

1939.

Present : Abrahams C.J.

SIVASAMPU *v.* CAROLIS APPU.\* 608—*P. C. Dandagamuwa*, 3,652.

*Prevention of Crimes Ordinance, No. 2 of 1926—Failure of convict to report departure from division—Meaning of word “move”—Breach of rule 38.*

Where a convict was charged with that he, being a person subject to police supervision and as such bound to report himself to the Inspector of Police, within whose division he resided, failed to report his departure to another division in breach of rule 38 of the rules made under section 4(1) of the Prevention of Crimes Ordinance, No. 2 of 1926.—

*Held*, that the word “move” in the rule meant change of one’s position whether for a permanent or indefinite period and was not equivalent to change of residence.

**A** PPEAL from an order of the Police Magistrate of Dandagamuwa.

*D. Jansze, C.C.*, for complainant, appellant.

No appearance for accused, respondent.

*Cur. adv. vult.*

January 27, 1939. ABRAHAMS C.J.—

This is an appeal under section 337 of the Criminal Procedure Code against the refusal of the Police Magistrate of Dandagamuwa to issue process against Ranasinghe Mudiyansele Carolis Appu to answer the charge that he, being a person subject to police supervision and, as such, bound to report himself to the Inspector of Police, Kuliya-pitiya, within whose division he resided, whenever he left his division, failed to report his departure to Unaliya in Narammala division, in breach of rule 38 of the rules made under section 4 (1) of the Prevention of Crimes

Ordinance, No. 2 of 1926. The accused is a convict and has not appeared nor is he represented but as this question is entirely one of law there is no reason why he should be brought before this Court.

Section 8 (1) of the above quoted Ordinance provides for police supervision and section 4 (1) (a) enables rules to be made regulating the supervision of persons subject to police supervision under the above quoted section. The relevant rule under which these proceedings were sought to be taken is rule 38 of the rules made on January 8, 1929. The relevant portion runs as follows:—

“Whenever he (the person sentenced to police supervision) shall change his residence from one division to another or move for any period whatsoever beyond the jurisdiction of the officer to whom he is liable to report himself within such first mentioned division, he shall at least 48 hours before changing his residence or so moving personally notify such change or such moving to the officer in charge of the Police Station, or in his absence to the officer acting for him or where there is no Police Station, to the Chief Headman of the division which he is leaving and shall within 48 hours of his arrival at his new residence or the place to which he has so moved report himself to the officer in charge of the Police Station or in his absence to the officer acting for him or where there is no Police Station to the Chief Headman of the division to which he has changed his residence or so moved.”

There is a further provision requiring him whenever he changes his residence or moves for any period whatsoever from one district to another at least 48 hours before changing his residence or so moving to personally notify such change or such moving to the Superintendent or Assistant Superintendent of Police of the district which he is leaving and shall report himself within 48 hours of his arrival and in the case of a change of residence thereafter once a month to the Police.

The accused in this case had to report himself at Kuliapitiya Police Station on the 2nd of every month. He reported himself on July 2, 1938, and again on August 2, 1938. On July 6, 1938, he was caught at Unaliya which is outside that police area.

The learned Magistrate does not agree that the accused was required by rule 38 to notify the Kuliapitiya Police Station before leaving the area. He contended that the word “move” does not have the connotation of the word “leave”. He says the fact that it is employed in the rule after the expression “change of residence”, gives to it the same meaning as the words “change of residence” because as it is a general expression following after a specific expression it should on the *ejusdem generis* rule have a limiting meaning. He also quotes his dictionary which informs him that one of the meanings of the word “move” in its intransitive sense is “change one’s residence”.

Now before considering the application of the *ejusdem generis* rule in the construction of statutes one has to consider whether there is anything to interpret. In other words, is there any reason why the plain ordinary meaning of the word “move”, that is to say, change one’s position, whether for a permanent or an indefinite period, should not be accepted. If in the construction of any particular word the employment of it in its

plain ordinary meaning violates one of the rules of construction and when it cannot be given its plain ordinary meaning, because that would create an ambiguity, then no doubt it is necessary to give it a suitable meaning and in that event, of course, the *ejusdem generis* principle of construction can be followed. But I can see no reason why the plain ordinary meaning which contrasts actual change of position, no matter for what period, with change of residence, which is movement in fact for a definite purpose should not be accepted. I do not know what the Magistrate's notion of the genus which includes both change of residence and movement can be, but it would appear to me that "to move" is the genus of which "change of residence" is the species. To change one's residence would be to move from one place to another for the purpose of residing, that is to say, taking up one's habitation. If "to move" were to be used in the sense of changing one's residence it would seem hardly necessary that the rule should be drafted in the way that it is. But manifestly on a reading of the rule itself they are intended to be contrasted because it appears that on a change of residence notification is to be made once a month, whereas in the case of moving for any period, the person concerned must merely report himself within 48 hours of his arrival.

The Magistrate seeks to interpret the word "move" as equivalent to a "change of residence" temporarily or permanently by a *reductio ad absurdum*. For instance, if a man under police supervision were walking along the boundary and were driven over the limits of that area by *force majeure* he would have committed that offence. The simple answer to that is that it is very difficult to see a police officer placing such an absurd charge before a Magistrate or a Magistrate taking such a charge seriously. The obvious intention of the rule is that persons of criminal tendencies who are placed under police supervision should not deliberately move outside the area where that supervision is exercised without notifying the police of both areas, otherwise crime is facilitated. It does not require residence to enable the commission of crime.

The appeal is allowed and the proceedings must continue.

*Appeal allowed.*