

1971

Present : Wijayatilake, J.

P. D. C. PEERIS and another, Petitioners, and
INSPECTOR OF POLICE, CRIMES, KALUTARA,
Respondent

S. C. 601-602/70—Application in Revision in M. C. Kalutara, 44067

*Conciliation Boards Act—Section 14—Requirement of Chairman's certificate—
Scope of its applicability in specified criminal cases.*

Where a person has been convicted in a Magistrate's Court in a case which should have in the first instance come up before a Conciliation Board, the conviction may be set aside in revision by the Supreme Court if the prosecuting police officer failed to produce before the Magistrate a certificate from the Chairman of the Conciliation Board. In such a case the ignorance of the prosecuting officer should not prejudice the accused.

APPPLICATION to revise an order of the Magistrate's Court, Kalutara.

A. C. de Zoysa, with *Jayatissa Herath* and *Justin Perera*, for the 1st and 2nd accused-petitioners.

K. W. D. Perera, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 14, 1971. WIJAYATILAKE, J.—

Learned Counsel for the petitioners submits that the learned Magistrate had no jurisdiction to try this case as a certificate under Section 14 of the Conciliation Boards Act has not been filed. He states that according to Government Gazette No. 14,821 of 27.9.68 a Conciliation Board has been set up in this area and therefore this case should have in the first instance come up before the Conciliation Board the charges being under Sections 314 and 410 of the Penal Code and the date of offence being 24.3.70. My attention has been drawn by Mr. de Zoysa to the cases of *Samarasinghe v. Samarasinghe*¹ 70 N.L.R. 276 and *Nonahamy v. Halgrat Silva*² 73 N.L.R. 217. However, learned Crown Counsel seeks to meet the objection to jurisdiction by relying on the judgment in *Robinson Fernando v. Henrietta Fernando*³ 80 C.L.W. 14. I do not see how this judgment can be of any avail to the respondent. The complainant in this case being the Inspector of Police, Kalutara, it was clearly his duty to produce a certificate from the chairman of the Conciliation Board before pursuing this prosecution before the Magistrate. In my opinion even at this stage the appellant is entitled to take this objection. In fact as set out by Samerawickrame J. in the above case

¹ (1967) 70 N. L. R. 276.

² (1970) 73 N. L. R. 217.

³ (1971) 80 C. L. W. 14; 74 N. L. R. 57.

reported in 80 C.L.W. 14 "where the want of jurisdiction is patent, objection to jurisdiction may be taken at any time. In such a case it is in fact the duty of Court itself *ex mero motu* to raise the point even if the parties fail to do so". In the instant case on a perusal of the charge sheet it should have been patent that the Magistrate had no jurisdiction in the absence of a certificate from the Conciliation Board as Sections 314 and 410 of the Penal Code are clearly set out in the schedule to the Conciliation Boards Act.

The prosecuting officer should have drawn the attention of the Magistrate to the want of jurisdiction at the commencement of the Trial. The fact that he was not aware of a Conciliation Board exercising jurisdiction in this area should not prejudice the accused in this regard. It would be well for the Police to give their mind to this question at the commencement of proceedings of this nature. Magistrates too if they have before them a map of the Judicial District showing the jurisdiction of the Conciliation Boards, if any, the difficulties which arise, such as in the instant case, could be avoided.

I would accordingly set aside the convictions and discharge the accused.

Convictions set aside.

