

1941

*Present : Keuneman J.***FELDANO v. THE MAGISTRATE, ANURADHAPURA et al.***In re* WRIT OF PROHIBITION AGAINST THE MAGISTRATE OF
ANURADHAPURA IN M. C. ANURADHAPURA, 4,742.*Motor lorry—Conviction of driver—Proceedings against owner for suspension of licence—Motor Car Ordinance, No. 45 of 1938, s. 159 (1).*

Where, on the conviction of the driver of a motor lorry, proceedings are taken against the owner under section 159 (1) of the Motor Car Ordinance to show cause against an order suspending the licence of the lorry,—

Held, that the Court was not bound to proceed against the owner in the same case in which the driver was convicted.**T**HIS was an application for a Writ of Prohibition against the Magistrate of Anuradhapura.

G. Thomas (with him A. C. Alles), for petitioner.

H. W. R. Weerasooriya, C.C., for first respondent.

Cur. adv. vult.

May 21, 1941. KEUNEMAN J.—

This Writ of Prohibition is sought under the following circumstances :—
On August 28, 1940, one Amaris Silva, driver of lorry No. Z 9102 in M. C. Anuradhapura, case No. 4,647, was convicted under section 122 of the Motor Car Ordinance. On September 13, 1940, application was made in these proceedings to the Magistrate for a notice on the petitioner, being the owner of the lorry, to show cause why the licence of the lorry should not be suspended in terms of section 159 (1) of the Ordinance. While that matter was pending, the petitioner moved for a Writ of Prohibition in this Court.

The point urged before me was that the Magistrate had no jurisdiction to initiate or continue these proceedings. Counsel for petitioner urged

that the Court had jurisdiction to act under section 159 (1) only in case No. 4,647, and that action could not be taken after sentence had been imposed in that case.

I have examined the language of section 159 (1), and find that it differs in many respects from the language of section 160 and section 75 which have been quoted by way of analogy.

Section 159 (1) runs as follows :—

“Where any court which in any year convicts the driver or the owner of a lorry is satisfied that the driver, or owner has previously been convicted twice or oftener in the course of that year of the same offence in respect of the same lorry, the court may call upon the owner of the lorry to show cause against an order, suspending the licence of the lorry being made in addition to any other punishment which may be imposed for that offence.”

It follows from this language that—

- (1) the proceedings under section 159 (1) cannot be commenced till after the conviction of the driver or owner. There is nothing in the section making it necessary to take the proceedings before sentence has followed the conviction.
- (2) The jurisdiction to commence proceeding under the section resides in the “court” which has convicted the driver or owner. The section does not require that the Court should act in the same proceeding in which the conviction was recorded. I do not think the words “in addition to any other punishment which may be imposed for that offence” in the section alters the meaning.
- (3) Although the driver alone has been convicted, the proceedings under section 159 (1) can be directed against the owner. This indicates to my mind that the proceeding may be a different proceeding to that which resulted in the conviction. In the present case the driver was convicted, and the subsequent proceedings were taken against the owner.
- (4) Section 159 (2) contemplates the case where the original conviction and the subsequent proceedings for suspending the licence are taken against the same person and gives the right of appeal in both cases to that person. I do not think this necessarily indicates that the subsequent proceedings must be in the same case as that in which the conviction was recorded, but it may be convenient in such circumstances to have both proceedings in the same case. This however is not the case I am examining now.
- (5) I think section 159 (3) shows that the appeal may be from the order of suspension only. In fact it is not possible for the owner to appeal against a conviction recorded against the driver.

I hold that the Court in the circumstances of the present case had jurisdiction to entertain the proceedings. The application fails and is dismissed and the rule dissolved with costs.

Rule discharged.