

1930

Present : Maartensz A.J.

SOMASUNDERAM v. HAMIDU.

696—*P. C. Puttalam*, 13,752.*Opium—Unlawful possession—Burden of proof—Opium prescribed to patient—Ordinance No. 5 of 1910, s. 5.*

Where on a charge of unlawful possession of opium the accused pleaded that he was a patient for whom opium had been prescribed by a vedarala,—

Held, that the burden was upon the accused to prove that opium was prescribed and that the quantity in his possession did not exceed the amount prescribed to be taken for a period of three days.

A PPEAL from an acquittal by the Police Magistrate of Puttalam.

Crossette Thambiah, C.C., for Crown, appellant.

September 24, 1930. MAARTENSZ A.J.—

The accused in this case was charged with possessing 626 grains of opium without a license from the proper authority in breach of section 5 of Ordinance No. 5 of 1910, an offence punishable under section 8 of the Ordinance.

The learned Police Magistrate accepted the accused's defence that he is a patient for whom opium was prescribed by a vedarala ten years ago and that the 626 grains of opium found in his possession

did not exceed the amount prescribed to be taken during a period of three days and acquitted the accused.

The complainant appeals from this order with the sanction of the Solicitor-General.

The defence set up to the charge is founded on section 5 (g) of the Opium Ordinance, 1910, which enacts as follows :—

“ From and after the said date it shall be unlawful for any person to have or to keep in his possession any opium except in the following circumstances, that is to say :—

(g) When it is in the possession of a patient in quantities not exceeding the amount prescribed to be taken during a period not exceeding three days.”

The burden of proving that the possession of opium was not unlawful is by reason of the provision of section 26 on the accused.

The mere fact that the accused is suffering from a disease for which opium might be prescribed is not a defence to the charge. There must be proof that opium was prescribed and that the quantity of opium in the accused's possession did not exceed the amount prescribed to be taken during a period of three days.

Opium cannot be lawfully purchased except under the provisions of section 4 of the Ordinance, that is to say, it must be obtained from an authorized vendor, from a registered medical practitioner, a vedarala, or a dispenser. To establish his defence the accused should have produced his prescription or proved that the opium had been dispensed by a registered medical practitioner or vedarala.

The evidence I have referred to has not been led by the accused and I am of opinion that he has not proved that he was entitled to have the opium in his possession.

I set aside the order appealed from and convict the accused and sentence him to pay a fine of Rs. 25, and in default of payment to simple imprisonment for fourteen days.

Set aside.

