

1961

Present : Weerasooriya, J.

MERCANTILE CREDIT LTD., Petitioner, *and* SUB-INSPECTOR
OF POLICE *and* another, Respondents

S. C. 301—Application for Revision in M. C. Colombo, 1246/C

*Excise Ordinance—Section 51 (2)—Confiscation of a motor car thereunder—Duty of
Court to hear owner.*

Confiscation of a motor car under section 51(2) of the Excise Ordinance
should not be ordered without the owner being given an opportunity of
being heard.

¹ (1939) 2 A. E.R.559.

APPPLICATION to revise an order of the Magistrate's Court, Colombo.

G. D. C. Weerasinghe, with *M. T. M. Sivardeen*, for petitioner.

J. A. D. de Silva, Crown Counsel, for 1st Respondent.

July 25, 1961. WEERASOORIYA, J.—

This application arises out of an order of confiscation of a motor car bearing registered No. 2 Sri 3172 which the Magistrate made in M. C Case No. 1246/C.

Four persons were charged in that case with the commission of the offence of having in their possession without lawful authority, on the 24th May, 1961, a quantity of unlawfully manufactured arrack which was transported in the aforesaid car. The accused pleaded guilty to the charge and the Magistrate made the order of confiscation after notice to the registered owner of the car, one B. Peter Perera, to show cause why the car should not be confiscated. On the 8th June, 1961, when the matter came up for enquiry, Peter Perera was absent and the Magistrate, purporting to act under section 51(2) of the Excise Ordinance, made order confiscating the car, and that it be sold by public auction and the proceeds credited to revenue.

It would appear that according to a statement made by Peter Perera to the Police, he had sold the car to one Nihal Salgado on the 25th of May, 1961, and was, therefore, not interested in showing cause against the confiscation of it. The present application for the revision of the order of confiscation is made by the Mercantile Credit Limited of Colombo on the ground that the absolute ownership of the car vested in the Company and that it had hired the said car to Peter Perera on a hire purchase agreement No. 2580/M dated the 23rd March, 1960. On the affidavit filed with the petition I am satisfied that the Mercantile Credit Limited was the absolute owner of the car at the time when the order of confiscation was made, and still is the absolute owner. It has been held by this Court in several cases, of which I need refer only to *Excise Inspector Fernando v. Marther & Sons*¹, that confiscation of a motor car under section 51(2) of the Excise Ordinance should not be ordered without the owner being given an opportunity of being heard, and that where the owner himself is not convicted of the offence, no order of confiscation should be made unless there is evidence that implicates him in the offence. In the present case as no notice was given to the petitioner of the proposed order of confiscation, I would on that ground alone set aside the order made by the Magistrate and remit the proceedings to him so that the petitioner may be given an opportunity of showing cause why the car should not be confiscated.

Case sent back for further proceedings.

¹ 1 O. L. W. 249.