Arlis v. Abeynayake

COURT OF APPEAL.
RANASINGHE, J., AND K. C. E. DE ALWIS, J.
C. A. APPLICATION 618/80—PRIMARY COURT, EMBILIPITIYA 1452.
OCTOBER 1, 8, 1980.

Primary Courts Procedure Act, No. 44 of 1979, section 67 (2)—Requirement that order be delivered within one week of conclusion of inquiry—Non-compliance—Whether judge has jurisdiction to deliver order thereafter.

Held

Section 67 (2) of the Primary Courts Procedure Act which requires the judge to deliver his order within one week of the conclusion of the inquiry is clear in laying down a definite period of time within which the order must be delivered and the judge ceases to have jurisdiction after the expiry of such period. Accordingly an order delivered after the expiry of such period will be set aside.

Case referred to

(1) *Dias et al, v. Suwaris,* (1978) 79 (2) *N. L. R. 258.*

APPLICATION to revise an order of the Primary Court, Embilipitiya.

D. C. R. Collure, for the petitioner.
P. Jayasekera, for the respondent.

Cur. adv. vult.

November 12, 1980.

K. C. E. DE ALWIS, J.

This is an aplication for the revision of an order made by the judge of the Primary Court in favour of an informant party purporting to act under section 67 (2) of the Primary Courts' Procedure Act, No. 44 of 1979. On a consideration of the facts in the case I am of opinion that his decision thereon is correct. However, two questions of law were raised by counsel for the petitioner, namely, (i) the order of the Judge is bad in law as more than one week had lapsed when delivering the order after the conclusion of the inquiry, and (ii) no material has been placed before the Court to indicate that a breach of the peace was likely or was threatened.

With regard to objection (ii), it seems to me that the material placed before the court by way of affidavit sufficiently indicated the possibility of there being a breach of the peace, though it was not specifically stated. Therefore, I cannot see validity in the objection to the Judge having proceeded to inquire into the dispute.

With regard to the objection (i), it must be noted that the order, after the inquiry, has been delivered by the Judge sixteen weeks after the conclusion of the inquiry in disregard of section 67 (2) which says :

> " The Judge of the Primary Court shall deliver his order within one week of the conclusion of the inquiry ".

The inquiry has been concluded on 29.2.80 and the order has been delivered on 25.5.80. It seems that the Judge alone could explain why the law was so flagrantly disregarded.

Counsel for the respondent submitted that the time limit laid down in that section is not an imperative requirement and submitted a number of authorities in support of his submission. It is unnecessary to discuss them here as they do not interpret the terminology in or even any analogous terminology to that which we find in section 67 (2) with regard to the period of time within which the act should be done. The Criminal Procedure Code required that a magistrate shall " forthwith " record a verdict of " guilty " or " not guilty ", after taking the evidence, and that a District Court shall record a verdict of acquittal or conviction " forthwith " or " within not more than twenty four hours ". Cases cited by counsel for the respondent dealt with such unprecise terminology as above. In that context these expressions needed judicial interpretation.

The Criminal Procedure Code was repealed by the Administration of Justice Law, No. 44 of 1973, which took its place. The latter Law provided that the Magistrate and the District Judge shall record the verdict " not later han twenty four hours after the conclusion of the taking of evidence.". It would be seen that there is a similarity with regard to the delivery of the verdict under the Administration of Justice Law and the delivery of the order under section 67 (2) of the Primary Courts Procedure Act. Both enactments lay down a definite period of time within which a verdict or an order, as the case may be, shall be delivered.

In the case of *Dias et al. v. Suwaris et al.* (1), Wijesundera, J. said, " Where the meaning of a statute is plain nothing can be done but to obey it ". When one statute stated that the act in question should be done " within one week " and another said that it should be done " not later than twenty four hours ", both enactments said the same, except, of course, with regard to the actual period of time. They fixed two definite terminals and expressed a duration of time without ambiguity. Therefore the dictum in the above cited case is applicable to the present case. When section 67 (2) is so clear and there has been a clear departure

from it by the Judge of the Primary Court, there is nothing that this court could do but to set aside the order of the Judge, as the order has been made when the Judge has ceased to have jurisdiction.

In the result, I allow the application but without costs.

RANASINGHE, J.—I agree.

Application allowed.

N. Mahendra,
Attorney-at-law.