

1968

Present : Alles, J.

W. A. L. WICKREMARATCHI, Appellant, *and* INSPECTOR OF  
POLICE, NITTAMBUWA, Respondent

*S. C. 737/1967—M. C. Gampaha, 6679 B*

*Jurisdiction of Conciliation Boards—It does not oust the jurisdiction of the established courts of law—Right of a subject to seek redress in a court of law—Fundamental character thereof—Absence of certificate from Chairman of Conciliation Board—Whether it is a curable irregularity—Penal Code, s. 314—Criminal Procedure Code, ss. 147, 425—Conciliation Boards Act, No. 10 of 1958, ss. 6, 12, 14 (1) (b).*

Accused-appellant was convicted in a Magistrate's Court upon a charge, under section 314 of the Penal Code, of causing simple hurt. Objection was taken for the first time in appeal that the Magistrate acted without jurisdiction in view of section 14 (1) (b) of the Conciliation Boards Act and that he should not have entertained the Police plaint in the absence of a certificate that the alleged offence had been inquired into by a Conciliation Board and had not been compounded.

*Held*, that the provisions of section 14 (1) (b) of the Conciliation Boards Act were not applicable to the present case. "Section 6 of that Act contemplates that the only disputes and offences which can be referred for inquiry to a Conciliation Board are such disputes and offences of the kind enumerated in section 6 (a) to (d) which the Chairman may of his own motion refer to the Board or such disputes and offences which the parties desire should be referred to the Board. Disputes and offences of the kind enumerated in section 6 (a) to (d) which are not referred to a Board by either one or other of the two methods mentioned above would ordinarily be justiciable by the established courts, even without the required certificate. The proposition therefore that every dispute or offence of the kind enumerated in section 6 must in the first instance be referred to a Conciliation Board and a certificate obtained from the Chairman, before proceedings can be instituted or entertained in an established court of law, is a proposition not warranted under the provision of the law."

*Held further*, that, even assuming that the failure to produce the Chairman's certificate before the case was instituted constituted an irregularity, it was only a procedural defect that was curable under section 425 of the Criminal Procedure Code.

**A**PPPEAL from a judgment of the Magistrate's Court, Gampaha.

*E. R. S. R. Coomaraswamy*, with *U. B. Weerasekera* and *C. Chakradaran*, for the accused-appellant.

*V. S. A. Pullenayegum*, Senior Crown Counsel, with *Lalith Rodrigo*, Crown Counsel, for the Attorney-General.

September 23, 1968. ALLES, J.—

This appeal raises a question affecting the jurisdiction of a Magistrate to try an offence specified in the Schedules to the Conciliation Boards Act, No. 10 of 1958.

The accused-appellant, a school teacher, was charged with causing simple hurt on 14th February 1966 to one Deonis Appuhamy by assaulting him with a camera, an offence punishable under section 314 of the Penal Code. After a trial lasting three days, at which both the prosecution and the defence were represented by Proctor and Counsel, the Magistrate reserved his order for 20th February 1967, on which date he found the charge proved and convicted the accused. He sentenced the accused to pay a fine of Rs. 35 and in default imposed a sentence of two weeks' rigorous imprisonment. The learned Magistrate has examined the evidence with care before arriving at a finding adverse to the accused-appellant and Counsel, at the hearing of the appeal, has not sought to canvass the Magistrate's finding on questions of fact or to argue that the conviction cannot be supported on the evidence led in the case.

It was submitted in appeal that the Magistrate acted without jurisdiction in view of section 14 (1) (b) of the Conciliation Boards Act and that he should not have entertained the Police plaint in the absence of a certificate that the alleged offence had been inquired into by a Conciliation Board and had not been compounded. This point was not raised at the trial nor even in the petition of appeal and the only evidence in support was filed in this Court in the nature of affidavits eight months after the appeal was filed. If the point taken by Counsel is entitled to succeed, it would mean that the present proceedings will have to be quashed and fresh proceedings taken in the Magistrate's Court, only if the offence cannot be compounded after inquiry by a Conciliation Board, in respect of an offence committed as far back as February 1966.

The affidavits filed in this Court establish that the offence was committed in the village of Bogamuwa within the area covered by the Conciliation Board of Oyaboda Peruwa established by the Minister of Justice under the provisions of the Act. An acceptance of Counsel's submission would have the effect of completely ousting the jurisdiction of a Magistrate's Court in respect of the offences specified in the Schedules to the Conciliation Boards Act in such areas where Conciliation Boards have been established by the Minister. I am unable to agree with such a broad proposition. Indeed such a proposition would be tantamount to an erosion of the jurisdiction vested in the established courts of law. I entirely agree with the observations of Basnayake, C.J. in *Asiz v. Thondaman*<sup>1</sup> that "the right of a citizen to invoke the aid of the courts is one that . . . . is so fundamental that it cannot . . . . be taken away even by our legislature itself". I do not think however that the Conciliation Boards Act has the far-reaching consequences which learned Counsel for the appellant has invited me to accept.

<sup>1</sup> (1959) 61 N. L. R. 217 & 222.

