

1940

Present : Wijeyewardene J.

GOVERNMENT AGENT, KANDY v. KARUNARATNE

410—M. C. Gampola, 19,076.

Motor Car—Charge of possessing a car without a licence—Use of car on highway not essential to constitute offence—Registered owner is deemed to possess car—Motor Car Ordinance, No. 45 of 1938, s. 29 (1) and (2).

Any person possessing a motor car for which a licence is not in force contravenes the provisions of section 29 (1) of the Motor Car Ordinance, No. 45 of 1938, even if the car has not been used on a highway during the material period.

Under section 29 (2) of the Ordinance the registered owner of a motor car shall be deemed, unless the contrary is proved, to possess the car within the meaning of section 29 (1).

[Section 29 (1) of the Ordinance enacts “no person shall possess or use a motor car for which a licence is not in force.”]

A PPEAL from an acquittal by the Magistrate of Gampola.

Nihal Gunasekera, C.C., for complainant, appellant.

No appearance for the accused, respondent.

Cur. adv. vult.

July 23, 1940. WIJEYWARDENE J.

This is an appeal with the sanction of the Attorney-General against the acquittal of the accused by the Magistrate of Gampola.

The proceedings in the Magistrate's Court were instituted on a written report by the Government Agent, Central Province. The charge as set out in the report was that the accused possessed on July 1, 1939, a motor car bearing registered number A 3056 for which a licence was not in force on that date, in contravention of section 29 (1) of the Motor Car Ordinance, No. 45 of 1938. The report contained further a certificate under section 160 (1) of the Ordinance to the effect that a sum of Rs. 20 was due from the accused as licence duty, for the second half of the year 1939, on the motor car in question.

A licensing clerk employed at the Kandy Kachcheri was the only witness for the prosecution. He stated that the accused was the registered owner of the vehicle and produced the relative certificate of registration. He stated further that a letter from the accused giving notice of non-user was received by the Licensing Authority on July 6, 1939.

The accused gave evidence to the effect—

- (a) that he has paid the licence duty up to June 30, 1939,
- (b) that he wrote a letter on June 30, 1939, to the Licensing Authority giving notice of non-user,
- (c) that he did not use the car after June 30, 1939.

Relying on *The Colombo Municipal Council v. J. A. Perera*¹ the Magistrate acquitted the accused as the prosecution failed to prove that the accused used the car on a highway at some time during the material period.

The authority cited by the Magistrate is a decision of this Court with regard to the interpretation of section 31 (1) of the Motor Car Ordinance, No. 20 of 1927. It was there held that the words "Motor Car" in section 31 (1) of the Ordinance meant a motor car used on a highway in view of section 2 of the Ordinance which read—

"Unless otherwise provided this Ordinance applies to a motor car only when on a highway."

The accused in this case is prosecuted under the Motor Car Ordinance, No. 45 of 1938, which came into operation on July 1, 1939. This Ordinance contains no provision similar to section 2 of Ordinance No. 20 of 1927. Now section 29 (1) of Ordinance No. 45 of 1938, which is the section governing the present case enacts that "no person shall possess or use a motor car for which a licence is not in force". There is nothing in the Ordinance compelling me to construe the words "motor car" in the section mentioned by me as meaning a motor car used on a highway. I hold therefore that any person possessing a motor car, for which a licence is not in force, contravenes the provisions of section 29 (1) of the present Ordinance even if the car has not been used on a highway during the material period.

¹ (1939) 40 N. L. R. 457.

The next question to be decided is whether the accused can be said to have possessed the car. This is a question which gives rise to a number of somewhat conflicting decisions under Ordinance No. 20 of 1927. But section 29 (2) of the present Ordinance has simplified the position by providing *inter alia* that the registered owner of a motor car shall be deemed, unless the contrary is proved, to possess the car within the meaning of section 29 (1).

I wish to add that if the accused's notice of non-user reached the Licensing Authority on or before June 30, 1939, the accused could have claimed the benefit of section 31 (2) of Ordinance No. 20 of 1927, in view of section 6 (3) of the Interpretation Ordinance (Legislative Enactments, Volume I, Chapter 2). The notice of non-user however reached the Licensing Authority after the new Ordinance came into operation.

The charge against the accused has therefore been proved.

I set aside the order of acquittal and send back the case to the Magistrate's Court with the direction to the Magistrate to record a verdict of guilty against the accused, pass an appropriate sentence against him and further order under section 160 (1) of the Ordinance a sum of Rs. 20 to be recovered from the accused as though it were a fine imposed by the court.

Set aside.

