

Present : Dalton J.

SILVA v. ABEYSEKERE.

39—P. C. Colombo, 43,471.

Criminal Procedure Code—Voluntary statement of the commission of offence—Evidence Ordinance, s. 157.

Where voluntary information, given to a police officer alleging the commission of an offence, was reduced to writing, evidence of such statement may be given under section 157 of the Evidence Ordinance.

APPPEAL from a conviction by the Police Magistrate of Colombo.

Garvin, for appellants.

Fonseka, C.C., for respondent.

February 15, 1929. DALTON J.—

The appellants have been convicted on a charge of selling and possessing ganja in contravention of the provisions of Ordinance No. 8 of 1912. He has appealed against that conviction on the ground that illegal evidence had been admitted by the Magistrate and that that illegal evidence has been considered by the Magistrate in deciding the case. It appears that after hearing evidence, including the evidence of the complainant, Excise Inspector Silva, the Magistrate called evidence and a witness produced an extract from the Information Book, which was the original complaint made by the Excise Inspector to the police under the provisions of section 121 of the Criminal Procedure Code. It has been urged on behalf of the appellants that this statement made by the Inspector at the police station was a statement made in the course of an investigation under chapter XII. of the Criminal Procedure Code, and, therefore, it was not admissible as evidence, but merely for the purpose of aiding the Magistrate in the inquiry or trial. The nature of that aid has been dealt with by this Court on a previous occasion, and it is quite clear that any statement that comes within the provisions of section 122 (3) is not admissible in evidence. I need only refer to the case of *King v. Cooray*¹ and the judgment of Mr. Justice Jayewardene in *Wickramasinghe v. Fernando*.² It has been urged for the respondent that this complaint to the police by the Excise Inspector is not a statement made in the course of any investigation under chapter XII., but information alleging the

¹ 28 N. L. R. 74.

² 29 N. L. R. 403.

1929
 DALTON J.
 ———
Silva v.
Abeysekere

commission of the offence, the receipt of which sets the police officer or inquirer upon his investigation to the charge. That would seem to be so if one would read sub-sections (1) and (2) of section 121 of the Code. This point has, however, already been decided by this Court and it has been held that a spontaneous statement, such as this complaint by Inspector de Silva made at the police station to a police officer, is not a statement which falls within section 122 (3) of the Criminal Procedure Code, but it is a statement the contents of which may be given in evidence for the purpose of corroborating the complainant's testimony as to the facts deposed to by him in evidence under the provision of section 157 of the Evidence Ordinance. The authority to which I refer is *King v. Pabilis*.¹

Under those circumstances it seems quite clear that the statement of the complainant admitted by the Magistrate at the end of the case was a statement which was properly admissible in evidence. Under the circumstances the ground of appeal cannot be sustained.

As regards the facts of the case, the Magistrate came to the conclusion that the sale and possession of ganja was properly proved. There was evidence to support both conclusions. There is no illegal evidence admitted. The appeal must, therefore, be dismissed and the conviction affirmed.

Affirmed.