

1953

Present : Swan J.

D. F. SENARATNE, Appellant, *and* K. SIMON APPU,
Respondent

S. C. 1,200—M. C. Matara, 28,847

Motor Traffic Act No. 14 of 1951—Sections 38, 45 (1), 216, 226—Charge of unauthorised plying for hire—Driver accused—Right of owner of car to withhold production of revenue licence—Evidence Ordinance, s. 130 (1).

Where the driver of a private motor car is prosecuted for carrying passengers for hire in contravention of the conditions of the revenue licence issued in respect

of the car, the registered owner of the car is not entitled, when he is summoned to produce the revenue licence, to refuse to produce the licence on the ground that it would tend to incriminate him. If the owner refuses to hand over the document to Court, secondary evidence of the contents of the document would be admissible.

APPEAL from a judgment of the Magistrate's Court, Matara.

D. Jansze, Crown Counsel, with *R. S. Wanasundera*, Crown Counsel, for the complainant appellant.

S. Saravanamuttu, with *V. K. Palusunderam*, for the accused respondent.

Cur. adv. vult.

March 11, 1953. SWAN J.—

In this case the accused respondent was charged with, being the driver of a private motor car No. CN 2698, having carried two persons for hire in contravention of the conditions of the revenue licence for the time being in the said vehicle in breach of Section 45 (1) read with Section 216 of the Motor Traffic Act No. 14 of 1951, and that he thereby committed an offence punishable under Section 226 of the said Act.

The accused pleaded not guilty and the case went to trial. One of the witnesses for the prosecution was Newton Devanarayana, the registered owner of the said car. When he was called into the witness box he admitted to the Magistrate that he had been summoned to produce the revenue licence for the year 1952, issued in respect of the said car, and that he had brought it with him to Court but was not prepared to produce it as it would tend to criminate him as the owner of the car. The learned Magistrate taking the view that the production of the licence would tend to criminate the witness did not compel the production of the document.

I fail to see how the production of this document could tend to criminate the witness. Undoubtedly the owner of a private car would be guilty of an offence under Section 45 (1) if he contravened the conditions laid down in the revenue licence by permitting the car to be plied for hire, but the essence of the offence as against him would be, if he was not present at the time, that the act was done with his knowledge and consent or acquiescence or connivance. In my opinion the production of the licence in this case could not in any way tend to criminate the witness if he was charged with an offence under the Motor Traffic Act.

Section 38 provides that the revenue licence shall be carried on the motor vehicle and made available for inspection. The proviso to the Section states that it shall be removed from the vehicle and produced when required by a Court. I hold that the witness could not have

claimed exemption under Section 130 (1) of the Evidence Ordinance and that the learned Magistrate should have asked him to hand over the document to Court. If he refused to do so secondary evidence of the contents of the document would have been admissible. In point of fact there is such evidence on record and that the car in question was licensed to carry passengers other than for fee or reward has been established.

I set aside the order of acquittal and remit the case for trial in due course. As the learned Magistrate has taken a very strong view on the facts against the accused I think the new trial should be before another Magistrate.

Acquittal set aside.