The Act was intended to provide an expeditious and inexpensive means of settling disputes between parties without the necessity of having recourse to the complicated process of a law suit. It was no doubt a salutary piece of legislation, which enabled subjects to resolve their disputes in a simple and effective manner. Conciliation as an alternative to the settlement of disputes and the compounding of offences in a court of law is a procedure that deserves to be encouraged but the Act never made any pretensions that the jurisdiction of the established courts should thereby be ousted. If, for instance, the parties to any dispute prefer to have their dispute settled by an established court presided over by a judicial officer, there is nothing in the Act which would prevent them from seeking such a settlement, although it would have been open to them to do so by invoking the assistance of a Conciliation Board. The right of the subject to seek redress for any grievance from the established courts of law is a right that is fundamental and should not in any way be fettered.

It is for that reason, I presume, that T. S. Fernando, J. in *Samarasinghe v. Samarasinghe*<sup>1</sup>, while conceding the right of the subject to invoke the assistance of the courts of law, stated that what the Act seeks to do is only "to place a bar against the entertainment by Courts in *certain stated circumstances* of civil or criminal actions, unless there is evidence of an attempt first made to reach a settlement". Those stated circumstances are not present in the instant case, and therefore section 14 (1) (b) has no application to the facts of this case.

The bar to the institution of certain civil actions or prosecutions for certain offences mentioned in section 14 is in connection with civil disputes and offences that may be referred to Conciliation Boards under section 6. Section 14 (1) (a) specifically refers to disputes to which paragraphs (a), (b) and (c) of section 6 applies. No reference to section 6 is made in section 14 (1) (d) and (c) but it is reasonable to infer that the offences specified in these two sub-sections must be to the offences enumerated in the Schedules to the Act and mentioned in section 6 (d). I am unable to agree with Mr. Coomaraswamy's submission that section 14 must be considered in isolation without reference to sections 6 and 12 of the Act, nor do I think that the Legislature ever intended that, in every case, the jurisdiction of the Magistrate to try the offences specified in the Schedules to the Act in a Conciliation Board area was to be dependent on a certificate being obtained from the Chairman of the Panel of Conciliators.

<sup>1</sup> (1967) 70 N. L. R. 276 at 278.

Section 6 reads as follows :—

“ The Chairman of the Panel of Conciliators constituted for any village area may, and shall upon application made to him in that behalf, refer for inquiry to Conciliation Boards constituted out of that Panel the following disputes and offences.”

There is thereafter an enumeration of the disputes and offences that can be inquired into by a Conciliation Board. Section 6 therefore, in my view, contemplates that the only disputes and offences which can be referred for inquiry to a Conciliation Board, are such disputes and offences of the kind enumerated in section 6 (a) to (b) which *the Chairman may of his own motion refer to the Board or such disputes and offences which the parties desire should be referred to the Board*. Disputes and offences of the kind enumerated in section 6 (a) to (d) which are not referred to a Board by either one or other of the two methods mentioned above would ordinarily be justiciable by the established Courts, even without the required certificate. The proposition therefore that every dispute or offence of the kind enumerated in section 6 must in the first instance be referred to a Conciliation Board and a certificate obtained from the Chairman, before proceedings can be instituted or entertained in an established court of law, is a proposition not warranted under the provisions of the law and one which I am unable to accept.

Counsel for the appellant sought to draw an analogy from the provisions of section 102 (3) of the Trusts Ordinance (Cap. 87) and section 56 of the Debt Conciliation Ordinance (Cap. 81) which, according to him, precluded a Court from entertaining an action in certain circumstances. I do not think that the provisions of these two Acts are helpful to the appellant. In the one case, the law requires a petition to be submitted to the Government Agent for relief before an action is entertained, and in the other, the Court is precluded from entertaining an action when a matter is pending before the Debt Conciliation Board. In *Samarasinghe v. Samarasinghe* (supra) the parties had referred their dispute to a Conciliation Board but the plaintiff instituted action in the District Court, while proceedings were pending before the Conciliation Board and before the certificate was issued. In the circumstances, T. S. Fernando, J. with whom Siva Supramaniam, J. agreed, felt himself bound to accept the plea of the defendant that the action could not have been instituted by the plaintiff or entertained by the court without the production of a certificate from the Chairman of the Panel of Conciliators. Those considerations do not apply in the instant case and in my view the present case is one to which the provisions of section 14 (1) (b) have no application.

Mr. Pullenayegum, for the Crown, further submitted that, even assuming that there was an irregularity in the production of the certificate before action was instituted, this was only a procedural defect that was curable under section 425 of the Criminal Procedure Code. I am inclined to agree. Section 425, inter alia, provided for the

dismissal of an appeal if any error, omission, irregularity or want of sanction has not occasioned a failure of justice. The absence of the certificate in this case, if it can be called an irregularity, would be similar to the want of sanction under section 147 of the Criminal Procedure Code. It only relates to the exercise of jurisdiction by a Magistrate's Court as distinct from the conferment of jurisdiction and therefore would be curable under section 425. Crown Counsel cited in support the Divisional Bench case of *Attapattu v. Punchi Banda*<sup>1</sup> and the decision of the English courts in *Price v. Humphries*<sup>2</sup>. In both these cases, the Court recognised the distinction between an objection which goes to the merits of the case and one which refers to procedure. The irregularity complained of in both cases was the want of the necessary authorisation from a third party before proceedings were instituted—a procedural irregularity which did not occasion a failure of justice. The same considerations apply in the present case.

The appellant's objection, therefore, to the competency of the Magistrate to try the case fails, and the appeal must be dismissed.

*Appeal dismissed.*

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