of substantive law while the Code of Criminal Procedure Act is one dealing with procedure; the provisions of the Judicature Act must necessarily prevail.

Section 10 of the Code of Criminal Procedure Act states—

“ . . . . . may be tried save as otherwise specifically provided for in any law . . . . . ”

Section 2 paragraph (gg) of the Interpretation Ordinance (Cap. 2) states—

“Written law shall mean and include . . . . . regulations made or issued by any person having authority under any statutory or other enactment to make or issue the same in and for Ceylon or any part thereof . . . . . ”

Section 61(1) of the Judicature Act states—

“The Minister may make regulations for carrying out or giving effect to the principles and provisions of this Act and for matters required by this Act to be prescribed or in respect of which regulations are authorized by this Act to be made”.

The regulations purported to have been made under Section 61 of the Judicature Act No. 2 of 1978 read with section 33 of that Act and published in Government Gazette Extraordinary No. 43/4 of 02.07.1979 states that every Primary Court shall have exclusive original Criminal jurisdiction in respect of the offences punishable under the provisions of the law set out in Column 1 of the Schedule hereto subject to the limitations, restrictions and conditions set out in the corresponding entry in Column II of that Schedule.

Column 1 of the Schedule enumerates inter alia section 410 of the Penal Code and the corresponding entry in Column II states—

“Except where loss or damage exceeds five hundred rupees”.

Therefore the regulation made by the Minister under section 61 read with section 33 of the Judicature Act which gives exclusive original criminal jurisdiction in respect of offences under section 410 of the Penal Code where the loss or damage does not exceed five hundred rupees to the Primary Court must be construed as a provision in “any law” within the meaning of section 10 of the Code of Criminal Procedure Act. Therefore the offence with which the accused was charged being an offence under section 410 of the Penal Code and the damage being only Rs. 362.75, would be triable exclusively by a

Primary Court having jurisdiction over the place of offence viz. 32/2, Kalugahawatta Road, Makuluwa, Piliyandala. I do not agree with the submission of learned Counsel that the regulation made by the Minister under section 61 and with section 33 of the Judicature Act has given jurisdiction to the Primary Courts in respect of the offences enumerated in Column 1 of that Schedule only as far as it is in compliance with the provisions of section 10 of the Code of Criminal Procedure Act resulting therefore in a jurisdiction concurrent with the jurisdiction set out in the Schedule to the Code of Criminal Procedure Act. In my view the offences set out in the regulations made by the Minister are exclusively triable by the Primary Court except in the instances falling within sub-section 3 of section 33 of the Judicature Act. The word "exclusive" in section 33 of the Judicature Act must necessary be subject to the jurisdiction given by section 9 of the Judicature Act to the High Court "to hear, try and determine . . . . . all prosecutions on indictment . . . . . in respect of - (a) any offence wholly or partly committed in Sri Lanka :". The interpretation is supported by the fact that section 33(3) of the Judicature Act refers only to the Magistrate's Court. Any other interpretation would lead to an absurdity in that where the exclusive jurisdiction to try offences under section 314 of the Penal Code except where the hurt is caused to a public officer etc. is given to a Primary Court, if on a charge for murder the High Court, would not be able to convict the accused on the jury bringing in a verdict of guilt for an offence under section 314 of the Penal Code.

There does not appear to be a Primary Court established at Moratuwa and the Magistrate's Court of Moratuwa exercises that jurisdiction, hence the Magistrate of Moratuwa would have had the necessary jurisdiction to entertain and try this offence. Therefore the conviction of the accused by the Magistrate of Moratuwa must be upheld. The Order for payment of Rs. 280 as compensation to the virtual complainant could be justified under section 17(4) of the Code of Criminal Procedure Act. I therefore affirm the conviction and the order for compensation imposed on the accused and dismiss the appeal.

B. E. DE SILVA, J. - I agree.

\* Appeal dismissed.