

1940

*Present : Wijeyewardene J.*KULATUNGA *v.* PULLE.213—*M. C. Gampola, 18,627.*

*Weights and Measures Ordinance—Prosecution by Police Sergeant—Weights not found by authorized examiner—Offence in respect of the aliquot parts of a pound—Weights and Measures Ordinance, s. 16 (Cap. 127).*

A prosecution under the Weights and Measures Ordinance may be instituted by a Police Sergeant.

A charge under section 16 of the Ordinance may be maintained in respect of a false weight by a person, who is not an examiner of weights and measures.

A charge under section 16 of the Ordinance can be maintained in respect of the aliquot parts of a pound avoirdupois.

**A** PPEAL from an acquittal by the Magistrate of Gampola.

*E. H. T. Gunasekera, C.C., for appellant.*

No appearance for respondent.

*Cur. adv. vult.*

July 24, 1940. WIJEYWARDENE J.—

The complainant appellant has preferred this appeal with the sanction of the Attorney-General against the acquittal of the accused who was charged with having committed an offence under section 16 of the Weights and Measures Ordinance (Legislative Enactments Vol. III. Chap. 127).

When the accused appeared on summons the Magistrate read the charge to him from the summons. The statement of particulars as given in the summons has not been drawn up with due regard to the provisions of section 16 of the Ordinance; for instance, the summons states that the accused "possessed" certain weights whereas, according to the Ordinance, it should have been stated that the weights were found in his boutique. Section 187 of the Criminal Procedure Code gives a Magistrate the power to make the necessary amendments in the statement of particulars



contained in the summons before adopting it as the charge to be read to an accused. It is desirable that Magistrates should exercise some care with regard to the framing of charges. In this case, however, no objection has been taken to the charge itself by the accused's proctor, though he appears to have argued several points of law at the close of the trial, on behalf of the accused. Whatever defects there may be in the charge, the prosecution has led the necessary evidence to prove that the accused has committed an offence under section 16 of the Ordinance.

The prosecution called as witnesses the complainant, the Examiner of Weights and Measures and two constables, Perera and Devasagayam. According to their evidence the accused was during the material period a person selling and dealing in goods by weight. The complainant, a Police Sergeant, entered the accused's boutique on December 16, 1939, and found there three weights— $\frac{1}{2}$  lb.,  $\frac{1}{4}$  lb., and 2 oz.—which were unstamped. The accused was present at the time. The complainant took charge of the weights. Perera pasted labels on these weights and the complainant wrote on the labels the name of the accused and his own initials. They were then removed from the boutique to the Police Station. The weights were here made into a parcel which after being sealed by the complainant with the seal of the Police Station was kept in the strong box at the station. All this was done in the presence of Perera. On December 21, the complainant took the parcel out of the strong box and sent it by Devasagayam to the Kachcheri, where the parcel was received with seals intact by the Examiner of Weights and Measures. He found that the 2 oz. weight was too heavy and that all the weights were unstamped. When the weights were produced before the Magistrate, they had the labels put on them by Perera at the accused's boutique and the weights were identified by the complainant and Perera as the weights seized in the accused's boutique. The Examiner of Weights and Measures identified the weights in Court as the weights examined by him.

The defence called no evidence and the Magistrate acquitted the accused, his chief grounds being—

- (i) that there was "no evidence that the weights packed were the actual weights delivered to the Examiner."
- (ii) that the complainant "is not a person authorized under chapter 127 to bring this prosecution."
- (iii) that the weights were not "found" in the accused's boutique by a person authorized under chapter 127.
- (iv) that "there is no evidence that the Examiner of Weights and Measures was duly appointed by the Government."
- (v) that there could be no offence probably with regard to  $\frac{1}{2}$  lb.,  $\frac{1}{4}$  lb., and 2 oz. weights under section 16 as that section "makes no mention of the aliquot parts referred to in sections 9 and 12."

I find it difficult to appreciate the first reason given by the Magistrate in view of the evidence of the prosecution witnesses which stands uncontradicted. While it may be conceded that more stringent precautions



could have been taken by the Police to avoid even the bare possibility of any one entertaining the slightest doubt as to the identity of the weights, I do not think that in the circumstances of this case there could be any reasonable doubt that the weights "possessed" by the accused were the weights produced in Court.

With regard to the second ground it has to be observed that the Weights and Measures Ordinance does not state in express terms that any person is authorized to bring a prosecution. I do not see any reason why the complainant in this case—a Police Sergeant—could not have instituted the proceedings under section 148 (1) (b) of the Criminal Procedure Code especially in view of section 119 of the Code. I find that in 5 Supreme Court Circular 221, the complainant was an Inspector of Police while in 31 New Law Reports 255, the complainant was a Police Sergeant.

There have been conflicting views on the question of law involved in the third reason given by the Magistrate. Some of the earlier decisions favour the view that a prosecution under section 16 of the Ordinance could be entered, only if the weights were "found" by an Examiner of Weights and Measures. I think that in giving these decisions the effect of section 119 of the Criminal Procedure Code or the corresponding section of the earlier Code has not been fully considered. If I may say so, I agree with the opinion expressed by Lyall-Grant J. in *Daniel v. Sandiris Appu*<sup>1</sup> that a prosecution under section 16 of the Ordinance could be instituted even if the weights were found by a Police Sergeant. I may add that there is an expression of opinion even in some of the earlier cases (*vide* 2 Supreme Court Circular 180 at 181 and 5 Supreme Court Circular 221) that it is not necessary that the weights should be found by an Examiner of Weights and Measures.

With regard to the fourth ground it is only necessary to say that the Examiner has himself given evidence to the effect that he was appointed on December 18, 1939.

The last reason given by the Magistrate necessitates an examination of section 16 and section 9 of the Ordinance. It is true that section 16 requires that the impugned weight should have been intended to represent any of "the weights mentioned in the schedule" and that the relative part of the schedule is more or less the usual table of the avoirdupois weights. I do not think that this is a ground for thinking that section 16 does not penalize a person in whose boutique a "false"  $\frac{1}{2}$  lb. weight is found. The fallacy of such reasoning is due to a misconception of the phrase "the weights mentioned in the schedule." Section 9 of the Ordinance makes it clear that the "Weights mentioned in the schedule" include aliquot parts of a pound. The relevant passage of this section reads:—"All weights . . . . . intended to represent . . . . . any of the weights mentioned in the schedule, . . . . . of the weight of one ounce avoirdupois or more, shall have the number of pounds or aliquot parts or multiples thereof contained in every such weight stamped . . . . . on the top or side thereof . . . . ."

<sup>1</sup> (1929) 31 N. L. R. 255.

I set aside the order of acquittal and remit the case to the Magistrate to amend the charge and take any further proceedings that may be necessary on the amended charge. The evidence already recorded will be taken as evidence in the case but the accused will be given a further opportunity of cross-examining the witnesses already called. After completing such further proceedings the Magistrate will record his verdict and pass an appropriate sentence if he finds the accused guilty.

*Set aside.*