

1948

Present : Nagalingam J.

PŌDINONA, Applicant, and JAMES, Respondent

*S. C. 376—Case stated by Commissioner for Workmen's Compensation under section 39 of Ordinance No. 19 of 1934**Workmen's Compensation—Distress warrant for recovery of sum due—Seizure by Fiscal—Claim made—Proper procedure—Ordinance—Section 41.*

An order for compensation in a sum of Rs. 1,800 was made by the Commissioner in favour of the applicant against the respondent. For the recovery of this amount a distress warrant was issued to the Fiscal who seized movable property. A claim to the property was made by a third party and the Fiscal reported the claim to the District Court which refused to investigate the claim.

Held, that neither the District Judge nor the Commissioner had jurisdiction to investigate the claim. The proper procedure in such a case would be for the Commissioner to stay the sale and refer the parties to a Civil Court having jurisdiction to decide the question of title

CASE stated by the Commissioner for Workmen's Compensation.

M. M. Kumarakulasingham, with *E. Perera*, for the applicant.

V. Tennekoon, *Crown Counsel*, for the Attorney-General, on notice.

Cur. adv. vult.

October 5, 1948. NAGALINGAM J.—

This is a case stated by the Commissioner for Workmen's Compensation under section 39 of the Ordinance for the opinion of this Court on the following facts :—

An order for compensation in a sum of Rs. 1,800 was made by the Commissioner in favour of the applicant against the respondent. For the recovery of this amount the Commissioner, in pursuance of the powers vested in him by section 41 of the Ordinance, which empowers him to recover the compensation as if it were a fine imposed by a Magistrate, issued a warrant of distress to the fiscal. The fiscal effected a seizure of certain movable property, which was claimed by a third party. The claim was reported by the fiscal to the District Court but that Court has declined jurisdiction to investigate the claim and has further intimated to the fiscal that no such claim should be referred to that Court.

In these circumstances, the question that arises for determination is as to whether the order of the District Judge is right, and if so, whether it is competent to the Commissioner himself to hold an inquiry into the claim, or if the Commissioner has no powers, what other tribunal should inquire into the claim.

Though the proceedings under the Workmen's Compensation Ordinance are in the nature of civil proceedings, insofar as they relate to a determination of the compensation payable, from the moment that the Commissioner exercises function to make recovery of the compensation awarded, the proceedings become governed by the Criminal Procedure Code for section 41 of the Ordinance says,

“The Commissioner is to proceed to recover the amount of compensation as if it were a fine imposed by a Magistrate upon such person and for the purpose of such recovery shall have all the powers upon a Magistrate for the recovery of fines imposed by him.”

The power which a Magistrate derives to recover a fine imposed by him is referable to the provisions of section 312(2) of the Criminal Procedure Code. A Magistrate is conferred no power under the Criminal Procedure Code or any other written law for the investigation of a claim that may be preferred on a seizure effected under a distress warrant issued by him. Obviously, in the case of a fine which accrues to the State, the fiscal would ordinarily seize only such property as he would be satisfied was property belonging to the offender and would only effect seizure after making adequate and proper inquiry aided, no doubt, by executive officers who themselves would have no interest in bringing under seizure property which to their knowledge is not that of the offender. Even so, cases are not wanting where claims have been preferred to property seized for the recovery of a fine; but these must be regarded as very exceptional. That may be one reason why the Legislature has provided no machinery for the investigation of claims in these circumstances by a Magistrate. It may also be that that the Legislature did not consider it feasible that a tribunal exercising almost exclusively criminal jurisdiction should be saddled with the determination of civil disputes. I do not, therefore, think that a Commissioner who has only the powers of a Magistrate with regard to this matter can proceed to an investigation of the claim. This is the view taken in India too.¹

There is no reported case where the procedure to be followed by a Magistrate in cases of claims to property seized under distress warrant has been set out. To say that it would be necessary to hear the parties before an order could be made determining their rights is elementary. In India, however, under the corresponding provisions of the Criminal Procedure Code, it has been held that the proper procedure is to stay the sale to enable the claimant to establish title to the property in a civil Court². This procedure would enable parties to present their respective cases effectually before an adjudication is made in regard to their rights. This view commends itself to me. It would be entirely impracticable for the Commissioner to embark upon an investigation of title to the property seized; this can only be done upon proper pleadings and upon an observance of the provisions of the Civil Procedure Code and having regard to the various systems of jurisprudence governing rights to property and of persons. The proper tribunal, therefore, would be a

¹ *Chitaley : Criminal Procedure Code.*

² *Chitaley : Criminal Procedure Code (1936 ed.) vol. 2, p. 1958.*

civil tribunal. It is also a matter of no small importance to bear in mind that in this case the property seized is valued at no less than a sum of Rs. 1,800.

The Criminal Procedure Code makes no provision for the reporting of a claim to the District Court or to any other civil Court. The District Judge was therefore correct in rejecting the claim presented to him.

For the foregoing reasons, I am of opinion that the Commissioner should stay sale and refer, as he shall think fit and proper, either the claimant or the person in whose favour compensation has been awarded, to establish either the title to the property seized or the right to have the property seized and sold, as the case may be, in a civil Court having jurisdiction in that behalf.

Parties referred to a civil Court.

