

1945

Present : Soertsz A.C.J.

PILLAI, Appellant, and SIRISENA (P. S.), Respondent.

1,125—*M. C. Chilaw, 26,955.*

Prevention of Crimes Ordinance (Cap. 18), ss. 5 and 6—Conviction of accused—Sentence of two years' rigorous imprisonment and two years' Police supervision—Validity of sentence.

Section 6 of the Prevention of Crimes Ordinance makes it a condition precedent to the imposition of the enhanced punishment provided for by that section that the Magistrate should pass a sentence other than imprisonment in respect of the offence charged.

There is nothing to prevent a Magistrate from combining the punitive powers given to him by sections 5 and 6.

A PPEAL from a conviction by the Magistrate of Chilaw.

Accused-appellant in person.

E. L. W. de Zoysa, C.C., for the Attorney-General.

October 19, 1945. SOERTSZ A.C.J.—

The accused-appellant was charged in the Magistrate's Court of Chilaw with dishonestly retaining a single-barrel breech-loading gun No. A 329852, valued at Rs. 75, property belonging to Mr. E. S. L. Perera of Kaluaripuwa, knowing or having reason to believe that the same was stolen property and with having thereby committed an offence punishable under section 394 of Chapter 15 of the Legislative Enactments. After trial the Magistrate convicted the accused of the offence charged and, it having been brought to his notice that the accused admitted five previous convictions, sentenced the accused to two years' rigorous imprisonment and two years' Police supervision. Although the Magistrate does not state in his order the provisions of law under which he purported to act in passing that sentence, it seems clear that he was acting under section 6 and section 5 of the Prevention of Crimes Ordinance, Chapter 18. But he appears to have overlooked the fact that section 6 makes it a condition precedent to the imposition of the enhanced punishment provided for by that section that the Magistrate should pass a sentence other than imprisonment in respect of the offence charged. So that in order to regularize the sentence passed by the Magistrate under section 6 it is necessary that it should be revised to the end that some punishment

other than imprisonment be imposed in respect of the offence itself. Accordingly I sentence the accused to pay a fine of Rs. 10 in respect of the offence and I leave intact the punishment which the Magistrate inflicted under section 6 of the Prevention of Crimes Ordinance as that was a matter which the Legislature had left in his discretion.

The next question that arises is whether the sentence passed by the Magistrate under section 5 of the Ordinance directing the accused to submit to two years' Police supervision may be legally passed. There is nothing positive in the various sections of this enactment to make it possible for the Magistrate to pass both a sentence of Police supervision, if that may be described as a sentence, as well as the enhanced punishment to which a man renders himself liable under section 6 in certain circumstances. But having regard to the fact that the proviso appended to section 5 expressly states that the provisions of section 5 shall not apply in the case of any person sentenced to preventive detention under section 7 of the Ordinance, it seems to follow by necessary implication that there is nothing to prevent a Magistrate from combining the punitive powers given to him by the two sections 5 and 6.

I would, therefore, dismiss the appeal, subject to the alteration I have made under section 6 of the Prevention of Crimes Ordinance for the purpose of regularizing the sentence passed by the Magistrate.

Appeal dismissed.

Sentence varied.
