1951 *Present:* **Nagalingam J**

SAMMIE, Appellant, *and* NAGODA POLICE, Respondent

S. C. 319 with Application 319—M. C. Galle, 1,171

Rubber Thefts Ordinance (Cap. 29). s. 16—Prosecution thereunder—Plea of guilty—Duty of Magistrate to be satisfied personally—" Reasonably suspected ".

Where, in a prosecution under Section 16 (1) of the Rubber Thefts Ordinance, the accused pleaded guilty to the charge of possessing rubber reasonably suspected to have been stolen—

Held, that, even though the accused pleaded guilty, the Magistrate was not relieved of the duty cast upon him by section 16 (1) of the Rubber Thefts Ordinance of satisfying himself that there were reasonable grounds for suspecting the rubber to have been stolen having regard to all the circumstances of the case.

Held further, that there is no requirement that a person who is suspected of being in possession of rubber can be charged, under section 16 of the Rubber Thefts Ordinance, only if he has failed to give a satisfactory explanation.

APPEAL from an order of the Magistrate's Court, Galle.

A. W. W. Goonewardene, for the accused appellant.

R. A. Kannangara, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 26, 1951. NAGALINGAM J.—

The appellant in this case has been convicted of an offence punishable under section 19 of the Rubber Thefts Ordinance, Cap. 29 of the Legislative Enactments, and has been sentenced to three months' rigorous imprisonment.

The Magistrate framed a charge against the appellant which reads as follows:—

"You are hereby charged that you did within the jurisdiction of this Court at Unavitiya on 2.4.51 found in possession 10 lbs. scrap rubber which is reasonably suspected of having been stolen and *fail to give a satisfactory explanation*, in breach of sec. 16 (1) Ch. 29, thereby committed an offence punishable under sec. 19 Ch. 29. "

It will be noticed that the words italicized in the charge do not form an integral part of the provisions of the Ordinance creating the offence. There is no requirement under section 16 of the Ordinance that it is only on the person who is suspected of being in possession of rubber failing to give a satisfactory explanation that he is to be charged. It may be that that is a circumstance which a Police Officer acting under section 16 (2) would take into consideration before he took proceedings under this section; but that is far from saying that the charge itself should embody an averment that the accused person had failed to give an account. The

offence is not dependent on the proof that the accused person failed to give a satisfactory explanation to the Police Officer. In fact an accused person need give no explanation to the Police Officer. On the other hand, whether with or without any explanation offered by an accused person, if the Police Officer is satisfied that the accused person is in possession of rubber which he suspects to have been stolen, he is entitled to act by seizing the rubber and by taking the person before the Magistrate and charging him. It will be seen from a perusal of sub-sections (1) and (2) of section 16 that while the Police Officer need only *suspect* the rubber to have been stolen, the charge against the accused person should be that he is in possession of rubber that is *reasonably suspected* of having been stolen. In other words, there is nothing which requires that the Police Officer should " reasonably suspect ", while the charge should be that the rubber is " reasonably suspected ", to have been stolen.

Does this qualification which has been introduced in regard to the suspicion at the stage that the accused person is charged indicate that the person who has to be satisfied that the rubber is suspected to have been stolen is not the Police Officer but the Magistrate, and the Magistrate must in the exercise of his judicial functions have evidence before him disclosing the existence of facts and circumstances from which he can not merely suspect but reasonably suspect the rubber to have been stolen before he can convict ? I think this is the only conclusion one can come to on a reading of these provisions.

When the Magistrate framed the charge in this case and embodied in the charge the statement *that the accused failed to give a satisfactory explanation*, the Magistrate cannot have intended that no explanation satisfactory to himself had been given, for he had not at or before the stage of framing or reading the charge called upon the accused to give an explanation. In fact the proceedings do not disclose that any such procedure was adopted by the learned Magistrate, so that the words can only mean that the accused person had failed to give a satisfactory explanation to the Police Officer, but that is entirely foreign to the charge because, as indicated already, when the matter comes into Court the person who must be saitsfied that reasonable suspicion attaches to the possession of rubber before a conviction can be entered is not the Police Officer but the Magistrate, and it is immaterial whether the Police Officer was satisfied with any explanation given by the accused person or not.

