

1931

*Present: Drieberg J.*KING *v.* MANIKAM *et al.*

51-55—D. C. (Crim.) Jaffna, 3,565.

Search warrant—Powers of search under the Opium Ordinance—Implied repeal of powers under the Police Ordinance, No. 16 of 1865, s. 59.

The enactment in section 22 of the Opium Ordinance, allowing the search for opium, bhang, and ganja only to Police Magistrates and police officers of a certain rank and prescribing the time within which such entry can be made, must be regarded as limiting the powers conferred by section 59 of the Police Ordinance.

A PPEAL from a conviction by the District Judge of Jaffna.

H. V. Perera, for the accused, appellants.

Pulle, C.C., for the Crown, respondent.

July 21, 1931. DRIEBERG J.—

The first and second appellants were convicted under section 323 of the Penal Code of causing hurt to a public officer to deter him from doing his duty and under section 163 of obstructing a public officer in the discharge of his duty.

¹ (1863-1868) *Ram.* 83.

² 25 *N. L. R.* 129.

³ 6 *C. L. R.* 171.

These offences are said to have been committed when the police were executing a warrant issued by the Police Magistrate for the search for ganja, bhang, and opium in "the house and premises of Manikam of Thavady, Kokuvil". After the evidence had been led of Inspector Stewart and Police Sergeant Amsa, Counsel for the appellants said that he accepted the facts as stated by Inspector Stewart and wished to discuss the law on which he based his defence that the resistance was justified. The learned District Judge then noted that it was not necessary to record further evidence. The statements of the appellants and the evidence of the doctor were read and the case for the prosecution closed. This was not satisfactory, for Counsel for the defence said nothing about the evidence of Police Sergeant Amsa. Though the charge of obstruction or resistance could be decided solely on the question whether the warrant was good, other questions arise in connection with the offence under section 223 of the Penal Code in which the evidence of Police Sergeant Amsa is necessary. The defence must be regarded as having accepted the evidence of Police Sergeant Amsa as well.

It was contended for the prosecution that the search was justified apart from the warrant, that the Inspector had authority to enter and search the premises without a warrant under section 22 of the Opium Ordinance, No. 5 of 1910; but that only authorizes entry between sunrise and sunset and there is no evidence of when Inspector Stewart entered.

Mr. Palle also relied on section 59 of the Police Ordinance, No. 16 of 1865, which gives a police officer the power to enter and inspect any part of premises in which he has reason to believe a crime has been committed. It was held by Phear C.J. and Clarence J. in *Michael v. Janis Appu*¹ that power could be exercised under this section only where causes manifest themselves to a police officer under such circumstances of urgency that it would not be reasonable for him to delay the search of the house for the purpose of previously arming himself with the necessary magisterial authority. Even if this is not the intention of this provision, the enactment in the later Ordinance, section 22 of No. 5 of 1910 allowing the search for opium, bhang, or ganja only to Police Magistrates and police officers of a certain rank and prescribing the time within which such entry can be made, must be regarded as qualifying and limiting the powers conferred by section 59 of Ordinance No. 16 of 1865.

Two objections are taken to the warrant; one is that it is uncertain which house was to be searched as the warrant mentioned two villages, Travady and Kokuvil; the other objection is that as the warrant does not give the name of Manikam's father it is not clear on the face of it against whom it is directed.

In the note made by the Judge of Counsel's argument there is nothing about the first ground. In his judgment he says the contention was that the warrant was defective as the reference to the Police Vidahn's division "Kokuvil" was wrong and that it should have been "Inuvil". In the petition of appeal it is stated that Thavady and Kokuvil are distinct villages situated in separate headman's divisions. There is no proof of this. Police Sergeant Amsa was asked in cross-examination whether

¹ (1879) 2 S. C. C. 42.

Thavady and Kokuvil were different villages and he said he did not know. So far as I can see the view taken by the trial Judge was that Kokuvil was mentioned as the headman's division within which Thavady lies, whereas it was within the headman's division of Inuvil. If there is only one village called Thavady the wrong statement of the division to which it belonged would give rise to no uncertainty; it is not said that there is another village of that name within the Kokuvil division. This objection must fail.

As regards the omission to give the full name of Manikam by prefixing his father's name or describing him as the son of a named person, it can be urged that the person against whom the warrant was issued was not properly named; but Police Sergeant Amsa who had applied for the warrant says he did not know whose son Manikam was. It was said by Counsel that it is a common name. This may be so, but there is no evidence that there is any other person of that name in Thavady, and in the absence of such evidence I cannot hold that there was any doubt as to the identity of the person named in the warrant as Manikam of Thavady.

I heard argument on the question whether if the warrant failed to describe the person with sufficient certainty it would not be merely irregular but wholly void, in which case the question would arise whether the officer executing it would be entitled to the protection afforded by the first part of section 92 of the Penal Code; this protection is given to a public servant who acting in good faith under the colour of his office does an act which may not be strictly justifiable by law. It was contended that this does not apply to a case where the warrant is wholly void for uncertainty—*Rex v. Hood*¹—and that further an officer who undertakes the execution of such a warrant does not act in good faith for he acts without due care and attention. This point has not attracted attention in the local cases cited to me. In view of my finding that the warrant is not defective it is not necessary to decide this point.

The appeals are dismissed.

Appeal dismissed.

