

1962

Present : Abeyesundere, J.

B. P. PERERA, Appellant, and M. B. ABRAHAM (S. I. Police),
Respondent

S. C. 738/61—M. C. Colombo, 1456/C

Excise Ordinance (Cap. 52)—Section 54—Confiscation of a motor car—Legality

In an appeal from an order to confiscate a motor car in which pot arrack was transported—

Held, that the confiscation of the motor car was not warranted by the provisions of section 54 of the Excise Ordinance. Nor was there any evidence of the implication of the owner of the motor car in the offence with which the accused were charged.

APPEAL from an order of the Magistrate's Court, Colombo.

Colvin R. de Silva, with *A. R. M. Manzoor*, for the appellant.

H. B. White, Crown Counsel, for the Attorney-General.

May 23, 1962. ABEYESUNDERE, J.—

This is an appeal from an order to confiscate a motor car in which thirty gallons of pot arrack were transported.

The only section in the Excise Ordinance enabling the confiscation of things is section 54 (old section 51). According to sub-section (1) of that section, the excisable article, materials, still, utensil, implement or apparatus in respect of or by means of which an offence has been committed under the Excise Ordinance shall be liable to confiscation. Sub-section (2) of that section provides for the confiscation, inter alia, of any conveyance used in carrying any excisable article lawfully imported, transported, manufactured, had in possession, or sold along with, or in addition to, any excisable article liable to confiscation under that section.

The aforesaid section does not apply to the present case and the motor car in question cannot be confiscated thereunder. Moreover, as contended by counsel for the appellant, there is no evidence of the implication of the owner of the motor car in the offence with which the accused were charged. Nor is there any evidence to show that the driver of the motor car was an employee of the owner.

I hold that the order to confiscate the motor car is invalid and I set aside that order. The motor car is at present in the possession of the owner who has provided cash security for obtaining such possession. I order that the motor car be returned to its owner and that the cash deposited as security be refunded to him.

Order set aside.