

1934

Present : Macdonell C.J.

PERUMAL *v.* AHAMADU *et al.*

590-2—P. C. Ratnapura, 2,949.

Excise Ordinance—Unlawful possession of ganja—Power of Excise Inspector to arrest offender—No compliance with section 36—Separate authority—Ordinance No. 8 of 1912, ss. 34 and 36.

Under section 34 of the Excise Ordinance, an Excise Inspector has power to arrest a person found in unlawful possession of ganja and to search him, although he has failed to comply with the requirements of section 36 with regard to search.

A tea boutique is not a "dwelling house" within the meaning of section 34 of the Ordinance.

A PPEAL from a conviction of the Police Magistrate of Ratnapura.

Amarasekere (with him *T. S. Fernando*), for the appellants.

Pulle, C. C., for Crown, respondent.

October 22, 1934. MACDONELL C.J.—

In this case the facts were that an Excise Inspector, having the powers of section 34 of Ordinance No. 8 of 1912 given to him, found one Abdul Samad in possession of ganja, and that person explained that he

had got the ganja from the first accused, at the same time pointing out the first accused to the Inspector. The Inspector saw the first accused walking into a tea boutique and followed him in. He held the accused by the waist and found a packet of ganja in the accused's waist. When the Inspector tried to search the accused's person further the accused resisted and struck at him. He is charged under section 220A of the Penal Code with obstructing the Inspector in the discharge of his duties.

It was argued that he could not be convicted because the Inspector did not take any of the steps required by section 36, that is, did not, since there was no time to obtain a search warrant, make the required entry in his diary. Section 34 says that an Excise Inspector "may arrest without warrant any person found committing in any place other than a dwelling house an offence punishable under section 43 or section 44"—possession of ganja is an offence under section 44. Section 34 also says that an Excise Inspector "may seize and detain any excisable or other article which he has reason to believe to be liable to confiscation under this Ordinance . . . and may search any person upon whom . . . he may have reasonable cause to suspect any such article to be."

Now a boutique is clearly not a dwelling house. The Excise Inspector therefore was arresting inside a place other than a dwelling house a man found committing an offence, because ganja was found upon him, and he searched that man because the finding of some ganja on him afforded reasonable belief that there might be more. The action of the Excise Inspector was therefore entirely inside section 34 and the conviction was right.

It was pressed both in argument below and here that the Excise Inspector not having acted under section 36 had no power either to arrest the accused or to search him. The effect of section 36 is to give a person who had complied with its requirements protection from the start for anything that he may do by way of search. If he has complied with the requirements of that section, he may search any place and seize any things which he has reason to believe are liable to confiscation. The section goes on to give him power to search and arrest any person whom he has reason to believe is guilty of an offence against the Ordinance. It is indifferent that nothing liable to confiscation is found and that the person arrested was not committing any offence against the Ordinance.

Now the difference between that section and section 34 is very marked. Section 36 deals mainly with the power to search a place, section 34 with the power to arrest a person. Normally, to search a place, a search warrant is necessary: Section 34 allows arrest to be made without a warrant if the person arrested is found committing an offence against section 43 or section 44. The power is limited; the man arrested must be found committing an offence; if he is not and if the person arresting has made a mistake, then section 34 does not authorize what he has done. But the scope and even the subject-matter of the two sections is entirely different. Here the accused was found committing an offence and section 34 authorized the acts of the Inspector.

The appeals must be dismissed and the convictions and sentences must be affirmed.

Affirmed.