

1954

Present : Sansoni J.

S. SINNATHURAI, Appellant, and SUB-INSPECTOR OF POLICE,
VAVUNIYA, Respondent

S. C. 560—M. C. Vavuniya, 26,585

Motor vehicle—Charge of using it without revenue licence—Burden of proof—Motor Traffic Act, No. 14 of 1951, ss. 25, 226—Evidence Ordinance (Cap. 11), ss. 105, 106.

In a prosecution for using a motor vehicle without revenue licence, in contravention of section 25 (1) of the Motor Traffic Act, the burden lies on the accused to prove that there is a licence in force, once evidence of user has been led by the complainant.

APPPEAL from a judgment of the Magistrate's Court, Vavuniya.

M. M. Kumarakulasingham, for the accused appellant.

H. B. White, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 16, 1954. SANSONI J.—

The accused in this case was charged with having driven a motor omnibus "on the public highway without there being in force in respect of the said omnibus a revenue licence" in breach of section 25 (1) of the Motor Traffic Act No. 14 of 1951 and thereby committed an offence punishable under section 226 of the Act. There was an alternative charge of having failed to carry the licence in a weather proof holder in breach of section 38 of the Act. The Magistrate convicted the accused on the first charge and acquitted him on the other after evidence had been given

by the prosecuting Inspector that the omnibus in question was stopped on a public road and no licence was produced although called for. No evidence was led by the defence.

In appeal it was contended that the prosecution had failed to prove the essentials of the offence set out in section 25 (1) which runs :—“ No person shall possess or use a motor car for which a licence is not in force ”. Must the prosecution in such a case prove that a licence is not in force in respect of the particular car or does the burden lie on the person who possesses or uses the car to prove that there is a licence in force ? I certainly think that the sub-section could have been worded more clearly, but I have no doubt that the burden lies on the possessor or user to prove that there is a licence in force, once evidence of possession or user has been led by the prosecution. It will be seen that this is a case of an absolute prohibition followed by an exception in the case of cars in respect of which there are licences in force. This construction of the sub-section is supported by the wording of sub-section (3) which reads :—

“ The possession by a dealer of a motor vehicle imported by him into Ceylon for the purposes of sale shall be deemed not to be a contravention of sub-section (1) so long as the vehicle remains unsold and is not used on any highway except under the authority of a dealer's licence. ”

Sub-section (5) reads :—

“ The possession of a motor vehicle by a person (not being a dealer) by whom the vehicle was imported into Ceylon shall be deemed not to be a contravention of sub-section (1), if, but only if, that person has applied for a revenue licence and such application has not been finally determined. ”

And sub-section (6) reads :—

“ The use of a motor vehicle which upon importation into Ceylon is used on a highway only for the purpose and in the course of removal from the Customs premises shall be deemed not to be a contravention of sub-section (1). ”

These sub-sections create further exceptions. The rule which applies is that a person claiming the benefit of an exception must prove the existence of circumstances bringing the case within the exceptions.

Another reason why I would hold that the burden shifted on to the accused after evidence of user had been led by the prosecution is the principle enunciated in *R. v. Turner*¹. Bayley, J.,—“ I have always understood it to be a general rule, that if a negative averment be made by one party, which is peculiarly within the knowledge of the other, the party within whose knowledge it lies, and who asserts the affirmative, is to prove it, and not he who avers the negative ”. These rules have been embodied in sections 105 and 106 of the Evidence Ordinance (Cap. 11).

For these reasons I affirm the conviction and dismiss this appeal.

Appeal dismissed.