1937 *Present :* **Abrahams C.J., Poyser and Koch JJ.**

THE KING *v.* SEPALA *et al.*

*62—***P.** *C. Panwila, 3,659.*

Police officer—Police Magistrate purporting to act as Superintendent of Police—No legal authority—Confession to Magistrate—Admissibility—Evidence Ordinance, s. 25.

A Police Magistrate who purported to perform the duties of a Police officer without legal authority is not a Police officer within the meaning of section 25 of the Evidence Ordinance.

THIS was a case stated by Maartensz J. under section 355 of the Criminal Procedure Code.

The accused in this case were convicted at the Midland Assizes before Maartensz J. of—(1) committing housebreaking by night under section 443 of the Penal Code, (2) committing robbery under section 380 of the

Penal Code, (3) voluntarily causing hurt under section 382 of the Penal Code. The case for the prosecution was that the fourth and fifth accused were two of a gang of robbers who forcibly entered the house of one Sinniah about 7 or 7.30 P.M. on the night of December 26, 1935, and robbed him of jewellery, money, and clothes and caused hurt in the course of the robbery. The first, third, fourth, and fifth accused were convicted and the others acquitted.

The evidence of identification except that of the first accused was unreliable, and Maartensz J. had no doubt that the jury convicted the fourth and fifth accused on the evidence of statements in the nature of confessions made by the fourth and fifth accused to Mr. S. C. Fernando, who was, when the statements were made to him, acting as Police Magistrate. Mr. Fernando in the course of his evidence given on January 11, 1937, as to the circumstances in which the statements were made to him stated that he was at the time in question an Additional Assistant Superintendent of Police. It was accordingly contended that, in view of the provisions of section 25 of the Evidence Ordinance, the statements were not admissible in evidence. The determination of the question of the admissibility of the statements was adjourned when Crown Counsel led evidence, which established that Mr. Fernando had not been appointed Police officer.

Maartensz J. held that the statements were admissible as Mr. Fernando was not a Police officer.

A. S. Ponnambalam, for the fourth and fifth accused, appellants.—The eight accused were charged with various offences. Statements in the nature of a confession were admitted in the course of the trial and the learned Judge has referred it to a Bench of three Judges.

Mr. Fernando though he was not appointed as an Additional Assistant Superintendent of Police, functioned as such. It was made clear that he was not in point of law an Assistant Superintendent of Police. The term Police officer should not be read in a technical sense, but in a popular and comprehensive sense (*Ameer Ali on Evidence* (*5th ed.*) p. 274).

[ABRAHAMS C.J.—What do you mean by a "comprehensive sense"?]

Ameer Ali quotes from *Reg. v. Hurribole Chunder*[1].

[ABRAHAMS C.J.—In that case he was a Police officer. He was a member of the Force though he was defectively appointed.]

With regard to the technical defect in his appointment see *The Inspector of Police v. Lebbe*[2].

The spirit of the law requires that the term "Police officer" should be construed in a general sense.

Counsel cited *Wijetunge v. Podi Sinno*[3].

N. Nadarajah, C.C., for the Crown, was not called upon.

Cur. adv. vult.

February 11, 1937. ABRAHAMS C.J.—

This is a reference by Maartensz J. on a point of law argued before him at the Kandy Assizes.

[1] *1 Cal. Law Rep. 215.* [2] *(1923) 25 N. L. R. 281.*

[3] *Browne 57.*

The two accused in the case were tried with four others on an indictment charging them with housebreaking, robbery and voluntarily causing hurt to two persons during the course of the burglary. These accused were convicted, mainly, in the opinion of the learned Judge, on two confessional statements made by them to Mr. Fernando, Acting Police Magistrate at Matale. These statements purported to have been made voluntarily, but it was elicited from Mr. Fernando that he had been exercising police powers and actually regarded himself as an Additional Superintendent of Police though it transpired on a detailed investigation of his functions that he had not been officially appointed to that or any other office in the Police Force, nor did his post of Office Assistant to the Assistant Government Agent carry with it an appointment to any office in the Police Force or lawfully import the exercise of Police powers. It was contended, however, for the accused, that Mr. Fernando was a Police officer within the meaning of section 25 of the Evidence Ordinance since he continuously exercised the powers of a Police officer, signed documents as Additional Superintendent of Police, *bona fide* believed himself to hold that office and was believed by others, official and unofficial, to be a Police officer. It was accordingly submitted that by the operation of section 25 aforesaid these statements were inadmissible. Maartensz J. held that the statements were admissible as Mr. Fernando was not a Police officer within the meaning of the above section. As the point was a novel one he agreed to refer it and made the following order of reference in respect of which we are now called upon to adjudicate :—

"I accordingly under the provisions of section 355 of the Criminal Procedure Code reserve and refer for the decision of a Court of three Judges the question of law which arose at the trial. The question is as follows. I quote from my order :—

"The question I have to decide is whether a confession made to a person who is not a Police officer is inadmissible against the person making it because the person to whom it was made performs from time to time the duties of a Police officer".

Counsel for the accused has cited to us the case of the *King v. Hurribole Chunder*[1], in which Garth C.J. held that the term "Police Officer" used in section 25 of the Indian Evidence Act, to which section 25 of the Ceylon Evidence Ordinance corresponds verbatim, was not to be interpreted in the technical sense, but in a popular and comprehensive sense. "Technical sense" presumably would confine the term to a member of the regularly constituted Police Force. Subsequent decisions of the Indian Courts explain what popular and comprehensive sense means by extending the scope of the section to cover persons who though not members of the Police Force are authorized by law to exercise certain powers vested in members of the Police Force. There is no definition of "Police Officer" in the Evidence Ordinance itself, and on the strength of the Indian decisions (no Ceylon cases on the interpretation of section 25 were cited to us) the term can be fairly held to include persons who fall into the two categories above mentioned.

[1] *1 Cal. Law Rep. 215.*

It is now sought to include within the term a person who has purported to perform the duties of a member of the Ceylon Police Force without any legal authority. I can see no warrant whatever for placing such a construction upon the term. Counsel for the accused has urged that Mr. Fernando was to all intents and purposes a Police officer, that he only lacked the actual appointment, and was *de facto* if not *de jure* a Police officer. These are mere words and carry the matter no further. The fact that a person *bona fide* believes himself to possess the authority to perform certain official acts does not create that authority, not even if others believe that he has that authority.

In my opinion Maartensz J. was right. Mr. Fernando was not a Police officer within the meaning of section 25 of the Evidence Ordinance.

I would therefore dismiss the appeal.

POYSER J.—I agree.

KOCH J.—I agree.

Appeal dismissed.