

1929

Present : Dalton J.

## PERERA v. NAGOOR PITCHE.

40—P. C. Kurunegala, 8,146.

*Excise Officer—Complaint by Police Sergeant—Authority to prosecute—Ordinance No. 8 of 1912, s. 46.*

A Police Sergeant is an Excise Officer competent to institute a prosecution under section 43 of the Excise Ordinance.

**A** PPEAL by the Solicitor-General from an order of the Police Magistrate of Kurunegala acquitting the accused.

*Crosette Tambyah, C.C., in support.*

January 28, 1929. DALTON J.—

The Solicitor-General appeals in this case. The complainant, a Sergeant of Police, brought a charge against the respondent with possessing 4 ounces of ganja in contravention of section 16 of the Excise Ordinance.

¶ After evidence was led to support the charge and the case for the prosecution closed, the Proctor for the accused addressed the Court and contended that the Police could not prosecute in proceedings under the Excise Ordinance. He referred to the case of *Meerigama v. John Singho and another*,<sup>1</sup> and also to a case which is not reported—S. C. No. 186 ; P. C. Kurunegala, No. 4,702—in which Schneider J. held that it had not been shown in that case that the Sub-Inspector of Police was an excise officer within the terms of the Excise Ordinance.

Following that last decision the Magistrate has stated he could not convict the accused, the Court having no jurisdiction to take cognizance of the offence, and the accused was therefore discharged.

Under section 49 the Magistrate has no power to take cognizance of an offence punishable under section 43 and other sections except *inter alia* on the report of an Excise Officer. The expression "Excise Officer" is defined in section 3 (2) amongst other persons as an officer invested with powers under section 7 of the Ordinance.

From the Excise Notification published in *Ceylon Government Gazette* of December 13, 1912, officers of the Police Force not under the rank of Sergeant are authorised to perform certain duties under certain sections, including section 7 of the Excise Ordinance.

It has previously been held in this Court, and I refer to the case of *Abeygunasekera v. Suwaris Appu*,<sup>2</sup> that an officer or other person appointed or invested with powers under section 7 of the Excise

<sup>1</sup> 4 T. L. R. 71.

<sup>2</sup> 16 N. L. R. 510.

Ordinance is an excise officer under the terms of section 49 of the Ordinance. However limited his powers may be, it is competent for such a person to institute prosecutions under section 43.

It is quite clear, therefore, that the complainant in this case, a Police Sergeant, has powers under the notification to which I have referred, and is an excise officer within the terms of section 49 of this Ordinance.

With regard to the case P. C. Kurunegala, No. 4,702, followed by the Magistrate, it is clear that the Court's attention was not drawn to the authority I have cited and the judgment of Pereira J.

With regard to the case cited by the Proctor in the lower Court, it would seem that Garvin J. did not deal with the objection raised that the prosecution had been instituted by a person who was not an excise officer. He stated he did not feel called upon to discuss the matter, although he pointed out that such an objection had been upheld by de Sampayo J. in *Miskin v. Fernando*.<sup>1</sup> A reference to that shows that the proceedings were instituted by a Police Constable.

I think I may take judicial notice of the fact that a Sub-Inspector is higher in rank than a Sergeant and a Police Constable is one who is lower than a Sergeant. A Police Sergeant comes within the appointments made by the Excise Notification of December 13, 1912, a Police Constable does not. This appeal must, therefore, be allowed, and the order set aside and the case sent back for the offence to be heard and for fresh adjudication to be made.

*Set aside.*

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DALTON J.

*Perera v.  
Nagoor  
Pitche*

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<sup>1</sup> 2 C. A. R. 34.