

MANAGING DIRECTOR, POLHENA REEF GARDEN HOTEL
v
REVENUE INSPECTOR, URBAN COUNCIL, MATARA

COURT OF APPEAL
NANAYAKKARA, J. AND
ABEYRATNE, J.,
C.A. 1504/2002
PHC MATARA HRCR 202/02
M.C. MATARA 31269

Urban Councils Ordinance, sections 21 and 164(2) – By laws – Failure to pay licence fee – Is it an offence? – Keeping hotel without a licence – Continuing offence – Action to be instituted within six months.

The accused-petitioner was charged under two counts: (1) committing an offence punishable under section 164(2) by failing to pay a licence fee of 1% of the gross turn over of the business in respect of 1997 and (2) committing an offence by keeping the hotel during 1997 without a licence. Consequent to an order made by the Magistrate's Court over-ruling certain preliminary objections to the charges, the accused-petitioner moved the High Court in revision, which court dismissed the said application.

Held:

1. Though the provisions of the Urban Councils Ordinance cast a duty on those who conduct certain businesses to pay a tax, the failure to do so does not create an offence; the accused-petitioner cannot be held liable to any kind of punishment under the Ordinance.
2. The offence of keeping a hotel without a licence is a continuing and a recurring offence, in respect of which a prosecution could be launched at any time within six months of the commission of the offence under section 21.
3. The accused-petitioner is alleged to have kept the hotel during the year 1997 without obtaining a licence, and the prosecution was launched on 25.5.98 before the expiry of the six months period, well within the stipulated period.

APPLICATION in revision from an order of the High Court of Matara.

Kalinga Indatissa for petitioner

S.F.A. Cooray for 1st respondent

K. Wickremasinghe, Senior State Counsel for Attorney-General

February 23, 2004

NANAYAKKARA, J.

The accused-petitioner-petitioner (accused-petitioner) in this case was charged in the Magistrate's Court of Matara with the following counts; 01

(1) That he committed an offence punishable under section 164(2) of the Urban Councils Ordinance by failing to pay as licence fee 1 percent of the gross turnover of the business in respect of the year 1997.

(2) that he committed an offence by keeping the hotel during 1977 without a licence in violation of By Law 1 of Part VI and Part VII of the By Laws of the Matara Urban Council. 10

Consequent to an order made by the learned Magistrate overruling certain preliminary objections to charges, the accused-petitioner moved the Provincial High Court seeking a revision of the said order of the Magistrate.

As the learned High Court Judge too had by his order dated 13.06.2002 refused to revise the said order of the Magistrate, the accused-petitioner preferred this appeal to this court.

It would be appropriate at this stage to determine the validity of the grounds on which the learned High Court Judge's order is impugned by this application. 20

As far as the first count with which the accused-petitioner was charged is concerned, as conceded by the respondent-respondent, although provision of the Urban Councils Ordinance cast a duty on those who conduct certain businesses to pay a tax, the failure to do so does not create an offence; this court would be constrained to hold that the accused-petitioner cannot be held liable to any kind of punishment under the said Ordinance.

This second count in respect of which the accused-petitioner has been charged relates to an offence of keeping a hotel and a lodging house without a licence issued in that behalf in violation of the by laws adopted by the Urban Council. The offence of keeping a hotel without a licence is created By Law 1 in Part VI of the stan- 30

dard By Laws and the said offence is punishable under By Law 2 of the Part VI of the said standard by laws.

This is a continuing and recurring offence in respect of which prosecution could be launched at any time within 6 months of the commission of the offence under section 21 of the Urban Councils Ordinance.

Therefore the objections taken to the 2nd charge that it was time barred and the argument that the 2nd charge against the accused-petitioner is not maintainable cannot be accepted by this court as the prosecution could have been launched at any time within a period of 6 months for having kept a hotel without a licence for the whole period of the year 1997. 40

According to the complaint made to the Magistrate's Court the accused-petitioner is alleged to have kept a hotel and lodging house during the year 1997 without obtaining a licence in violation of the By Laws of the Urban Council and the prosecution in respect of that charge had been launched on 25.05.1998. Therefore it is evident that the action against the accused-petitioner had been instituted before the expiry of the 6 months period stipulated by the By Laws and the institution of proceedings against the accused-petitioner was well within the period stipulated by law. 50

The question whether the accused-petitioner is the Managing Director or not depends entirely on evidence and other factual matters and till evidence in that regard is led it would be difficult for this court to determine liability of the accused-petitioner in respect of the 2nd charge.

Therefore I am of the view that the case should be remitted to the Magistrate to determine the said issue on the basis of evidence. 60

Accordingly the case is sent back to the Magistrate's Court for trial on the 2nd charge preferred against the accused-petitioner.

ABEYRATNE, J. - I agree

Case remitted to the Magistrate's Court for trial on the 2nd charge preferred against accused-petitioner.