

1953

Present : Swan J.

A. H. M. SAHEED, Appellant, and L. BAPTISTE (Sanitary Inspector),
Respondent

S. C. 1,171—M. C. Negombo, 64,175

Housing and Town Improvement Ordinance—Section 13 (1) (b)—Deviation from approved plan—Meaning of “ plan ”.

Where a person is charged under section 13 (1) (b) of the Housing and Town Improvement Ordinance with deviating from an approved plan in respect of a building, it is not necessary for the complainant to establish that the plan was drawn to scale ; it will be sufficient if the diagrams and measurements together indicate clearly what the accused proposed to erect and what was duly approved.

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

H. V. Perera, Q.C., with *M. H. Aziz*, for the accused appellant.

E. B. Wikramanayake, Q.C., with *M. L. S. Jayasekera*, for the complainant respondent.

Cur. adv. vult.

March 2, 1953. SWAN J.—

The accused was charged under section 13 (1) (b) of the Housing and Town Improvement Ordinance with having deviated from the plan he had submitted, and which had been approved by the Chairman of the Town Council, in respect of a building he had erected in the town of Minuwangoda. The approved plan is marked P1. It was later amended by P2. P1 is certainly not drawn to scale. That is self-evident ; but there are certain measurements given therein which must undoubtedly be taken as part and parcel of the plan. It is not denied that the building now erected deviates from the measurements contained in P1 and P2, and the accused also admits that instead of providing expanded metal for the rear walls of the kitchens he installed windows.

The defence taken in the lower Court was that the deviations were made either on the suggestion or with the approval of the prosecuting Inspector, and with the consent or acquiescence of the previous Chairman and the Medical Officer of Health. As the learned Magistrate says in his judgment this is no defence because any deviation from an approved plan must be with the written consent of the Chairman.

A good deal of evidence was led to show that the present Chairman is not well-disposed towards the accused. But that is wholly irrelevant to the question at issue.

The point urged by Mr. Perera was that the accused could not be guilty of any offence because P1 and P2 are not plans but rough sketches. He contends that a plan must be something drawn to scale. I am unable to agree. The Ordinance does not define the word plan. The new

International Dictionary defines *plan* as “draft or form, properly a representation drawn on a plane as a map . . . a graphic representation, a diagram”. In Stroud’s Dictionary I find the following :—

PLAN. “The plan to be submitted to a Local Authority of Works to be done does not mean something merely showing the ‘method’ or ‘manner’ but means a map or something equivalent, which will enable the Authority to judge whether what is proposed shall be allowed to proceed.”

In my opinion P1 and P2 answer that description. They may be sketches not drawn to scale but they are amply sufficient to show what is proposed to be done. There is a “ground plan” which shows the floor space the rooms will cover. There is a “cross-section” which gives an idea of the height of the walls and the roof. There is a “front elevation” which is a graphic representation of what the entire building will look like from the road. There are also certain measurements given; and if you take the diagrams and measurements together there can be no doubt as to what the accused proposed to erect and what was duly approved. In my opinion the learned Magistrate was right in holding that the accused was guilty of the offence with which he was charged. Perhaps the deviations are innocuous, but that is a matter that will have to be considered when application is made by the accused for a certificate of conformity, or if the alleged animosity of the present Chairman is manifested by an application to Court for a mandatory order under section 13 (2).

The appeal is dismissed.

Appeal dismissed.