

1968

Present : de Kretser, J.

M. T. IDROOS, Petitioner, and THE COMMISSIONER OF
INLAND REVENUE, Respondent

S.C. 235—*Application in Revision in M.C. Colombo, 4217/A*

*Inland Revenue Act No. 4 of 1963—Section 111(6)—Proceedings before
a Magistrate for recovery of tax—Scope of Magistrate's power to
adjourn the matter.*

Where, in proceedings before a Magistrate for the recovery of income tax, the person proceeded against seeks an adjournment in terms of section 111 (6) of the Inland Revenue Act, No. 4 of 1963, the Magistrate has no power to grant adjournments in broken periods.

APPPLICATION to revise an order of the Magistrate's Court, Colombo.

M. S. Osman, with M. A. Mansoor, for the petitioner.

Shiva Pasupati, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 25, 1968. DE KRETSER, J.—

This matter came up before me by way of revision. The facts are as follows:—

The petitioner Idroos came before the Chief Magistrate Colombo on 14.3.68 on a summons issued by the Chief Magistrate consequent on the receipt of a certificate filed by the Commissioner of Inland Revenue certifying that Idroos had defaulted in paying tax to the tune of Rs. 13,544.00, and moved for an adjournment under the provisions of Section 111 (6) of the Inland Revenue Act No. 4 of 1962. The Magistrate gave him an adjournment up to 10.4.68 which is a period of 27 days. On 10.4.68 the petitioner was absent. The journal entry is silent on the point but the Magistrate's subsequent order makes it clear that on that day a medical certificate dated 9.4.68 certifying that Idroos had been under treatment for coronary insufficiency from 20.3.68 was handed in. From an affidavit filed by the Commissioner of Inland Revenue, I am satisfied that the petitioner had on 9.4.68 written to the Commissioner that he was unable to submit his objections owing to illness. On 9.4.68 the Commissioner of Inland Revenue had in terms of Section 111(7) sent in his certificate that the petitioner had not raised any objections before him and this certificate was also before the Magistrate

on 10.4.68. The Magistrate directed that this case be called on 6.5.68. He says in his subsequent order that this was in view of the medical certificate filed. On 6.5.68 the petitioner was present and was represented by Counsel. The Commissioner of Inland Revenue was also represented by his legal officer. The main point among other points urged was the only point now urged before me. It was that the Magistrate had the right and should have exercised the right to give further time to the petitioner to raise his objections before the Commissioner.

Mr. Osman for the petitioner submitted before the Magistrate and also before me that the Magistrate had the right to at least give three more days in that in the first instance he had given only 27 days though he had the right to give up to 30 days. The Magistrate was of the view that he had no power to give the 30 days referred to in broken periods and that the section obviously contemplated a continuous period not to exceed 30 days granted at his discretion. I am in entire agreement with the Magistrate in regard to his observations on the point. In my opinion the only discretion the Magistrate had in the matter was in regard to the period of time which he would grant in the first instance when in terms of Section 111 (6) the application for time was made to him. His discretion in the matter was only in regard to the number of days not exceeding 30 that he would give the petitioner to enable him to submit to the Commissioner his objections to the tax sought to be recovered. Once he had exercised his discretion, he had no further discretion in the matter. The fact that the Magistrate was presumably satisfied by the medical certificate which was in no way challenged, that the petitioner took ill on 20.3.68 and the fact that owing to the nature of that illness the petitioner could not do what he had taken time to do, do not permit the Magistrate to do anything more in the matter. What he was given the discretion to do in terms of the Act, he had done and thereafter the law had to take its course. It certainly seems incongruous that the obvious intention to give a defaulter a last chance to make his submission to the Commissioner should be lost to him owing to circumstances over which he had no control whatsoever, but whether in such cases the Magistrate if satisfied as to their genuineness should have discretion to give further time is a matter for the legislature to consider and make provision for.

In the instant case it appears a pity that the petitioner who apparently had facts at his command to persuade the Commissioner that there was an error in the assessment which was the basis on which he had moved the Court for time, should have lost six days without placing them before the Commissioner—

a state of things that apparently made at least the lawyer for the Commissioner to have suspicion that this was just another attempt to put off the day of reckoning.

The application made in revision is refused.

Application refused.

