

Present: Akbar J.

1930

VANDERSMAGT *v.* SANGARAPILLAI

71—M. C. Colombo, 5,863.

Jurisdiction—Offence under section 13 (1) of the Housing and Town Improvement Ordinance—Power of Municipal Court.

The Municipal Court has no jurisdiction to entertain a charge under section 13 (1) of the Housing and Town Improvement Ordinance.

A PPEAL from a conviction under section 13 (1) of the Housing and Town Improvement Ordinance.

H. V. Perera (with *Tissaverasinghe*), for appellant.

Hayley, K.C. (with *Choksy*), for respondent.

¹ 4 N. L. R. 70.

² 1 De G. & J. at P. 23

³ 28 N. L. R. 321.

1930 March 15, 1930. AKBAR J.—

*Vanderamagt
v. Sangara-
pillai.*

This is an appeal from a conviction under section 13 (1) of the Housing and Town Improvement Ordinance, No. 19 of 1915. The only point taken by the appellant's Counsel was a question of law. He argued that a prosecution under section 13 (1) cannot be brought in a Municipal Court and that such a prosecution can only be lodged in a Police Court. Under that Ordinance the words "Police Magistrate" are defined under section 2 as including a Municipal Magistrate, unless the context otherwise requires a different interpretation. Section 13 (1) contains no reference to the words "Police Magistrate." This sub-section merely states that a person who commits a breach of the provisions of the sub-section will be liable on summary conviction to a certain punishment. But sub-section (2) of that section refers to "the" Police Magistrate and goes on to state that a chairman may apply for a mandatory order.

The Supreme Court has held in *Anthonisz v. Fernando*¹ that the proceedings under sub-section (2) of section 13 must be initiated separately and cannot be continued as part of the proceedings under sub-section (1). Mr. Hayley, for the Municipality, argues that the word "the" in sub-section (2) clearly implies that a prosecution under sub-section (1) could be launched before a "Police Magistrate," and as a Police Magistrate includes a Municipal Magistrate, a prosecution under sub-section (1) could be brought before a Municipal Magistrate. He has cited the case of *Cullen v. Trimble*,² that such an interpretation must be adopted by implication. It will be seen under the English statute that no reference is made to any Court, and the Court of Appeal held that a jurisdiction was impliedly conferred upon justices to deal summarily with the offences under the act. Under section 13 (1) of the local Ordinance the words used are on "summary conviction," and by section 8A of Ordinance No. 21 of 1901 these words are only appropriate to a case instituted before a Police Magistrate and the extended definition of the words "Police Magistrate" appearing in Ordinance No. 19 of 1915 cannot be applied to the Interpretation Ordinance, No. 21 of 1901. It is not necessary to speculate on the intention which the draughtsman presumably had when he drafted sub-sections (1) and (2) of section 13. I have only to interpret the two sub-sections as they stand, and it is not possible to adopt the interpretation suggested by the respondent's Counsel. I must, therefore, hold that the Municipal Court had no jurisdiction to entertain a charge under sub-section (1) of section 13. If the Municipality desires to bring such offences within the jurisdiction of the Municipal Court, it can be done by the Governor and the Executive Council under sub-section (2) of section 54 of the Municipal Councils Ordinance, No. 6 of 1910. I set aside the conviction and acquit the accused.

Set aside.

¹ 7 C. W. R. 58.

² 41 L. J., *Magistrates Cases*.