CHARLES CHANDA v THE PEOPLE (1970) ZR 18 (CA)

COURT OF APPEAL

PICKETT AG CJ, MAGNUS AGJ AND HUGHES J 40

14TH OCTOBER 1970

Appeal No. 70 of 1970

Flynote

Criminal law and procedure - Admission of guilt - Procedure to be followed - Juvenile Ordinance, s. 66.

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Headnote

A subordinate court passed a reformatory order without recording any conviction against a juvenile offender who admitted the charge.

Held:

(i) The provisions of s. 66 of the Juvenile Ordinance makes it mandatory for the court to record a finding of guilty or make an order 5 upon such a finding where a juvenile offender admits the truth of the charge.

(ii) By failing to comply with the statutory provision, the proceedings were a nullity and the reformatory order would be quashed.

Legislation referred to: 10

Criminal Procedure Code, 1965 (Cap. 7), s. 187 (2).

Juveniles Ordinance, 1965 (Cap. 8), s. 66.

Judgment

Pickett Ag CJ: delivered the judgment of the court.

In the first place it is evident from the record that the learned senior resident magistrate did not have before him a statement of the facts of the 15 case. More serious however, he did not record any conviction, as provided by s. 187 (2) of the Criminal Procedure Code, which states as follows:

"If the accused person admits the truth of the charge, his admission shall be recorded, as nearly as possible, in the words used by him, and the Court shall convict him and pass sentence upon or 20 make an order against him, unless there shall appear sufficient cause to the contrary."

Of course in this case the offender was a juvenile and subject to the provisions of the Juveniles Ordinance. Section 66 of the Juveniles Ordinance provides as follows: 25

"The words 'conviction' and 'sentence' shall cease to be used in relation to juveniles dealt with by a subordinate court and any reference in any enactment whether passed before or after the commencement of this Ordinance to a person convicted, a conviction, or a sentence shall in the case of a juvenile be construed as 30 including a reference to a person found guilty of an offence, a finding of guilty, or an order made upon such a finding, as the case may be."

This is a mandatory provision. It was not carried out by the magistrate, so we have no alternative but to consider the proceedings to be a 35 nullity and quash the sentence of a reformatory order.

We have considered the possibility of an order for a re-trial in this case, but in view of the time which has elapsed since he was before the magistrate, and also our strong feeling that in any event the reformatory order proposed in this case was an excessive sentence, we do not propose 40 in the circumstances, to order a re-trial. Accordingly, this reformatory

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order is hereby quashed and the appellant is ordered to be set at liberty forthwith.

Order quashed

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