

**SHANCHA
V
THE ATTORNEY-GENERAL AND ANOTHER**

COURT OF APPEAL
S.N. SILVA, J.
C.A. No. 142/87
M.C. KULIYAPITIYA 1818
3 OCTOBER, 1988

Excise Ordinance - Transport of unlawfully manufactured liquor - Excise Ordinance, Sections 46, 47 and 54 - Sentence - Confiscation of vehicle.

Held-

A sentence of one year's rigorous imprisonment and fine of Rs. 2000/- for transport of unlawfully manufactured liquor is unlawful, as under s. 47 of the Excise Ordinance, the accused is liable only to a maximum of six (6) months rigorous imprisonment and to a fine of Rs. 1000/- or both.

Section 54 provides for the confiscation of the excisable article or materials or the apparatus used in the commission of the offence. The motor cycle used for the transport is not liable for confiscation.

APPEAL from conviction and sentence by Magistrate's Court, Kuliyapitiya.

K.S. Tilakeratne for accused - appellant

Asoka Weerasooriya, S.C. for the State

October 03, 1988
S. N. SILVA, J.

In this case the accused-appellant was charged with having committed the offence of transporting 240 grams of unlawfully manufactured liquor in terms of sections 46 and 47 of the Excise Ordinance. The accused-appellant pleaded guilty to the charge and the learned Magistrate sentenced the accused to a term of 1 year's rigorous imprisonment and to pay a fine of Rs. 2000/- . The learned Magistrate also made order that the motor cycle which was used for the transport of the unlawfully manufactured liquor be confiscated.

In terms of section 47 of the Excise Ordinance the accused is liable only to a maximum of 6 months rigorous imprisonment and to a fine of Rs. 1000/- or both. The sentence imposed by the learned Magistrate is unlawful.

The learned Magistrate has not indicated the provision under which the motor cycle was confiscated. Section 54 provides for the confiscation of the excisable article or materials or the apparatus used in the commission of the offence. The motor cycle used by the accused-appellant would not be liable for confiscation in terms of this provision. Accordingly I would set aside the order of confiscation.

As regard the punishment that has been imposed, I note that the accused-appellant has been convicted on 3 previous occasions. However the offence and the sentences imposed on those occasions are not on the record. In these circumstances I would set aside the term of 1 year's rigorous imprisonment and impose in its place a sentence of 6 months rigorous imprisonment suspended for a period of 5 years. The fine of Rs. 2000/- is also in excess of the maximum provided in the penal section. In the circumstances I set aside the fine of Rs. 2000/- and impose in its place a fine of Rs. 1000/- in default of payment of the fine the accused will serve a term of 6 weeks rigorous imprisonment. Subject to the foregoing variation, the conviction is affirmed and the appeal is dismissed.

*Sentence varied.
Confiscation of vehicle set aside.*