

Present : Garvin J.

1928.

RAJAPAKSE *v.* MOHAMMADU.

468—*M. C. Colombo, 5,592.*

Motor Car—Failing to carry licence on the car—Conviction—Endorsement—Duty of Magistrate—Ordinance No. 20 of 1927, s. 39 (1).

Where the driver of a motor car was convicted of the offence of failing to carry on his car the licence of the said car in breach of section 36 (1) of the Motor Car Ordinance of 1927.

Held, that it was the duty of the Magistrate to endorse the particulars of the conviction upon the driver's certificate.

A PPEAL by the complainant from an order of the Municipal Magistrate of Colombo refusing to endorse on the certificate of the accused, the driver of a motor car, the particulars of a conviction under section 36 (1) of the Ordinance No. 20 of 1927. On his own plea, the accused was convicted under the said section of the offence of failing to carry on his car the licence of the said car.

Crossette Thambiah, C.C., for appellant.

H. V. Perera (with *Rajapakse*), as *amicus curiæ*, for the Automobile Club.

¹ 22 *L. J. C. B.* 225.

² 23 *L. J. C. P.* 108.

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The accused, being the driver of a private motor car bearing No. C 3188, was charged with failing to carry on his car the licence of the said car in breach of section 36 (1) of Ordinance No. 20 of 1927.

To this charge he pleaded guilty and was accordingly convicted and sentenced to pay a fine of Rs. 2.50.

The prosecuting police officer then moved the Police Magistrate to endorse the particulars of the conviction upon the certificate of competence granted to the accused driver.

It was urged that under section 39 of the Ordinance the Police Magistrate had no option in the matter and was required by law to make such an endorsement in every case in which a person was convicted of an offence against the Ordinance. The Police Magistrate has refused to accept this contention and the complainant has appealed with the sanction of the Solicitor-General.

Section 39 (1) is as follows :—

“ Any court before which a person is convicted of an offence against this Ordinance or any other written law in connection with the driving of a motor car—

(a) may, if the person convicted holds a certificate of competence, suspend the certificate for such time as the court thinks fit, or cancel the certificate and declare the person convicted disqualified for obtaining another certificate for a stated period, and, unless otherwise provided, shall endorse upon the certificate particulars of any order of the court made under this section and also, whether such an order is made or not, particulars of the conviction ; ”

The Police Magistrate read this section as placing upon him an obligation to make such an endorsement only in the case of an offence in connection with the driving of a motor car whether the offence be against this Ordinance or any other written law. If that was the intention of the Legislature it would only have been necessary to say that the obligation to make an endorsement arises when a person is convicted of an offence in connection with the driving of a motor car ; the words “ against this Ordinance or any other written law ” would not and I think should not have been given a place in the sentence. I do not however think that the words referred to are mere surplusage nor indeed having regard to the structure of the sentence, is it possible to treat them as such. It seems to me that it favours the construction for which the appellant contends, namely, that the offences contemplated are (a) offences against the Ordinance, and (b) offence against any other written law in connection with the driving of a motor car.

The Ordinance embodies the local law relating to motor vehicles and it is therefore understandable that in determining the cases to which the provisions of section 39 (1) are to apply the Legislature resolved that they should apply to all offences under the Ordinance and when bring within the section acts which are offences under any other written law imposed the limitation that they must be offences in connection with the driving of a motor car.

Section 39 (1) is in all probability based on section 4 of the Motor Car Act, 1903 (3 Edw. VII., c. 36), the corresponding words of which are as follows:—

“Any court before whom a person is convicted of an offence under this Act, or of any offence in connection with the driving of a motor car”

It is beyond question therefore that the provisions relating to the suspension, endorsement, &c., of licences are applicable in England to the case of a person who has been convicted (a) of an offence under the Act, or (b) of any offence in connection with the driving of a motor car. There is no reason to suppose that it was intended to depart from the policy of the corresponding provision of the English Act when section 39 (1) of the local Ordinance was drafted. The language of the section does not appear to me to indicate any such intention.

This interpretation of the Ordinance may as the Magistrate points out result in the endorsement of the certificate of a driver of a conviction which has little and possibly nothing to do with him in his capacity of holder of such a certificate.

It is conceivable that the provisions which the Legislature has enacted for the purpose of carrying out its policy in this matter are wider than necessary. But the language it has used is to my mind clear and requires a Magistrate when a person is convicted by him of (a) an offence against the Ordinance, or (b) an offence against any other written law in connection with the driving of a motor car, to endorse the particulars of the conviction upon his certificate of competence, if he holds one.

Inasmuch as this is a case of a conviction of the holder of such a certificate of an offence against “this Ordinance,” i.e., the Motor Car Ordinance, No. 20 of 1927, it is the duty of the Magistrate to endorse the conviction on his certificate.

The order of the Magistrate is set aside and the case sent back to him for the purpose indicated.

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Set aside.