1942 *Present:* Soertsz J.

SANMUGAM PILLAI, Appellant, *and* FERDINANDS (S. I., POLICE), Respondent.

47—M. C. Matara, 41,390.

Criminal Procedure—Police officer a material witness—Propriety of acting as prosecutor—Criminal Procedure Code, s. 199.

A Police Officer can, under section 199 of the Criminal Procedure Code, conduct the prosecution in a case although he is a material witness for the prosecution.

APPEAL from a conviction by the Magistrate of Matara.

L. A. Rajapakse (with him *S. Alles*) for the accused, appellant.

H. W. R. Weerasooriya, C.C., for the complainant, respondent.

Cur. adv. vult.

March 9, 1942. SOERTSZ J.—

Accused, appellant, was charged with having refused to sell a bag of Milchard rice in circumstances that made the refusal an offence under the regulations referred to in the charge. He was convicted and sentenced to pay a fine of Rs. 500.

Counsel appearing for him submitted (*a*) that the conviction should be set aside on the ground that the prosecution was conducted by a material witness for the prosecution, (*b*) that the conviction is not justified on the evidence viewed in the light of probability, (*c*) that the fine was excessive.

In regard to (*a*) whatever one may think of a material witness conducting the case for the prosecution, that course is sanctioned by section 199 of the Criminal Procedure Code as pointed out in the unreported cases to be found in the S. C. M. of October 29, 1941, and July 30, 1941, in cases No. S. C. 640, M. C. Matara, and S. C. 368, M. C. Mannar, 1349, respectively.

In regard to (*b*) I am unable to agree with that contention.

In regard to (*c*) the evidence shows that the appellant is in the business in a big way. His daily turn over is said to be Rs. 1,500 or Rs. 2,000.

I am unable to take as lenient a view in the case of such a captain of industry, as I took in the case of a village boutique-keeper whose daily turn over could not have been more than five or ten rupees. However, having regard to the fact that this is the first offence of the appellant, I reduce the fine to Rs. 300. Subject to this variation the appeal is dismissed.

Appeal dismissed.