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Present : de Kretser, J.

THE ATTORNEY-GENERAL, Petitioner, and D. S. JAYASINGHE,
Respondent

S C. 56/68—Application in Revision in M. C. Narahenpita, 84362

Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 249), as amended by Act No. 37 of 1964—Section 4 (1)—Issue of certificate thereunder for recovery of unpaid tax—Magistrate's order thereafter—Power of Supreme Court to examine its legality in revision—Criminal Procedure Code, ss. 312 (2), 347, 356, 357—Courts Ordinance, s. 37.

Although the Magistrate's Court is merely a collecting agency when the Magistrate makes an order in terms of section 4 (1) of the Heavy Oil Motor Vehicles Taxation Ordinance for the recovery of unpaid tax, the Supreme Court has revisionary power in such a case, by virtue of sections 347, 356 and 357 of the Criminal Procedure Code read with section 37 of the Courts Ordinance, to satisfy itself as to the legality or propriety of the order made by the Magistrate.

APPPLICATION to revise an order of the Magistrate's Court, Narahenpita.

Noel Tittawella, Crown Counsel, for the Attorney-General.

H. W. Jayewardene, Q.C., with *S. S. Basnayake*, for the Respondent.

Cur. adv. vult.

September 24, 1968. DE KRETZER, J.—

The facts relevant to this order are as follows :—

The Government Agent of Colombo District for the purpose of recovering tax due on Vehicle No. 22 Sri 5155 issued to the Magistrate of the Traffic Court, Narahenpita, a certificate under Section 4 (1) of the Heavy Oil Motor Vehicles Taxation Ordinance. The Magistrate (Mr. Wickremasekera) issued notice, and on 19.11.67 heard the submissions made by Advocate S. Basnayake on behalf of Don Simon Jayasinghe the party noticed, and the submissions made by Mr. Tittawella, Crown Counsel who appeared as Amicus Curiae. On 10.12.67 the Magistrate made his order discharging the party noticed, holding that the certificate issued by the Government Agent was not in conformity with the provisions of Section 4 (1) of the Ordinance. The Attorney-General has moved this Court to act in revision and set aside the order made by the Magistrate and to order the Magistrate to recover the sum stated in the certificate as though it was a fine imposed by the Magistrate.

Mr. H. W. Jayewardene, Q.C., has submitted that :

- (a) Inasmuch as the Crown concedes that the Magistrate acting in terms of Section 4 of the Heavy Oil Motor Vehicles Taxation Ordinance acts in an executive capacity when he makes his order, the remedy by way of an appeal or an application in revision to the Supreme Court is not available to the party aggrieved by such order.
- (b) That the order made by the Magistrate is in any event one he was entitled to make and is a correct order.

It appears to me that in this submission there is some confusion between the nature of the function the Magistrate performs when he makes an order in terms of the special jurisdiction conferred on him by Section 4 of Cap. 249 as amended by Act 37 of 64, and the capacity in which he makes it.

When the Government Agent in terms of Section 4 (1) of Cap. 249 forwards a certificate and statement to the Magistrate, the law as set out in Section 4 (1) says " the Magistrate shall, upon receipt of such certificate and statement, forthwith direct the amount to be recovered as though it

were a fine" i.e., the Magistrate has to order, as provided for by Section 312 (2) of the Criminal Procedure Code, "that a warrant should issue for the amount (stated as due in the certificate) by distress and sale of any movable property" belonging to the defaulter, for the issue of a distress warrant is the means provided for recovery of fines imposed by a Magistrate. Now what is the nature of the function the Magistrate is performing, when he makes the order that distress warrant should issue? It is clear that as required by law he is collecting the money due on the certificate by using the machinery of the law normally used for the recovery of fines imposed by him, and as such I agree with Mr. Justice Tambiah who said that the Magistrate's Court is merely a collecting agency when the Magistrate makes an order in terms of this section, vide *Abdulally v. A. G. A., Jaffna*¹. But the fact remains that the order that results in that happening is the order of a Magistrate even if it does not involve the use of any judicial discretion, and it appears to me that the terms of Sections 347, 356, 357 of the Criminal Procedure Code read with Section 37 of the Courts Ordinance apply to such an order, and it is subject to revision by the Supreme Court which has the right to satisfy itself as to the legality or propriety of any order made by a Magistrate and the proceedings in his court. Quite apart from the instant case, the reported cases show that there is the need for the Supreme Court to satisfy itself as to the legality of orders made by the Magistrate purporting to act in terms of this section, vide the case of *Nilandeen v. G. A., Matara*² where the Magistrate acting in terms of section 4 (1) thought he had the right to impose a term of imprisonment in default of the payment of the certified amount.

Mr. Jayewardene submits, and I entirely agree, that the Magistrate *ex mero motu* has the right and should examine the certificate sent him by the G. A., to satisfy himself that it is a certificate that complies with the requirements of such a certificate before he makes his order on it. In the instant case if the Magistrate had done that and had come to the conclusion that he eventually sets out in the order he has made in this case, namely that the certificate was not in conformity with the provisions of Section 4 (1) in that it did not state that Don Simon Jayasinghe was the registered owner of Vehicle 22 Sri 5155, he could have returned the certificate to the G. A. for necessary amendment and then would probably have found that the error was his in that he had lost sight of the fact that Cap. 249 had been amended and as amended by Act 37 of 64 provided for the issue of a certificate in respect of a defaulter who could be quite distinct from the registered owner of the vehicle at the time the order was sought. But the Magistrate in the instant case came to that conclusion after issuing a notice (or if the certified journal is correct a summons) on the party named in the certificate as a defaulter and after hearing the submissions made on his behalf by Mr. Basnayake and of an *Amicus Curiae* in Mr. Crown Counsel Tittawella and reserving his order. In the order he did not deal with any of the submissions made but came to the conclusion that the certificate was bad in law which was not the submission of either Mr. Basnayake or Mr. Tittawella.

¹ (1964) 68 N. L. R. 168.

² (1965) 68 N. L. R. 185.

He discharged the party noticed.

There is no provision under the section to summon or notice the party named in the certificate any more than there should be a charge sheet which was the contention in *Abdulally v. A. G. A., Jaffna*¹. Section 4 (1) of Cap. 249 clearly and imperatively sets out all that a Magistrate has to do when he receives the G. A.'s certificate, and as Tambiah J. pointed out, it is a well known canon of construction that the court should only interpret the law and not introduce words into a statute where the words are clear. Nowhere in this ordinance is it said that a Magistrate should issue a notice or a summons on a defaulter before he issues the distress warrant. The rules of natural justice are not violated for the notice required by Section 4 (2) of Cap. 249 gives the person against whom the order of the Magistrate is sought ample opportunity of satisfying the G. A. that no tax is due from him, if that is indeed the true position, before the G. A. issues his certificate, and of course there is really nothing to prevent a person whose goods are seized on a distress warrant issued by the Magistrate showing even at that point of time cause to the Magistrate why they should not be sold, if in fact there is some cause which for some reason he has failed to bring to the notice of the G. A.

Let aside the order made by the Magistrate and direct him to issue a distress warrant in terms of Section 312 (2) of the Criminal Procedure Code for the recovery of the sum of Rs. 8,040 from Don Simon Jayasinghe.

Order set aside.

¹ (1961) 68 N. L. R. 168.
