

1960

Present : T. S. Fernando, J.

A. G. FERNANDO, Appellant, and THE GOVERNMENT AGENT,
KANDY, Respondent

S. C. 21—M. C. Panwila, 1307

Motor vehicle—Charge of possessing a lorry without licence—Failure of accused to give notice of non-user—Inference of guilt—Motor Traffic Act, No. 14 of 1951, ss. 16, 17, 18, 25 (1), 37.

In a prosecution for using a motor vehicle without revenue licence in contravention of section 25 (1) of the Motor Traffic Act the sole circumstance that the accused had failed to give notice of non-user for the year in question is not material if the accused establishes that the vehicle had already been dismantled or rendered unserviceable and that what he possessed on the date specified in the charge had ceased to be a motor vehicle as contemplated by the Act.

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

No appearance for the accused-appellant.

M. M. Kumarakulasingham, as *amicus curiae*, at the instance of the Court.

T. M. K. Seneviratne, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 13, 1960. T. S. FERNANDO, J.—

This appeal raises a point of some interest to owners of motor vehicles, particularly motor vehicles which have become unserviceable.

The appellant is the registered owner of motor lorry bearing distinctive number IC. 512, the date of the first registration being 16th August 1949. Being a heavy oil motor vehicle, the appellant as registered owner was liable to pay, in addition to the licence fee for the yearly revenue licence under the Motor Traffic Act, 1951, the tax imposed by the Heavy Oil Motor Vehicles Taxation Ordinance (Cap. 190). On 27th October 1956 he applied to the Government Agent for a waiver of the heavy oil tax as from 15th December 1956 "as the vehicle is being scrapped"—to use the language of the appellant appearing in his application. The Government Agent caused an investigation to be made by the Police into the condition of the vehicle and waived the tax as from 15th December 1956 and that tax has not been claimed thereafter from the appellant.

The appellant gave notice of non-user for the year 1957 as required by section 37 of the Motor Traffic Act, 1951. He failed to give a similar notice in respect of the year 1958, but he has again given (on 30th December 1958) notice of non-user P.2 in respect of the year 1959. In P.2 which is the printed form supplied by the licensing authority the appellant states that he does not intend to use the vehicle "because the vehicle has been scrapped". The charge framed in the present case against the appellant was that of possessing on 1st January 1958 motor lorry bearing number IC. 512 for which a revenue licence was not in force, a contravention of section 25 (1) of the Act. In view of the charge which related to the lack of a revenue licence for the year 1958, a notice of non-user for 1959 is irrelevant. There was admittedly no notice of non-user given for 1958, but the prosecution conceded that for the previous year (1957) a valid notice of non-user had been given to the licensing authority. This notice must have been given before 1st January 1957, but it was not produced by the prosecution. Had it been produced, the Court would have been in a position to examine the reason, if any, given by the appellant for the non-user. This notice must have been given about the time the appellant made application for a waiver of the heavy oil tax in which application made in October 1956 he referred to the imminent scrapping of the vehicle. Whether or not the appellant referred in the notice of non-user in respect of the year 1957 to the scrapping of the vehicle, it has been proved in this case that the licensing authority had been informed of the scrapping of the vehicle and had caused an investigation to be made into the condition of the vehicle. The investigation was made by Police Constable Dharmalingam who testified that he made an inspection of the vehicle in 1956 at the Government Agent's request and found that the lorry had been dismantled, that it was not serviceable and that it was not possible in his opinion to make it serviceable. The Village Headman of the area also testified that the lorry was unserviceable and that he had not seen the lorry running on

the road in 1958. On the evidence in the case the only finding that could have been reached in regard to the condition of this motor vehicle in 1958 was that it was not serviceable.

Section 18 of the Act requires the Registrar to cancel the registration of a motor vehicle if he is satisfied that the vehicle has been permanently removed from Ceylon, or destroyed, or dismantled and broken up or otherwise rendered permanently unserviceable. The prosecution appears to have contended in the Magistrate's Court that the appellant failed to apply for cancellation of the registration referred to in section 18, and the learned Magistrate in his order states that if the vehicle is unserviceable it is for the registered owner to get the registration cancelled "thereby putting once and for all an end to any doubt that he is in possession of that vehicle which is unserviceable". It is not necessary for the purposes of the present appeal to consider the question whether a cancellation of the registration of a motor vehicle must be preceded by an application therefor made by the registered owner. The prosecution in this case relying on sections 16 and 17 of the Act under which the registered owner for the time being is deemed to be the owner of the motor vehicle claimed to maintain the charge framed against the appellant on the sole circumstance that he had failed to give notice of non-user for the year in question, viz. 1958. As the only finding of fact which the Court could have reached on the evidence in the case in regard to the condition of the "vehicle" was that it had been either dismantled or rendered unserviceable, that finding in my opinion disposed of the allegation in the charge that the appellant possessed this lorry on the date specified, viz. 1st January 1958. What the appellant possessed on that date were certain parts of the lorry; he possessed a dismantled lorry, a lorry which had been rendered unserviceable, the circumstances strongly indicating that it had been rendered permanently unserviceable; in short, what the appellant possessed on 1st January 1958 had ceased to be a motor vehicle as contemplated by the Act.

The prosecution therefore failed to establish the charge laid against the appellant and he should, in my opinion, have been acquitted. The conviction and sentence are set aside.

I should add that I am grateful for the assistance given by learned counsel who appeared as *amicus curiae* at the instance of the Court.

Appeal allowed.

