

1943

Present : Hearne J.

PEIRIS, *et al*, Appellants, and ELIYATAMBY, Inspector
of Police, Respondent.

895-898 M. C. Colombo, 32,825

*Police Information Book—Used as evidence by Magistrate—Testing credibility
of witness.*

Entries in a Police Information Book cannot be used as evidence for
the purpose of testing the credibility of a witness.

A PPEAL from a conviction by the Magistrate of Colombo.

L. A. Rajapakse (with him V. F. Guneratne), for accused, appellants.
N. Nadarasa, C.C., for Crown, respondent.

Cur. adv. vult.

March 10, 1943. HEARNE J.—

There were four appellants and at the conclusion of the argument I summarily dismissed the appeals of the second, third, and fourth accused. It was obvious that, however the clash between the first accused and the complainant may have originated, they made the quarrel their own quite gratuitously and helped in the infliction of very serious injury on the latter. So far as the first accused was concerned it was of importance to decide who was the original aggressor and the decision of this question was made to depend, to some extent at least, upon the Police Information Book. The first accused had called as a witness one C. P. Perera, who claimed to have been an eye-witness and who gave evidence that was most favourable to the first accused. He said he had seen the complainant assault the first accused and that, when the latter was running away, he advised him to go to the police and gave him his name. Dealing with this witness the Magistrate remarked that "he found the first accused had not mentioned his name to the police" when he made a statement after the events which led to his being charged. It appears that the Magistrate "found" what he did in the Police Information Book and Crown Counsel admitted that this must be taken to be so. Was that an improper use of the Police Information Book? On the authorities it plainly was. It was used, as the judgment indicates, to discredit the first accused when he said that he had met C. P. Perera soon after the affray and, arising from that, it was used to discredit the evidence given by C. P. Perera. This is precisely what cannot be done. *Wickremasinghe v. Fernando*¹ *Tennekoon v. Ponniah*². Entries in the Police Information Book cannot be used as evidence for the purpose of testing the credibility of a witness.

I allow the appeal and order a retrial of first accused by another Magistrate.

Set aside.

¹ 29 N. L. R. 403.

² 11 C. L. W. 68.

1941

Present : Cannon J.

ABEYWICKREME, Appellant, and COMMISSIONER OF
MOTOR TRANSPORT, Respondent.

In the matter of a case stated under section 4 (6) of the
Motor Car Ordinance, Appeal No. 2,609.

*Omnibus licence—Refusal of application for licence in a particular year—
Change of circumstances—Renewal of application—Motor Car Ordinance,
No. 45 of 1938, s. 4 (6).*

Where the Commissioner of Motor Transport refuses an application for an omnibus licence for a particular year, he is not debarred from considering another application by the same applicant for the same route during the same year where the circumstances have changed and where there is room for an additional omnibus.

THIS was a case stated for the Supreme Court under section 4 (6) of the Motor Car Ordinance, 1938.

H. V. Perera, K.C. (with him D. D. Atulathmudali), for objector, appellant.

H. W. R. Weerasooriya, C.C., for the Commissioner of Motor Transport.

Cur. adv. vult.

December 17, 1941. CANNON J.—

This is an appeal by way of cases stated under section 4 (6) of the Motor Car Ordinance, No. 45 of 1938, in which Ordinance is the law relating to the licensing of public vehicles.

The question referred by the case stated for the decision of this Court is as follows:—"Where the Commissioner refuses an application for an omnibus licence for a particular year, is he debarred from considering another application for the same route during the same year where the circumstances have changed and there is room for an additional omnibus?"

The duration of a 'bus licence is for a year or any part of a year ending in the month of December in all cases. The procedure for obtaining a licence to begin in January is that the application must be sent in to the licensing authority and forwarded by that authority, together with its recommendation, to the Commissioner of Motor Transport not later than the first week in the October preceding. An application for a licence to come into force at any time after January 31 must be forwarded by the licensing authority, with its recommendation, to the Commissioner within seven days of its receipt. The licensing authority may not recommend a refusal of the application except upon one or more of three grounds, namely, unsuitability of the particular 'bus for the proposed route; unsuitability of the route for 'bus traffic; traffic congestion on the proposed route—"that any proposed route is generally so congested by traffic that additional omnibus traffic cannot, with due regard to the safety and convenience of the public, be allowed thereon", section 45 (2) (c). All such applications are advertised by the Commissioner; and any other licence holder or applicant for a licence for any part of the route in question may make objection to the issue of the licence, section 46 (2) (b). The Commissioner must have regard to the following matters when deciding whether to grant or refuse the application:—The licensing

authority's recommendation; any objection under section 46 (2) (b); existing transport facilities; adequacy of the proposed service for the needs of the public. The Commissioner's decision is duly notified to the licensing authority for that authority to act in conformity therewith; and where the decision communicated is that the licence should be refused, section 53 (1) directs that "the licensing authority shall not issue the licence".

