

1969

Present : de Kretser, J.

A. NADARAJAH, Appellant, *and* GOVERNMENT AGENT,
JAFFNA, Respondent

S. C. 52/69—M. C. Point Pedro, 2399

Motor vehicles—Prosecution of registered owner for possessing a vehicle without a licence—Presumption of possession by registered owner—Rebuttability—Motor Traffic Act, s. 25 (2).

A person is not liable to be convicted of the charge of possessing a motor vehicle without a licence in contravention of section 25 (2) of the Motor Traffic Act if he proves that, although he is for the time being the registered owner, he neither used the vehicle nor was in possession of it at the time relevant to the charge.

APPEAL from a judgment of the Magistrate's Court, Point Pedro.

R. L. N. de Zoysa, for the accused-appellant.

Kosala Wijayatilake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

October 4, 1969. DE KRETZER, J.—

The Magistrate of Point Pedro (Mr. K. Viknarajah) convicted the Accused of the charge of possessing a motor vehicle for which a licence was not in force on 1.1.67. He fined him Rs. 10 in addition to sentencing him to pay the licence fee of Rs. 95 as a fine. The accused has appealed.

The Magistrate says, "Under Section 25 (2) (of the Motor Traffic Act) the person for the time being who is the registered owner shall be presumed to possess that vehicle unless the contrary is proved. The Accused has not proved anything to the contrary. I hold that the accused is presumed to possess the vehicle as he is the registered owner."

It appears to me that what the Magistrate meant to say is that as the presumption arising under the section had not been rebutted, he held that the vehicle was in the possession of the accused, the registered owner, who was therefore guilty of the offence.

The reason why he came to the conclusion of that "the accused has not proved anything to the contrary" is because he disbelieved T. Kanagaratnam, called for the Defence, who said that he was now the owner of the car in question having bought it on 1.8.65, and in fact had come to Court in it. He gave the history of how it came to be his as follows: the Accused had sold the car to one Ratnam, Ratnam sold it to Siviah Sivanandan, and he had bought it from Sivanandan. He did not send the relevant transfer to the Registrar until 30.11.66, and in sending it he put down the Accused as the previous owner. The Registrar wanted him, on 28.10.67, to get the signature of the Accused, and he contacted the Accused and the Accused said he would furnish the necessary information to the Registrar but he had not done so. In the result the car was still not registered in his name. Ratnam was also called for the Defence. He admitted that he had bought the car from the Accused and he sold it, he says, within a month of his purchase. He did not say to whom, nor was he asked.

The Magistrate says he does not accept the evidence of Kanagaratnam or Ratnam. He does not say why. It appears to me that Kanagaratnam's evidence that the car is in his possession should be accepted, more especially as no attempt was made to contradict that as far back as 30.11.66 he had claimed to be registered as the new owner, and that the Registrar had refused to do so without the signature of the Accused on the transfer form. The Registrar apparently had good reason for wanting that done, but the issue at this trial is one of possession.

The evidence called proves affirmatively who is in possession of this vehicle at the time relevant to this charge. That evidence rebuts the presumption under Section 25 (2) that the registered owner is in possession. The result is that the accused should not have been convicted for he neither used the vehicle nor was in possession of it.

The appeal that the conviction and sentence be set aside is allowed.

Appeal allowed.