

1943

*Present : Hearne J.*

SIMON, Appellant, and PERERA (Inspector of Police)  
Respondent.

949—*M. C. Panadure, 20,592.*

*Rubber Thefts Ordinance (Cap. 29), s. 16 (1)—Charge of being in possession of rubber reasonably suspected of being stolen—Essence of offence.*

In a charge under section 16 (1) of the Rubber Thefts Ordinance of being in possession of rubber reasonably suspected of being stolen the essence of the offence is the inability of the person in possession to account satisfactorily for his possession.

Undue stress should not be placed on the grounds of suspicion of the police officer concerned.

**A** PPEAL from a conviction by the Magistrate of Panadure.

*K. W. E. Perera*, for accused, appellant.

*A. C. Alles, C.C.*, for complainant, respondent.

*Cur. adv. vult.*

February 11, 1943. HEARNE J.—

A Police Officer found the appellant in possession of 40 lb. of rubber which he suspected were stolen and he accordingly applied for a summons "to bring" him before a Magistrate. He was charged under section 16 (1) of the Rubber Thefts Ordinance and convicted.

My attention was drawn to a case decided by this Court *Soysa v. Davith Singho*<sup>1</sup>. The accused in that case was charged under section 4 of the Protection of Produce Ordinance which is similar to but not identical with section 16 (1) of the Rubber Thefts Ordinance. It was held by Schneider J. that "the circumstances of the case did not give rise to any suspicion that the tea was not honestly in the possession of the accused and that being so, the section did not oblige the accused to give the Court a satisfactory account of his possession of the tea, although the evidence in the case undoubtedly showed that the account given by the accused was by no means satisfactory."

Now to be in possession of property suspected of being stolen is no offence under the Penal Code. It is not even an offence to be in possession of property which is actually stolen. The offence is possession and a guilty knowledge or reasonable belief that the property is stolen. Under section 4 of the Protection of Produce Ordinance the circumstances must be such as to give rise to a suspicion that the property is not "honestly in possession". It seems to imply that the circumstances must give rise to suspicion of dishonesty of possession in the sense of guilty knowledge under the Penal Code. That, however, inadvertently or not, is not what the Legislature has laid down in the Rubber Thefts Ordinance. Under this Ordinance a Police Officer may take action merely "if he finds any person in possession of rubber which he suspects to have been stolen". The two Ordinances are capable of differentiation.

But apart from this, whether one is dealing with the Protection of Produce Ordinance or the Rubber Thefts Ordinance undue stress should not, I think, be laid on the grounds of suspicion entertained by the Police Officer concerned. The two Ordinances, so far as he is concerned, merely enable him to do something he could not otherwise do, and the essence of the offence is the inability of the person in possession to account satisfactorily for possession. I think that it is in this way that the provisions of 2 & 3 Vict. C. 47 S. 66 and 2 & 3 Vict. C. 71 S 24 are regarded in England though, as these sections have been construed, because of certain additional words "or conveying" which do not appear in our law, they have been held to apply only to possession on the street "and not in house". It is just possible Schneider J. had the decided cases in England in mind for, in the case that was before him on appeal, possession was not in a street but "in a boutique".

In the present case the circumstances were certainly of a suspicious nature. The accused offered no explanation personally but put forward a witness whose evidence was not believed.

Another objection was taken to the effect that the rubber found in the appellant's possession was not proved to have been rubber obtained from the latex of any of the rubber plants mentioned in section 22. In that section, "rubber plant" includes certain varieties and is not exhaustive. I would mention that this objection was not taken at the trial or in the petition of appeal.

The appeal is dismissed.

*Appeal dismissed.*