

In passing I wish to say a word about the way in which the Explosives Ordinance is described in the charges. It is referred to as "Chapter 140 of the New Legislative Enactments of Ceylon". The correct way to describe an Ordinance in the Revised Edition of the Legislative Enactments is by its short title. It is sufficient to refer to the Explosives Ordinance as "the Explosives Ordinance" without more. So in the case of any other Ordinance in the Revised Edition.

The appeal is allowed and the accused is acquitted.

Appeal allowed.

1949

Present: Gratiaen J.

WIJE, Appellant, and ABEYSUNDERA (Excise Inspector),
Respondent

S. C. 695—M. C. Teldeniya, 6,379

Sentence—Imposition of fine without imprisonment—Means of accused should be considered—Time should be given for payment—Payment of Fines (Courts of Summary Jurisdiction) Ordinance, No. 49 of 1938.

The terms of the Payment of Fines (Courts of Summary Jurisdiction) Ordinance are specially designed to give a convicted person, in cases where the imposition of a fine is thought to be appropriate, an opportunity of paying within a reasonable time an amount which is fixed with reference to his means.

APPPEAL from a judgment of the Magistrate, Teldeniya.

T. B. Dissanayake, with *V. S. A. Pullenayagam*, for the accused appellant.

A. Mahendrarajah, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 14, 1949. GRATIAEN J.—

The accused in this appeal is 17 years old. He has been convicted of two offences punishable under the Excise Ordinance, namely of possessing a small quantity of fermented toddy in excess of the permitted amount, and of having been tempted to sell a part of it to a decoy for cents 25. He was sentenced on each count to pay a fine of Rs. 250 or in default to undergo a term of six weeks rigorous imprisonment to run consecutively.

On the merits I am satisfied that the charges have been clearly proved, and the convictions must therefore be affirmed. The appeal against the sentences remains for consideration.

No previous convictions had been recorded against the appellant, and having regard to his age, the learned Magistrate rightly decided that the imposition of a fine in lieu of a sentence of imprisonment would meet

the ends of justice. It is therefore unfortunate that before fixing the amount of the fine the salutary and indeed the imperative requirements of the Payment of Fines (Courts of Summary Jurisdiction) Ordinance, No. 49 of 1938, were not consulted and applied. This Ordinance has been substantially taken over from the Criminal Justice Act, 1914 of England, and its terms are specially designed to give a convicted person, in cases where the imposition of a fine is thought to be appropriate, an opportunity of paying within a reasonable time an amount which is fixed with reference to his means. The procedure prescribed enables the offender to avoid the alternative sentence of imprisonment which has in all the circumstances of the case been regarded by the Magistrate to be less appropriate. It is for this reason that section 2 requires that *the means of the offender* among other factors shall be taken into consideration in fixing the amount of the fine, and that section 3 makes it obligatory that *time shall be given* for the payment of the fine (by instalments in suitable cases) unless the Court is satisfied that he has sufficient means to pay the amount forthwith or that he has no fixed abode or that other reasons exist (the nature of which *shall be recorded*) why the time for payment should not be postponed. Section 8 lays down for very obvious reasons special conditions to protect young persons in cases where fines are imposed. Indeed, the entire Ordinance abounds in beneficial provisions which, however irksome they may prove to those who officiate in a busy Court, should not be neglected or ignored if avoidance of the imprisonment of first offenders and young delinquents in minor offences is recognized as one of the ends of justice.

In the present case the accused was ordered to pay a sum of Rs. 500 forthwith by way of fine without any inquiry as to whether he possessed the means to do so. On the failure of this young man to achieve the impossible he was transported from Teldeniya to Kandy, and committed to prison. He filed an appeal against the convictions and sentences, but it took some days before his relations could find an accommodating bailsmen to procure, no doubt for a suitable consideration, his release pending this appeal by furnishing security in the sum of Rs. 1,000 to abide the decision of this Court. In the result, the accused has already spent a short and, I fear, unprofitable period as an inmate of an overcrowded prison. I do not therefore consider that any further punishment is called for, and I accordingly set aside the order requiring him to pay a fine of Rs. 500 as well.

I should like to be convinced that the provisions of the Payment of Fines Ordinance of 1938 are as well known as they ought to be. The amount of a fine must be fixed not only with reference to the gravity of the offence but to the ability of the offender to pay. Once the amount is fixed it is but right and it has now become an obligation imposed by law to give the offender sufficient time to make the payment. Otherwise it might often happen that, as in this case, a man is unnecessarily sent to prison at the public expense without corresponding benefit to the individual concerned.

Convictions affirmed.

Sentence of fine set aside.