

New Battery Manufacturers Co Ltd v K. Ramtohul

1996 SCJ 405

Record No. 4882

The Supreme Court of Mauritius

In the matter of:-

New Battery Manufacturers Co Ltd

Appellant

v/s

K. Ramtohul

Respondent

JUDGMENT

This is an appeal against the decision of the Learned Magistrate of the Industrial Court ordering the appellant (defendant in the Court below) to pay to the respondent (plaintiff in the lower Court) the sum of Rs 290,507.69 as wages in lieu of notice and severance allowance for unjustified dismissal.

The case for the respondent, an accountant employed by the appellant company, was that on 27 November 1991, Mr Ganee Moosa, one of the directors of the appellant company, publicly insulted him by saying: “Eta batchara avec toi pas capave causer, to aine vendeur femme, to aine toutoute, baise fesse aller do batchara”. The respondent considered such treatment as amounting to constructive dismissal and based his claim on section 30(3) of the Labour Act.

The appellant’s plea was twofold. First, it claimed that the respondent had stopped work of his own free will. Secondly, it went on to add that even if

one of its directors had illtreated the respondent such ill-treatment could not amount to a constructive dismissal.

After hearing evidence - including evidence from the respondent to the effect that he had sued Mr Ganee Moosa for the same insult and Mr Ganee Moosa agreed to pay damages - the Learned Magistrate found that Mr Ganee Moosa did utter the words and that the words amounted to a constructive dismissal. He therefore ordered the appellant to pay the sum claimed. His decision is now challenged on grounds which in essence may be summed up as follows -

- (a) Mr Ganee Moosa as Chairman of the company, was not involved in the day-to-day running of the company and as such did not have power to dismiss the respondent;
- (b) the Learned Magistrate was wrong to infer facts adverse to the appellant company from a private amicable settlement of a case between the respondent and Mr Ganee Moosa;
- (c) the Learned Magistrate erred in holding that there had been constructive dismissal and that the respondent had no alternative but to leave his employment.

The evidence before the Learned Magistrate of the Industrial Court shows that the respondent has always known Mr Ganee Moosa as a director. In fact, Mr Ganee Moosa was not only a director but also the Chairman of the board of the appellant company. The Learned Magistrate did not believe Mr Ganee Moosa when he said that he had nothing to do with the respondent's employment. Moreover, the Learned Magistrate who had seen and heard the witnesses who deponed before him, including Mr Ganee Moosa, chose not to

believe him when he said that he did not utter the impugned words. The Learned Magistrate found that Mr Ganee Moosa did utter those words and we are of the view that there was sufficient evidence before him to make such a finding. It is only after having made this finding that the Learned Magistrate went on to add that further proof, if needed, could be found from the fact that Mr Ganee Moosa did agree to pay damages to the respondent before a civil court for uttering those very words.

Whilst it is true that not any kind of verbal abuse will enable a worker to relinquish his appointment and claim constructive dismissal, we are of the view that the words used by the Chairman of the appellant company to the address of the respondent, an accountant employed by the company, were abusive, coarse and vulgar and left the respondent with no alternative but to leave his employment.

For the above reasons, therefore, we find that the judgment of the Learned Magistrate cannot be impeached and we dismiss the appeal, with costs.

Y.K.J. Yeung Sik Yuen
Senior Puisne Judge

K.P. Matadeen
Judge

23 December 1996

Judgment delivered by Hon. K.P. Matadeen, Judge

For Appellant : Mr A. Rajah, S.A.
Sir Hamid Moollan, Q.C.

For Respondent : Mr J. Gujadhur, Attorney-at-Law
Mr D. Hurnam, of Counsel