



DUNLOP MALAYSIAN INDUSTRIES BHD v. PUBLIC PROSECUTOR
HIGH COURT, SEREMBAN
PEH SWEE CHIN J
CRIMINAL APPEAL NO 67 OF 1983
31 MAY 1984

CRIMINAL LAW

Case(s) referred to:

Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd [1971] AC 850, 880

Counsel:

Vinayak P Pradhan for the appellants.

Mohamed Zaki bin Mohamad Yasin (Deputy Public Prosecutor) for the respondent.

Solicitors: Skrine & Co.

Peh Swee Chin J

This appeal involves a pollution offence under section 25(1) of the Environmental Quality Act, 1974 in which the sole defendant, a corporation registered under the Companies Act, 1965, was fined \$10,000/-on its plea of guilty. The matter did not end there, for the learned Magistrate further sentenced to one (1) day's imprisonment, one Zubir bin Abdul Rauf (the factory manager of the defendant/corporation), who represented the defendant at the hearing and against this order of one day's imprisonment an appeal was lodged.

The order appealed from appears to have been so highly irregular that it was not surprising that learned counsel for the appellant, in his submission, took the Court through the rules of natural justice and the articles of the Federal Constitution dealing with the fundamental liberty of a person.

The learned Magistrate however relied, for this remarkable state of affairs, on para. 20 of the Third Schedule referred to in section 99A of the Subordinate Courts Act, 1948.

Section 99A reads as follows:-

"99A. In amplification and not in derogation of the powers conferred by this Act or inherent in any court, and without prejudice to the generality of any such powers, every Sessions Court and Magistrates Court shall have the further powers and jurisdiction set out in the Third Schedule."

Para. 20 of the Third Schedule reads as follows:-

"20. Power, where any corporation is guilty of any act or omission which, if it were an individual, would render it liable to arrest or commitment, to order the arrest of or commit any officer of the corporation who caused or wilfully permitted or contributed to the act or omission, and also to fine the corporation."

Read literally, para. 20 may indeed mean the way it had meant to the learned Magistrate. Such literal reading would however, in the circumstances of the case, lead to a result totally unjust and repugnant to all our notions of justice for Encik Zubir was jailed, (though for only one day), when he was not a defendant, neither was he charged with the offence in question and he had, unmistakably, represented the defendant/corporation in appearing in court and pleading guilty to the offence. Such a literal reading, therefore, could not be adopted as Parliament could not have intended such a totally unjust result or gross injustice.

Such a result aforesaid could not have been intended by Parliament, if one is to adopt a purposive approach in interpreting para. 20. This approach was explained by Lord Diplock in *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd [1971] AC 850, 880*. The Subordinate Courts Act, 1948, must have been clearly

**[1984] 1 LNS
126**[Print](#)[Annotation](#)[View MyPad](#)[Send to MyPad](#)[Assign Keyword](#)

as may be prescribed by a written law other than the Act itself. Thus, for example, para. 20 of the Third Schedule empowers the Subordinate Courts to enlarge time *etc.* for any proceedings. It would be equally wrong for any magistrate to invoke this paragraph on his own motion to extend such time regardless of the Limitation Act, 1953 which has been validly relied on. Para. 20 therefore shall be read as being subject to the modification, that the arrest or committal mentioned therein shall be according to any manner as may be prescribed by any written law other than the Subordinate Courts Act, 1948.

In the light of what is stated above, the learned Magistrate had therefore wholly misapplied the law or para. 20 of the said Third Schedule. The appeal must therefore be allowed and the sentence of one day's imprisonment set aside.

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