

1948

Present: **Wijewardene J.**

KUMARAVELU, Appellant, and WIJEWERATNE
(INSPECTOR OF LABOUR), Respondent.

751—M. C. Colombo South, 548.

Keeping shop open in contravention of closing order—Duty of prosecution to prove that accused was occupier—Shops Regulation Ordinance, No. 66 of 1938, ss. 18, 23 (1), 31.

The accused was charged with—(a) having kept his shop open at 7.25 P.M. and (b) having permitted a customer to enter the shop after 6 P.M., and thereby committed offences punishable under section 23 (1) read with section 18 of the Shops Regulation Ordinance:—

Held, that the prosecution had to prove that the accused was the owner of the business of the shop or a person having the charge or the general management and control of the shop.

A PPEAL against a conviction by the Magistrate of Colombo South.

N. Nadarajah, K.C. (with him *N. Nadarasa*), for the accused, appellant.

G. P. A. Silva, C.C., for the Crown.

Cur. adv. vult.

October 1, 1945. WIJEWARDENE J.—

The accused was charged with—

(a) having kept his shop open at 7.25 P.M.; and

(b) having permitted a customer to enter the shop after 6 P.M.,

and thereby committed offences punishable under section 23 (1) read with section 18 of the Shops Ordinance, No. 66 of 1938.

Now, section 23 (1) of the Ordinance shows clearly that it is only "the occupier" of the shop who is guilty of an offence committed in breach of the provisions of section 18. "Occupier" is defined by section 31 to mean the owner of the business of the shop or any person having the charge or the general management and control of the shop.

¹ 11 C. L. W. 152.

² 7 N. L. R. 139.

³ 14 N. L. R. 353.

The prosecuting Inspector himself stated that the accused was the Secretary of the Co-operative Stores Society, Limited, which ran the shop and that one Kumaraswamy was the Manager, and further that Kumaraswamy was present when he entered the shop about 7.25 P.M. The accused gave evidence and said that he was an Honorary Secretary working at the store after 6.30 P.M. and that Kumaraswamy, the Manager, was in charge of the business. The accused was not cross-examined on that point.

I hold that the prosecution has not proved that the accused was the "occupier" of the shop and I acquit the accused.

Appeal allowed.
