

BROWN & CO. LTD.

v.

ADHIKARIARACHCHI, LABOUR OFFICER AND ANOTHER

COURT OF APPEAL.

B. E. DE SILVA, J. AND T. D. G. DE ALWIS, J.

C.A. APPLICATION 214/82- M.C. MALIGAKANDA 91296.

JANUARY 23, 1984.

Autrefois acquit - Issue estoppel - Section 314 of the Code of Criminal Procedure Act, No. 15 of 1979 - Sections 2 and 4 of the Wages Boards Ordinance.

The Labour Officer filed plaint against B. & Co. alleging that it had deducted a sum of Rs. 500 from the salary of an employee A without his consent in contravention of the provisions of s.2 (a) of the Wages Boards Ordinance read with Regulation 2(1) (a) of the Regulations of 1971 and thereby committed an offence punishable under s. 4(1) (b) of the Wages Boards Ordinance.

B & Co. had previously been charged before the same court on the identical provisions of the same law in relation to the identical employee in respect of a deduction of Rs. 300 and in that case the Magistrate had held that the employee was not a person to whom the Wages Boards Ordinance applied.

In the present proceedings B & Co. tendered a plea of *autrefois acquit* but the Magistrate overruled the objection.

Held-

- (1) The offences in the two cases are not the same but are different and distinct.
- (2) Having regard to the provisions relating to the plea of *autrefois acquit* in the Code of Criminal Procedure Act, No. 15 of 1979, such a plea cannot be sustained by the accused.

Cases referred to :

- (1) *Connelly v. D. P. P.*, [1964] 2 All ER 401.
- (2) *Pritam Singh v. State of Punjab*, AIR 1956 S.C. 415.
- (3) *Queen v. Ariyawantha*, (1957) 59 N.L.R. 241, 244.
- (4) *D. P. P. v. Humphrys*, [1976] 2 All ER 497.
- (5) *P. M. K. Tennekoon v. Queen*, (1965) 69 C.L.W. 28.

APPLICATION for revision.

N. Sinnathamby with *N. T. S. Kularatne* and *Sriyani Obeysekera* for the petitioner.

J. Gunasekera, State Counsel, for the complainant-respondent.

M. Kanagaratnam for the intervenient-respondent.

Cur. adv. vult.

February 28, 1984.

B. E. DE SILVA, J.

The accused-petitioner has filed this application and for the reasons stated therein has moved to revise the order of the learned Magistrate dated 2.12.81.

The facts material to this application are as follows :

The complainant-respondent filed plaint against the accused-petitioner in the Magistrate's Court of Maligakanda alleging that the accused-petitioner whilst being the employer of one J. D. Abeysekera its employee, did on or about 10.2.1978 deduct a sum of Rs. 500 from the January 1978 salary of the said employee without his consent in contravention of s. 2 (a) of the Wages Boards Ordinance (Chap. 136) read with Regulation 2 (1) (a) of the Regulations of 1971 published in Government Gazette No. 14,961 of 4.6.1971 and thereby committed an offence in terms of s. 4 (1) (b) of the Wages Boards Ordinance. A copy of the charge sheet is annexed marked "A".

The accused-petitioner had previously been charged in proceedings 68797 of the same Court for having committed an offence under the identical provisions of the said law and in relation to this identical employee in respect of a deduction of Rs. 300 made in the month of December 1977 from the salary of the employee for November 1977. In the said proceedings the accused petitioner admitted the deduction and the only question in issue was whether or not the said employee was a person to whom the Wages Boards Ordinance applied. After trial the learned Judge held that the said employee J. D. Abeysekera was not a person to whom the Wages Boards Ordinance applied and accordingly acquitted the accused company. A certified copy of the charge sheet, proceedings and the order of the learned Judge in case 68797 are annexed marked "B". The said decision of the learned Judge has not been appealed against.

In the present proceedings 91296 the accused petitioner-company tendered a plea of autrefois acquit on the footing that in proceedings 68797 there was a valid and binding determination of a competent Court that J. D. Abeysekera was not a 'worker' within the definition of the said term in the Wages Boards Ordinance and accordingly not an employee to whom the said law applied and that the said determination being binding on the Commissioner of Labour such decision could not be canvassed in subsequent proceedings. At the trial in action 91296 submissions were made by the Attorneys-at-law who appeared for the accused-petitioner, complainant-respondent and certified copies of the charge sheet, the evidence and the order made in action 68797 were marked and produced in evidence.

The learned Magistrate by his order dated 2.12.81 overruled the objections of the accused-petitioner company.

At the argument before us it was urged that the learned Magistrate failed to identify or address his mind and or failed to consider the plea taken by the accused-petitioner in case No. 68797. The material issue which required adjudication in the present case had been judicially determined by a competent Court which held that J. D. Abeysekera was not covered by the Wages Boards Ordinance and therefore the present charge made in pursuance of the same provisions of the said order cannot be maintained in law and that the said determination was binding on the Commissioner of Labour and the State in these proceedings and accordingly should result in an acquittal of the accused petitioner. It was further urged that the learned Magistrate had considered extraneous matters in arriving at a decision against the accused company which matters were never argued and were not in issue upon the plea taken by the accused company.

Learned Counsel for the accused-petitioner referred to the decisions in *Connelly v. Director of Public Prosecutions* (1); *Pritam Singh v. State of Punjab* (2) *Spencer Bower on Res Judicata*, 2nd Ed. (Turner) at page 283 and *Queen v. Ariyawantha* (3) to show that the principle of issue estoppel applied to criminal proceedings. It was submitted that on an application of these principles the accused was entitled to sustain the plea of autrefois acquit.

Learned State Counsel and learned Counsel for the 2nd respondent on the other hand referred us to the decision in *Director of Public Prosecutions v. Humphrys* (4) where it was held that the principle of issue estoppel does not apply to criminal proceedings. The attention of Court was also drawn to the decision in *P. M. K. Tennekoon v. Queen* (5).

I have given consideration to the submissions made by Counsel for the parties. In determining the question whether the accused is entitled to sustain the plea of *autrefois acquit* due consideration must be given to the provisions of our Code of Criminal Procedure as to the circumstances when this plea can be sustained. Our Code of Criminal Procedure Act recognises the plea of *autrefois acquit* or *autrefois convict* only to the limited extent set out in s. 314 of our Code of Criminal Procedure Act, No. 15 of 1979. Section 314 (1) provides thus :

"a person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such an offence shall while such conviction or acquittal remains in force not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under s. 166 or for which he might have been convicted under s. 167."

A careful perusal of the offences in case 68797 and in the present action 91296 would show that the offences in the two cases are not the same but are different and distinct. In the circumstances having regard to the provisions relating to the plea of *autrefois acquit* as contained in our Code of Criminal Procedure Act such a plea cannot be sustained by the accused company. I am of opinion that the learned Magistrate has correctly overruled the plea of *autrefois acquit* raised by the accused petitioner. I refuse the application of the petitioner. The case should now proceed to trial on the charge against the accused petitioner.

T. D. G. DE ALWIS, J.,—I agree.

Application refused.