

Present : Akbar J.

DEWASUNDERA v. SINNATHANE et al.

1930

43—P. C. Mullaittivu, 10,725.

Search warrant—Affidavit of excise inspector—Hearsay evidence—Insufficient material—Excise Ordinance, No. 8 of 1912, s. 35.

The affidavit of an excise inspector, based on hearsay evidence, is insufficient material upon which a Magistrate would be justified in issuing a search warrant under section 35 of the Excise Ordinance.

A PPEAL from a conviction by the Police Magistrate of Mullaittivu.

R. L. Pereira, K.C. (with Ramachandra), for the accused, appellant.

March 14, 1930. AKBAR J.—

These three accused have been convicted for obstructing an excise inspector in the discharge of his public functions; viz., when he was searching the house of the first accused under a search warrant issued to him by the Magistrate under section 35 of the Excise Ordinance. If the Government Agent or the Magistrate, upon information obtained and after such inquiry as he thinks necessary, has reason to believe that an excise offence has been committed or is likely to be committed, he may issue a warrant for a search.

The whole question in this case hinges on whether the search warrant was properly issued in terms of section 35. The proceedings which led to the issue of the warrant clearly show that the prosecuting excise inspector swore an affidavit saying that he had received information which he reasonably believed to be true that Rasamma (wife of the first accused) was selling foreign liquor illicitly, and he therefore moved for a search warrant to search and

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inspect the house of the woman. This affidavit is dated December 16, 1929, and it was sworn to before Mr. Poulter, the Police Magistrate. On the same day a man called Sinniah Vytilingam gave evidence before the Magistrate saying that he was employed at the Jaffna Picture Palace and that he had bought brandy from a woman called Ponnammah and from another man called Kanapathy, upon which the Magistrate issued a search warrant to search the house of the above three persons, meaning thereby the woman Rasamma, the woman Ponnammah, and the man Kanapathy. He not only ordered the excise inspector to search the houses of these three persons, but also to enter all their houses in this connection. In my opinion the issuing of the warrant to search the house of Rasamma was illegal under section 35 in the absence of any proper evidence before the Magistrate. The prosecuting inspector's affidavit shows that he was relying on hearsay evidence, and on such evidence the Magistrate cannot and should not issue a warrant to search the house of the woman Rasamma for brandy or any other foreign liquor.

Therefore the whole question resolves itself into whether the procedure adopted at the inquiry justified the issue of the warrant. I think every effort should be made to impress upon Magistrates the importance of search warrants and that they should not be lightly issued. The Magistrate attempts to correct this grave error by supplementing the evidence of Vytilingam by stating as follows : " On December 16 Vytilingam was brought to me by the excise inspector ; I recorded his evidence and issued the search warrant on which the events of this case arose. The three names mentioned to me on that occasion by Vytilingam (as people from whom he bought foreign liquor) were (1) Ponnammah, (2) Kanapathy, and (3) Rasammah. In making the record of this information I find I have omitted the name of Rasammah ; the information I received, however, was against her too. The first accused is the husband of Rasammah. The search warrant applied to the premises which the excise inspector endeavoured to search. "

I need not go on to consider this case further, but I must mention that objection was taken to the Police Magistrate hearing this case on other grounds. The accused called two witnesses whose evidence has not been considered by the Magistrate at all. They are two outsiders. One calls himself the manager of the estates of Wijayawardene, Sedawatta, who was supervising the cutting of a statue of Buddha. He says that there was no obstruction of the kind specified by the prosecuting inspector. His evidence is corroborated by a man called Ramaswamy of India. In the circumstances I think the conviction cannot stand. I set aside the conviction and acquit all three accused.

Set aside.