

1938

Present : Koch J.

INSPECTOR OF POLICE, BATTICALOA v. PONNIAH.

99—P. C. Kalmunai, 23,389.

Post Office—Misbehaviour in a public place—Penal Code, s. 488.

A Post Office is a public place within the meaning of section 488 of the Penal Code.

APPPLICATION for revision of an order of the Police Magistrate of Kalmunai.

C. T. Olegasegaram, for accused, petitioner.

E. H. T. Gunasekara, C.C., for Crown, respondent.

Cur. adv. vult.

June 22, 1938. KOCH J.—

The petitioner was charged with having misbehaved himself while in a state of intoxication in a public place, namely, the Kalmunai Post Office, to the annoyance of the Postmaster of Kalmunai, an offence punishable under section 488 of the Ceylon Penal Code. He was convicted and fined Rs. 10 in default one week's simple imprisonment.

On the merits, I have not the slightest doubt that the learned Magistrate has come to a correct conclusion. There is ample evidence to justify his finding.

The petitioner's Counsel has, however, raised a point of law which requires consideration. He maintains that a Post Office is not a public place within the meaning of this section.

He cited the case of *Pietersz v. Wiggin*¹. Withers J. in the course of his judgment said :

“I should have thought a police station was essentially a private place, and none the less so because members of the public can enter it for a limited purpose. It might as well be argued that the office of the head of a public department was a public place. In my opinion a public place in the said section is a place to which and from which the public have ingress and egress as of right and without reference to any particular purpose, as a public thoroughfare, square, &c.”

In *Wijesuriya v. Abeyesekera*², Shaw J. held that a circus was not a public place. The reasoning is more easily understood here as no member of the public can lawfully enter a circus without first paying for his admission and as it is within the power of the proprietor or manager to prevent anyone entering without payment.

The difficulty I feel in agreeing with the earlier decision (and I say so with all respect), is that a member of the public cannot be prevented from entering a police station although if it is found that his visit is purposeless, he may later be ordered out.

The next case on the point concerns a resthouse, namely, *Perkins v. Don Samel*³. Jayawardena J. agreed with the Magistrate that a resthouse was a public place.

If the decision in *Pietersz v. Wiggin* (*supra*) applied a resthouse cannot be considered a public place and the public have the right to enter it only for a limited purpose. Jayawardena J. seems to have based his opinion on an English case, *The Queen v. Wellard*⁴. There Grove J. said that the conclusion for the prisoner was that a public place must be a place where the public have an absolute legal right to go, but, in his opinion, a public place was one where the public go no matter whether they have a right

¹ 2 Ceylon Law Reports 111.

² 21 N. L. R. 159.

³ 28 N. L. R. 173.

⁴ (1884) 14 Q. B. D. 63.

to go or not. The right is not the question. In that case, the learned Judge expressed himself in the way he did as the misconduct complained of took place on a grassy spot which belonged to the parish of Northfleet. Persons who desired to do so were in the habit of going to this spot although in going there they were legally speaking trespassing.

I would prefer to follow the decision in *Perkins v. Don Samel* for the reason I have given and would therefore hold that a Post Office is a public place within the meaning of section 488 of the Penal Code.

The point of law raised therefore also fails and the application must be dismissed.

Application dismissed.