In this case, when the accused was called upon to plead to the charge which was read out to him, the accused person pleaded guilty and on his own plea he was convicted and sentenced as set out at the commencement of this judgment. It is a point worthy of note that under this Ordinance an appeal is allowed as of right to an accused person, notwithstanding the provisions of section 355 of the Criminal Procedure Code, thereby enabling an accused person though he may have pleaded guilty to appeal as of right. This is certainly a very wide right conferred on an accused person who in comparison with many another offender may be said not to have committed a serious offence. And this provision gives an insight into the workings of the mind of the Legislature and suggests that the Legislature required that every case under this Ordinance should

be subjected to surveillance by this Court as it probably had in view the possibility that under the Ordinance a charge could easily be brought but may be far more difficult to repel.

This same notion seems to underlie the requirement that even where an accused person does not give an account to the satisfaction of the Magistrate *as to how he came by such rubber*, the Magistrate must be satisfied himself that " having regard to all the circumstances of the case there are *reasonable grounds for suspecting such rubber to have been stolen* ". It seems to me that the effect of this provision is that where the accused person can give *an innocent explanation of his possession* he is entitled to an acquittal though the rubber may in fact have been stolen property. But it is only where the accused has failed to satisfy the Magistrate that his possession of the rubber was in circumstances which excluded any *mens rea* attaching to him, that the Magistrate is called upon to proceed further to satisfy himself that there are reasonable grounds for suspecting such rubber to have been stolen.

It has, however, been contended by learned Crown Counsel that where the accused person pleads guilty the Magistrate then can be said to be satisfied that there are reasonable grounds for suspecting such rubber to have been stolen *having regard to all the circumstances*. I find it difficult to accept this contention. If the Legislature was so minded, it certainly could have said that where an accused person pleads guilty the Magistrate is not concerned with satisfying himself that there are grounds for believing the rubber to have been stolen. The Ordinance makes no exception in such a case, and the Magistrate is not relieved of the duty imposed upon him by the enactment that even so he must be satisfied that there are reasonable grounds for suspecting such rubber to have been stolen *having regard to all the circumstances*.

It is important to note that while it is competent to an accused person to combat the assertion that the rubber was stolen or that the rubber is reasonably suspected to have been stolen, it is sufficient, as I said earlier, in order to secure an acquittal, if he gives an account to the satisfaction of the Magistrate as to how he came by such rubber, and that, although the rubber may admittedly have been stolen. Learned Crown Counsel, however, thought that the mere possession of stolen rubber was sufficient to establish the charge effectively against an accused person, but this view cannot be accepted.

It is also manifest from the proceedings that no opportunity was given to the accused person to account for the possession of the rubber by him, for when the accused person in this case was called upon to show cause why he should not be convicted he said he was guilty. The accused person was undefended and the Magistrate failed to explain to him that the law permitted him to give an explanation as to how he came by the rubber as distinct from the circumstance of his having been in possession of rubber which may be reasonably suspected to have been stolen. On this ground alone the conviction cannot be sustained.

There is the further difficulty presented in this case that the Magistrate did not have before him any evidence of facts from which it could be

said that *having regard to all the circumstances* the Magistrate was satisfied that there were reasonable grounds for suspecting the rubber to have been stolen. I have already rejected the contention of learned Crown Counsel that the plea of guilty tendered by the accused person constitutes a circumstance from which the learned Magistrate could have drawn an inference that the rubber could reasonably be suspected to have been stolen. Non-observance of this provision by the learned Magistrate also vitiates the conviction.

I think I have said enough to show that in my view not merely the charge but the entire proceedings against the accused are highly irregular and a contravention of the provisions of the Ordinance. I do not think in a case such as this the accused should be put to the expense of another trial.

I therefore set aside the conviction and acquit the accused.

Appeal allowed.