

1928.

Present : Drieberg J.

SUB-INSPECTOR OF POLICE, TANGALLA v.  
WICKREMESURIYA.

568—P. C. Tangalla, 21,883.

*Motor car—Endorsement of particulars of offence obligatory—Cancellation of certificate discretionary—Oversight of Police Magistrate—Subsequent order—Ordinance No. 20 of 1927, s. 39 (1) (a).*

An order for the cancellation or suspension of the certificate of the driver of a motor vehicle under section 39 (1) (a) is discretionary in Court. Such an order is in the nature of a punishment and can only be made by the Magistrate who tried and convicted the accused.

An order for the endorsement of the particulars of an offence upon the certificate is obligatory upon Court.

Where the Court omits to make such an order at the time of conviction, the endorsement may be made later.

**A** PPEAL from an order of the Police Magistrate of Tangalla.

*H. E. Garvin*, for the accused, appellant.

October 17, 1928. DRIEBERG J.—

The appellant was charged with not fitting his motor bus with a mirror as required by section 13 of the Motor Car Ordinance of 1927. On July 6 last he pleaded guilty to the charge and was fined Rs. 10.

Section 39 (1) (a) of the Ordinance enacts that unless otherwise provided the Court shall, when a person is convicted of an offence under the Ordinance or any other written law connected with the driving of a motor car, endorse upon the certificate, particulars of the conviction, and also whether, as provided by the earlier part of the same section, an order of suspension or cancellation has been made.

Apparently the appellant did not have his licence with him when he was convicted, and on July 14 following he was noticed to produce it. He produced his licence on August 10; there was some argument by his Proctor upon matters which I need not deal with, because they are not relevant to the grounds on which I am dealing with this appeal. The Police Magistrate, who was not the Police Magistrate who convicted him on July 6, made order suspending his certificate for one month. The appellant appeals from this order.

In my opinion, the Police Magistrate had no power to make this order. Orders for suspension or cancellation are discretionary in the Court. They are in the nature of a punishment or penalty,

and, if such orders are made, they can only be made by the Police Magistrate who tried and convicted the accused. I cannot see how, when an accused has been once convicted and his punishment indicated, he can subsequently have an additional punishment imposed upon him by another Magistrate, or even, for a matter of that, by the same Magistrate on a later date.

The order made under the first part of section 39 (1) (a) for endorsement of licences are not discretionary but obligatory upon the Court, and I see no reason why the Court, if it had by an oversight omitted to make the endorsement, cannot do so thereafter. It is in no sense a punishment, but merely a record of a conviction and a punishment. I therefore set aside the order appealed from. The Police Magistrate will cause to be endorsed upon the certificate particulars of the conviction of the appellant entered on July 6, 1928.

1928.

DRIEBERG

J.

*Sub-  
Inspector  
of Police,  
Tanqalla v.  
Wickreme-  
suriya*

*Set aside.*

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