

1963

Present : Herat, J.

D. JOSEPH, Appellant, and MARIAM PILLAI (Police Sergeant),
Respondent

S. C. 979 of 1962—M. C. Batticaloa, 5579

*Misconduct in public by a drunken person—“State of intoxication”—Penal Code,
s. 488.*

When a man smells of liquor and behaves in a disorderly manner, it does not necessarily follow that he is in a state of intoxication within the meaning of section 488 of the Penal Code.

APPPEAL from a judgment of the Magistrate's Court, Batticaloa.

No appearance for the accused-appellant.

G. P. S. de Silva, Crown Counsel, for the Attorney-General.

February 11, 1963. HERAT, J.—

In this case the accused-appellant is unrepresented and absent, but, the learned Crown Counsel, in the highest tradition of the Attorney-General's Department, has brought to my notice a vital fact which vitiates the conviction.

The appellant was charged under Section 488 of the Penal Code which reads as follows :—

“Whoever, in a state of intoxication, appears in any public place or in any place which it is a trespass in him to enter, and there conducts

himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both. ”

The evidence for the prosecution was that of a police officer who says that he found the accused-appellant strongly smelling of liquor and behaving in a disorderly manner. This officer further stated that the accused-appellant was not in a position to make a statement.

It must be noted that one of the elements of the offence is that the person charged should be in a “ state of intoxication ” at the time of the offence. The accused-appellant was not examined by any medical officer who could have reported as to whether the appellant was in an intoxicated state. Because a man is smelling of liquor and behaving in a disorderly manner it does not necessarily follow that he is in a state of intoxication. I therefore hold that one vital element of the offence charged is not borne out by the evidence. This point had been taken in the lower Court but the learned Magistrate thought that the evidence of the police officer, which I have referred to above, was sufficient to establish that element of the offence too. I cannot agree with this view. I, therefore, allow the appeal and quash the conviction.

Appeal allowed.

