

IN RE JOHN MATHEW

COURT OF APPEAL.

SENEVIRATNE, J. (PRESIDENT, C/A) AND JAMEEL, J.

C.A. 1307/85—M.C. MALIGAKANDE 55238.

NOVEMBER 22, 1985.

Children and Young Persons Ordinance, section 23 (2) – Default sentence of imprisonment on young person.

A young person should not be ordered to be imprisoned for any offence or committed to prison in default of payment of fine unless the Court certifies that he is of so unruly a character that he cannot be detained in a remand home or certified school or that he is, so depraved of character that he is not a fit person to be so detained.

Revision by Appeal Court of sentence imposed by the Magistrate of Maligakande Magistrate's Court.

Accused John—present.

Nihal Jayasinghe, S.C.C. for Attorney-General.

T. B. S. Wijeyakoon, Probation Officer, Colombo—present.

November 22, 1985.

SENEVIRATNE, J. (President, C/A)

This case record was called by this Court from the Magistrate's Court, Maligakande as the Commissioner of Prisons has through the Ministry of Justice brought to the notice of this Court that a child under 16 years has been sentenced to jail, and that in terms of section 29 of the Rules promulgated in the Prisons Ordinance Subsidiary Legislation of Ceylon, Volume I, Chapter 54 this accused cannot be admitted to prison. Rule 29 states "that the Commissioner of Prisons should bring to the notice of the Governor without delay the case of any person under the age of 16 years who may be sentenced to imprisonment and who should in his opinion be discharged". The Commissioner of Prisons has got the accused examined by the Prisons Medical Officer and on the report filed of record he has certified that this accused is less than 16 years old. Giving the benefit of the doubt to the accused the court has to proceed on the basis that the accused is about 15 years old.

The accused John Mathew has been charged in the Magistrate's Court, Maligakande in that on 20.9.1985 he had possessed 16 drams of unlawfully manufactured liquor, an offence under the Excise Ordinance. This accused has been produced in court on 4.10.1984 and the charge had been informed. He has pleaded guilty to the charge. The learned Magistrate has fined the accused Rs. 700/- and imposed a default sentence of 2 1/2 months imprisonment in default of payment of fine. The Court called for this record, to consider by way of revision the sentence passed. It has been established that the accused Mathew is a boy under 15 years of age and comes within the term of young person under the Children and Young Persons Ordinance Chapter 23. Section 23 (2) states that "a young person shall not be ordered to be imprisoned for any offence or be committed to prison in default of payment of fine unless the court certifies that he is of so unruly character that he cannot be detained in a remand home or certified school or that he is so depraved of character that he is not a fit person to be so detained". The learned Magistrate has not at all directed the mind of the court to this provision of this special law dealing with young persons. The fine imposed is itself an excessive fine, (as it has happened in this instance, this accused cannot pay the fine) and he seems to be a first offender. The learned Magistrate should have made use of the other salutary provisions of the Children and Young Persons Ordinance which sets out different modes of dealing with a young person found guilty of an offence. The court notes with regret that in passing sentence the learned Magistrate has not at all directed attention to the provisions of law dealing with an accused of this age. At sight the accused appears to be about 15 years of age even at present. If the learned Magistrate had doubt regarding the age of the accused the Magistrate ought to have got the accused examined by the Judicial Medical Officer. Further the law specifically provides that an accused of this age should be detained in a Remand Home or Certified School and not in the prison meant for adults.

The ultimate result of the learned Magistrate ignoring the provisions of law dealing with young persons, has been that this accused who is about 15 years of age has spent his jail term in the prison meant for adults, i.e. Welikada Prisons and is due to be discharged tomorrow after serving one month and eighteen days. The sentence passed on the accused is pro forma set aside which of course is not a consolation to this boy who has spent this period of time in an adult

prison. On being questioned by Court, the accused states that he is selling unlawfully manufactured liquor for a Mudalali and that he was caught in the act of transporting the same. This is, in the view of this Court, a fit instance in which the Magistrate should have considered in dealing with the accused under the Probation of the Offenders Ordinance.

The jail sentence imposed on the accused is pro forma set aside and the Prisons is directed to immediately release this accused in respect of this case. If he is to be detained in respect of any other case, the Prisons is ordered to produce this accused in the Magistrate's Court where any case is pending, forthwith, and obtain an order to detain this accused in the Remand Home for Young Persons pending the trial.

JAMEEL, J. – I agree.

Jail sentence pro forma set aside.
