

1949 *Present* : **Wijeyewardene C.J. and Canekeratne J.**

ATTORNEY-GENERAL, Appellant, and JOHAR *et al.*,
Respondents

S. C. 1,521—M. C. Colombo, 44,680

Betting on Horse Racing Ordinance—Search of premises—Inspector—Not in charge of station—Search regular—Chapter 36—Section 15 (2) as amended by Ordinance No. 55 of 1943.

The Police officer empowered to make a search under section 15 (2) of the Betting on Horse Racing Ordinance need not be an officer in charge of a Police Station.

Sabapathy v. Richard (1948) 49 N. L. R. 406, overruled.

APPPEAL from a judgment of the Magistrate, Colombo. This case was referred to a Bench of two Judges by Jayetileke S.P.J.

F. B. P. Jayasuriya, Crown Counsel, for the Crown.

E. B. Wikramanayake, K.C., with H. W. Jayewardene, for the accused respondents.

Cur. adv. vult.

July 22, 1949. WIJEYWARDENE C.J.—

The two accused were charged with having committed certain offences punishable under section 10 (2) of the Betting on Horse Racing Ordinance as amended by Ordinance No. 55 of 1943.

Inspector Thiedeman, the Officer-in-Charge of the Cinnamon Gardens Police Station, stated in the course of his evidence that the premises and the two accused mentioned in the charges were searched by two Sub-Inspectors of Police who were not in charge of a Police Station. Thereupon, the Magistrate discharged the accused, as he thought that, in the absence of a search warrant, the search could not be made by an officer who was not in charge of a Police Station.

The relevant words in section 15 (2) of the Betting on Horse Racing Ordinance as amended by Ordinance No. 55 of 1943 are :

“ Where a Police Officer of or above the rank of a Sergeant in charge of a Police Station has reason to suspect that any such offence is being committed he may exercise all or any of the powers which could have been conferred on him by subsection 1 ”.

These words empower “ a Police Officer of or above the rank of a Sergeant in charge of a Police Station ” to make the necessary search. The officers indicated by those words are :

- (a) a Police Officer of the rank of Sergeant in charge of a Police Station and
- (b) a Police Officer above the rank of a Sergeant in charge of a Police Station.

I am unable to hold that the officers referred to in (b) must be also officers in charge of a Police Station. In order to construe the section in that way, one has to read the section as if there was a comma or “ and ” after “ Sergeant ”.

The Magistrate has misdirected himself in holding that a Police Officer making a search under section 15 (2) must always be an Officer in charge of a Police Station.

I set aside the order of discharge and direct the Magistrate to proceed to hear the case according to law.

CANEKERATNE J.—I agree.

Sent back for trial.