

1951

Present : Basnayake J.

RAMSON, Appellant, and AHAMATH (S. I. Police), Respondent

*S. C. 658—M. C. Puttalam, 38,541**Motor Car Ordinance, No. 45 of 1938—Suspension of certificate of competence—
Procedure for such order—Section 75 (2) (c)—“ Special reasons ”.*

An order suspending a certificate of competence should not be made under Section 75 (2) (c) of the Motor Car Ordinance, No. 45 of 1938, without affording the accused person an opportunity of placing before the Court facts in extenuation of his offence.

Obiter : A circumstance peculiar to the offender as distinguished from the offence is not a “ special reason ” within the meaning of the expression in Section 75 (2) (c).

APPEAL from a judgment of the Magistrate's Court, Puttalam.

E. R. S. R. Coomaraswamy, for the accused appellant.

A. C. M. Ameer, Crown Counsel, for the Attorney-General.

August 28, 1951. BASNAYAKE J.—

The appellant pleaded guilty to the following charges—

- (a) of using a lorry for which a licence was not in force,
- (b) of driving a lorry in relation to which a policy of insurance or a security in respect of third party risks was not in force.

He was fined Rs. 50 in respect of each charge and the learned Magistrate also made order suspending the appellant's certificate of competence for one year.

Section 75 (2) (c) of the Motor Car Ordinance, No. 45 of 1938. provides that: "Where any person is convicted of the offence of contravening the provisions of section 127, the Court shall make an order suspending the certificate of competence of such person, or declaring such person to be disqualified for obtaining a certificate of competence, for a period of not less than twelve months, unless in the circumstances of any case, for special reasons to be recorded in the proceedings, the Court is of opinion that such order should not be made or that the period of suspension or disqualification should be less than twelve months."

It does not appear that the appellant was afforded an opportunity of placing before the Court any special reasons in regard to the offences committed by him. It is important that an accused person should be afforded an opportunity of placing before the Court facts in extenuation of his offence so that it may be the better able to exercise its discretion to mitigate the operation of the imperative terms of section 75 (2) (c).

I therefore set aside the order of suspension of the appellant's certificate of competence and direct that the case be sent back in order that the learned Magistrate may afford the appellant an opportunity of placing any facts he wishes to submit for his consideration in the exercise of his discretion under section 75 (2) (c).

I think it will be helpful if I were to state for the guidance of the learned Magistrate the scope of the section, especially as the Motor Traffic Act, No. 14 of 1951, has a corresponding provision.

The section empowers the Magistrate to arrest the operation of the first part of section 75 (2) (c) if he is of opinion that having regard to the circumstances of the case there are special reasons why the order of suspension or disqualification should either not be made or the period of

suspension or disqualification should be less than the prescribed period. The Court should be of opinion that in the circumstances of the case before it, there are special reasons why the order should not be made. A "special reason" is one which is special to the facts of the particular case, that is, special to the facts which constituted the offence. A circumstance peculiar to the offender as distinguished from the offence is not a "special reason".

I am not aware of any decision of this Court on the scope of the expression "special reasons" in our enactment. Though the corresponding provision of the English Act is not in precisely the same terms as our provision, the English decisions thereon in my view are of assistance. I do not wish to burden this judgment by reference to them individually, but it is sufficient to say that it has been held there that financial hardship, conviction for a first offence, a long driving record without complaint, forgetfulness or carelessness in not taking out a policy of insurance, a misapprehension of the legal effect of a policy, that disqualification is too severe a penalty, and that the accused is a lorry driver who drives for his living, are not special reasons. On the other hand it has been held that there were special reasons where the insured was misled by the insurance company, where an employed person drove a vehicle having no reason to think its use was not covered by insurance, where an owner let his garage proprietor drive in the belief that such person would be covered in the ordinary course of business, and where through an oversight a policy had not been renewed and the insurers informed the Court that they would have met any claim.

In the case of *Whittal v. Kirby*¹, Lord Goddard adopted with approval the following meaning of the expression "special reason" laid down in the Northern Ireland case of *R. v. Crossan*²:

"A 'special reason' within the exception is one which is special to the facts of the particular case, that is, special to the facts which constitute the offence. It is in other words a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence, and one which the Court ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender as distinguished from the offence is not a 'special reason' within the exception."

There is in my opinion nothing in our Ordinance that makes this definition of the meaning of 'special reason' inapplicable to our law. It can with advantage be adopted by us.

Sent back for consideration of sentence.

¹ (1946) 2 AU E, R. 552.

² (1939) 1 N. I. 106 at pp. 112, 113.