

1941

Present : de Kretzer J.

THIDEMAN *v.* GUNASEKERE.

237—M. C. Negombo, 30,548.

Soliciting a person in a public place—Meaning of expression—Vagrants Ordinance (Cap. 26), ss. 7 (1) (a) and 9 (1) (a).

An Inspector of Police and a constable drove up to a place reputed to be a brothel and having halted their car by the side of the road, switched off the lights. The accused then approached the car and asked the constable who was in civil clothes whether he wanted "the goods", and agreement as to price having been reached the accused went in and brought a woman, whereupon he was arrested.

Held, that the facts did not establish the offence of soliciting any person in a public place for the commission of any act of sexual intercourse within the meaning of section 7 (1) (a) of the Vagrants Ordinance.

Held, further, that the accused had committed the offence of knowingly living wholly or in part on the earnings of prostitution under section 9 (1) (a) of the Ordinance.

A PPEAL from a conviction by the Magistrate of Negombo.

L. A. Rajapakse, for the accused, appellant.

T. S. Fernando, C.C., for the complainant, respondent.

Cur. adv. vult.

July 10, 1941. DE KRETZER J.—

The appellant has been convicted, under section 7 (1) (a) of the Vagrants Ordinance, of the offence of soliciting in a public place a person for the purpose of the commission of an act of illicit intercourse. The facts are that an Inspector of Police and a constable drove up to a place reputed to be a brothel and having halted their car by the side of the road, switched off the lights. The accused then approached the car and asked the constable, who was in civil dress, whether he wanted "the goods", and agreement as to its price having been reached, he went in and brought a woman, whereupon he was arrested.

In a somewhat similar case Fernando J. expressed the opinion that it was not the accused but the Police who did the soliciting. Notwithstanding some slight difference in the facts it seems to me that that is what happened on this occasion also. If a person had innocently halted his car there, on the accused putting this question he would probably have been driven away. Here the conduct of the Police was that of would-be patrons.

It seems to me that even apart from this aspect of the matter the prosecution must fail. Soliciting connotes importunity, asking with earnestness, pressing of a matter and not mere inquiry. It may mean inviting, as when a trader "solicits patronage" but that again is not

mere inquiry. Besides, publicity is one of the elements of the offence and a private conversation on a public road does not come within the purview of the section.

In my opinion the offence which the accused committed is that dealt with in section 9 (a). Considering how quickly he appeared, the nature of his very first words, the subsequent haggling over terms, his going in and promptly producing the woman, one easily infers that he knowingly lives wholly or in part on the earnings of prostitution. There is also the presumption created by the section. It is an offence with which the accused might have been charged on the very same facts and he may therefore be convicted of it. His defence was a denial of the whole incident and he has not suffered any prejudice. I accordingly set aside the conviction and sentence and convict the accused under section 9 (1) and sentence him to three months' rigorous imprisonment.

Conviction varied.