The facts which give rise to the present appeal are that a licence was applied for in October, 1940, for a 'bus to ply from January, 1941, on the route Matara to Hakmana. The Commissioner refused it and there was no appeal from his refusal. Later, in February, 1941, the applicant applied for a licence for the route Matara to Hakmana and Beliatte, such licence to come into force on March 1, 1941. This application was allowed because the traffic conditions had changed. An appeal was lodged by an objector, one of the grounds of appeal being that the refusal of the first application was final for the year 1941. The objector's appeal being dismissed, he asked the Tribunal to state a case for the decision of this Court: hence the reference.

Mr. Perera, in arguing the objector's appeal that a later application for the same 'bus and route for a particular year could not be entertained, submitted that the licensing authority when it sends its recommendation, and the Commissioner when he considers "the adequacy and suitability of all existing transport facilities" under section 47 (1) (c), make their decision for the whole year in question; and if the Commissioner's decision is to refuse, that decision is final for the year for which the application is made, by virtue of the direction in section 53 (1) that "the licensing authority shall not issue the licence". He drew attention to the fact that the wording of the section is peremptory and submitted that it does not permit any subsequent application to be considered for the same route for the same year. While admitting that circumstances may change, he maintained that the Statute required the Commissioner to consider all the circumstances actual or potential at the time of his decision; otherwise there would be no finality. The decision to refuse, he argued, has the legal effect of an injunction against the issue of the licence for the year in question to the applicant for that route, which injunction was unqualified.

Mr. Weerasooriya emphasised that the Ordinance permits an application to be made for a licence to come into force in any month of the year, and submitted that it, therefore, followed that it is open to anyone to make a number of applications for a licence to come into force in different months. He pointed out that the licensing authority was required to forward applications to the Commissioner for consideration, and contended that while the Commissioner could still refuse a second application on the grounds of his refusal of the prior application, for example, congestion, he could not refuse it on the principle of *res judicata*. In short, he must consider it on its merits, which would include new circumstances existing when he deals with the second application. A state of congestion existing in one part of the year may not continue for a number of reasons, some of which are anticipated by the Ordinance. For example, a 'bus may be withdrawn or a licence holder may be granted

a change of route ; further, though the Commissioner has authorised the issue of a licence, the licensing authority must refuse it if the Examiner reports the 'bus to be unfit. In each of these cases the volume of 'bus traffic on the particular route would thus be lessened. Counsel cited section 58B (1) to show that the Ordinance contemplated fresh applications for the same 'bus and route. This section provides for the issue of a new licence where there has been a change of possession, and Counsel submitted that the provision is wide enough to cover a case where the old owner had been refused a licence ; that it does not limit the right of the new owner to make an application only in a case where the old owner has successfully applied for a licence for the route.

The relevant part of section 53 (1) reads as follows:—“Where the decision or order communicated by the Commissioner under section 52 in respect of any application for a licence for an omnibus or lorry is that a licence should be refused, the licensing authority shall not issue the licence”. Mr. Weerasooriya submitted that the words “any application” should be construed as meaning “any particular application”. The section was necessary because without it, the licensing authority might disregard the decision of the Commissioner ; but, he contended, it was limited to a particular decision on a particular application, namely, an application for a licence from a particular month, not to a particular month.

The legal argument adduced against the appeal is reinforced by the practical aspects of the problem. I think it would be unreasonable in the absence of some clear statutory prohibition, to hold that the Commissioner has no power to consider favourably, where changed circumstances justify it, a fresh application by an applicant whose application for the same 'bus and route has been previously refused. The answer to the question referred is, therefore, in the negative, and the appeal is dismissed with costs.

Having come to this decision, it is unnecessary for this court to consider whether or not the second application in this case, having been for an extended route, was, on that account, different from the first application and therefore not within the ambit of section 52 (1).

Appeal dismissed.
