

1966

*Present : T. S. Fernando, J.*

A. M. K. AZEES, Appellant, and W. T. SENEVIRATNE  
(S. I. Police), Respondent

*S. C. 1246 of 1965—M. C. Chilaw, 3353*

*Police Ordinance (Cap. 53)—Section 68—Premises suspected of containing stolen property—Right of a police officer to enter therein without a warrant—Criminal Procedure Code, s. 70.*

Section 68 of the Police Ordinance permits a police officer to enter without a warrant any premises which he reasonably suspects of containing stolen property. This right is not affected by section 70 of the Criminal Procedure Code nor confined to cases of just suspicion as do not reasonably admit of delay in the search.

**A**PPPEAL from a judgment of the Magistrate's Court, Chilaw.

*M. M. Kumarakulasingham*, with *C. Ganesh*, for the accused-appellant.

*R. Abeyseriya*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

March 9, 1966. T. S. FERNANDO, J.—

The appellant and his wife were convicted by the Magistrate on charges of criminal insult and intimidation—sections 484 and 486 of the Penal Code. The allegation of the prosecution was that certain words uttered by the appellant and his wife constituted insult and intimidation. The appellant was sentenced to undergo 3 months' rigorous imprisonment on each count, the sentences to run concurrently. His wife was sentenced to pay a fine of Rs. 25 on each count, in default 2 weeks' simple imprisonment, the default sentences to run concurrently. She has not appealed, and I find on reference to the record that she has paid the fines.

In regard to the appeal of the appellant, I must observe that the offences have been committed by these two accused persons a little after midnight after they had had the harrowing experience of a prolonged search of their house by police officers. The police officers claimed they searched this house after a complaint received by them that an enclosed back verandah of a certain house had been broken open and a small quantity of crockery and glassware had been stolen. The person who made the complaint did not himself seek to implicate either the appellant or his wife, but that person did say that a man named Arthur had stated to him that a lad described as a son of the ex-constable Azees was seen coming out of the back verandah. The police officers had not sought out the man Arthur to question him themselves nor had they gone in search of the appellant's son who, according to the evidence, is an employee at a cinema. Instead, they decided on suspicion to search the

house of the appellant for the stolen articles. How they hoped to identify the articles in the absence of the person who made the complaint or any other person from the house alleged to have been burgled is not revealed in the evidence. The search did not reveal any of the articles for which the Police were searching.

Learned counsel for the appellant contended that the Police had searched the house without legal authority. I am, however, compelled on the authority of the decision in *Miskin v. Dingiri Banda*<sup>1</sup> to hold against this contention. It is a decision of a bench of three judges, and Bertram, C.J. there stated that "under the provisions of section 50 (now section 68 of Cap. 53) of the Police Ordinance No. 16 of 1865, a police officer may enter without a warrant any premises in which *inter alia* he has just cause to believe that crime has been committed or is about to be committed or which contains stolen property. Such rights are not affected by section 70 of the Criminal Procedure Code nor confined to cases of just suspicion as do not reasonably admit of delay in the search".

In regard to the sentence which appears to be heavy, the learned Magistrate has stated that it was not possible for him to take a lenient view in this case as the appellant is an ex-policeman who should have known better and conducted himself properly. The appellant has hitherto borne a good character. His sleep on the night in question and the privacy of his home were both disturbed by police officers who were quite aware that the appellant himself had been at one time in the Police Service. There was no good reason shown why the Police could not have waited till morning to make a search of this particular house. Police officers must themselves learn to take with good grace annoyance on the part of householders who feel aggrieved at the way the police sometimes administer the law. Rough or abusive language which shocks and upsets drawing-room affability need not necessarily be made the subject of criminal charges in Court merely because police officers are the persons who happen to be at the receiving end of that kind of language. The model police officer is the officer who tempers the exercise of his statutory powers not only with moderation but also with good humour. If, as appears to me in the present case, the statutory power was unnecessarily exercised at that time of night, it was no heinous offence for the citizen to have given vent to his outraged feelings.

I would quash the sentences imposed by the learned Magistrate and substitute therefor fines of Rs. 25 on each count, in default 2 weeks' simple imprisonment, the default sentences to run concurrently. In thus equalising the sentences imposed on husband and wife, I find some satisfaction in this age of equality of the sexes, in not visiting foul language used by the male with greater severity than similar language used by the female.

*Conviction affirmed.*

*Sentence altered.*

<sup>1</sup> (1922) 4 C. Law Rec. 106.