

1969

Present : Wijayatilake, J.

W. H. AGNES NONA, Appellant, and PALIPANA (S. I. Police),  
Respondent

*S. C. 413/68—M. C. Galle, 32796*

*Brothels Ordinance—Section 2 (a)—Offence of keeping or managing a brothel—Sentence of imprisonment—Duty of Court to exercise its discretion on proper material.*

Before an accused is sentenced to a term of imprisonment under the Brothels Ordinance, the trial Court is expected to exercise its discretion on proper material, in the circumstances of each case.

**A**PPEAL from a judgment of the Magistrate's Court, Galle.

*H. Rupasingha*, for the accused-appellant.

*Shibly Aziz*, Crown Counsel, for the Attorney-General.

October 1, 1969. WIJAYATILAKE, J.—

The accused has been charged with keeping or managing a brothel an offence under Section 2 (a) of the Brothels Ordinance. She was convicted and sentenced to six months rigorous imprisonment and a fine of Rs. 500. She was also bound over for a period of twelve months in a sum of Rs. 300.

Learned Counsel for the appellant submits that the only evidence led by the prosecution in regard to the charge is that of two accomplices. On their evidence, it would appear that they were common prostitutes and in those circumstances the version given by them has to be assessed with great care and caution. However, on a perusal of the evidence, particularly that of the accused herself, I am satisfied that the learned Magistrate has arrived at a correct verdict. He has stressed the fact that the witnesses are not of sound moral character, but that in a case of this nature it would be difficult to expect better witnesses and with the necessary care and caution he has assessed the evidence.

There is nothing against the accused and learned counsel for the appellant submits that the learned Magistrate has chosen to impose a sentence of imprisonment rather than a fine only although this is a first offence, without giving adequate reasons for the same. He has referred me to the case of *Podinona Perera v. Haniffa*<sup>1</sup> where Swan J. held that "where a magistrate chooses to impose a sentence of imprisonment rather than a fine for a first offence under the Brothels Ordinance, he must give reasons for so doing or at least the proceedings must show that he has exercised his discretion properly".

<sup>1</sup> (1953) 56 N. L. R. 165.

On a reference to the Brothels Ordinance, it would appear that even on a second or subsequent conviction under this Ordinance, the Magistrate is given the same discretion. Thus it would seem that the Legislature has thought it fit to stress that before an accused is sentenced to a term of imprisonment under the Brothels Ordinance, he is expected to exercise his discretion on proper material, in the circumstances of each case. In the instant case, after conviction, the prosecuting Inspector of Police had mentioned that the accused had escaped a charge against her all these days although she was carrying on this trade on a large scale in the heart of the Galle city. This statement appears to have impressed the learned Magistrate. However, it is strange why the Galle Police was not sufficiently vigilant in checking the trade carried on by this woman if it was on such a large scale and why the Police had not taken any action till their services were called for by the Probation Department in this case.

In view of the fact that there is nothing against this woman, I delete the sentence of imprisonment and impose a fine of Rs. 500 in default six weeks rigorous imprisonment. Also acting under Section 2 of the Brothels Ordinance, I order her to enter into a bond in a sum of Rs. 500 with one or two sureties to be of good behaviour for a period of twelve months, in default of which she shall serve a period of three months rigorous imprisonment.

*Sentence reduced.*