

1970

Present : Samerawickrame, J.

P. P. PALANIYANDI PILLAI and another, Appellants, and THE
LABOUR OFFICER, NUWARA ELIYA, Respondent

S. C. 1012-1013/67—M. C. Nuwara Eliya, 33278

Shop and Office Employees (Regulation of Employment and Remuneration) Act (Cap. 129)—Sections 51, 62 (3)—Vicarious liability of employer—Quantum of evidence—Business Names Ordinance (Cap. 149), s. 12.

Where an employer is prosecuted as being vicariously liable to be punished under section 51 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act in respect of an offence committed by his employee, *prima facie* proof that he is the employer of the shop in question may be furnished partly by the evidence of the officer who detected the offence that the name of the accused appeared in the certificate exhibited in the shop in compliance with the requirements of section 12 of the Business Names Ordinance.

APPEAL from a judgment of the Magistrate's Court, Nuwara Eliya.

G. E. Chitty, Q.C., with *P. Nagendran* and *G. E. Chitty (Jnr.)*, for the accused-appellants.

S. Aziz, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

January 13, 1970. SAMERAWICKRAME, J.—

The appellants have been convicted of two offences under the Shop and Office Employees (Regulation of Employment and Remuneration) Act punishable under Section 51 of the Act. They have been made vicariously liable as employers. Learned counsel for the appellants submitted that there was no proof that the appellants were the employers of the manager of the shop in question. He pointed to the fact that though a certified copy of the certificate of registration issued under the Business Names Ordinance had been produced the presumption provided for by s. 62 (3) of the Shop and Office Employees Act did not arise because that certified copy had not been issued within one month before or within one month after the date of the alleged commission of the offence. The offence alleged was committed on the 15th of March, 1966, and the certified copy has been issued on the 19th of October, 1966. There was however evidence of the Assistant Commissioner of Labour who detected the offence that the original certificate of registration of the business was in the shop and was produced before him. Section 12 of the Business Names Ordinance requires that the certificate of registration or a certified copy thereof shall be kept exhibited in a conspicuous position at the principal place of business of the firm. The original appears to have been kept in the shop in compliance with this provision. Moreover, had there been a change in respect of the partnership between the 15th of March, 1966, and the 19th of October, 1966, when the certified copy was issued, such change would have appeared in the copy. I am therefore of the view that a *prima facie* case has been made out by the prosecution to prove that the appellants were the employers and that, in the absence of any evidence led by the defence, the fact that they were the employers must be considered to have been established.

The learned magistrate has imposed a sentence of two weeks' rigorous imprisonment on each of the appellants. As the appellants were made liable vicariously for an act which was done in their absence, I think that they should be given the option of paying a fine. However, in view of the circumstances set out by the learned magistrate in imposing the sentences, it is necessary that heavy fines should be imposed.

I affirm the convictions of the 1st and 2nd accused-appellants but set aside the sentences of imprisonment passed on them and in place of them, I impose upon each of the accused-appellants a fine of Rs. 400 and in default of the payment of fine a sentence of four weeks' rigorous imprisonment on count (1) and a further fine of Rs. 400 and in default of the payment of fine a sentence of four weeks' rigorous imprisonment on count (2).

Convictions affirmed. Sentences altered.