

1953

Present : Swan J.

CICILIN PERERA, Appellant, *and* D. B. SAMARADIWAKARA
(S. I. Police), Respondent

S. C. 1,098—M. C. Colombo, 40,090

*Excise Ordinance (Cap. 42) - Authority of police officer to prosecute thereunder—
Sections 2, 43, 49.*

A police officer is an excise officer within the meaning of section 49 of the Excise Ordinance and is therefore competent to institute a prosecution under section 43 of that Ordinance.

APPPEAL from a judgment of the Magistrate's Court, Colombo.

B. E. de Silva, with *D. S. Nethsinghe*, for the accused appellant.

E. R. de Fonseka, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

March 2, 1953. SWAN J.—

The point urged by learned Counsel for the appellant is that there has been an irregularity in these proceedings which amounts to an illegality and that the conviction must be quashed.

The accused was charged with the sale of *an excisable article, to wit a quantity of arrack*, without a licence from the Government Agent in breach of Section 43 of the Excise Ordinance (Cap. 42)¹ and having thereby committed an offence punishable under Section 43 (g) of the said Ordinance. The prosecution was initiated upon a report by Sub-Inspector Samaradiwakara of the Mt. Lavinia Police. Learned Counsel for the appellant contends that the Court could not have taken cognizance of the alleged offence upon that report. He relies on Section 49 of the Ordinance which enacts that no Magistrate shall take cognizance of an offence punishable under Section 43 except on his own knowledge or suspicion or on the report of an Excise Officer.

This is not the first time that this point has been taken. It had been raised time and again, very often successfully, until the Crown appealed against the order of acquittal in *Perera v. Nagoor Pitche*¹. In that case it was brought to the notice of this Court that there was an Excise notification published in the *Government Gazette* of 13.12.1912 which authorized Police Officers not under the rank of Sergeant to perform certain duties under certain sections of the Excise Ordinance. It should be noted that in section 2 the expression *Excise Officer* is stated to mean a "Government Agent, Assistant Government Agent, or any Officer or person appointed or invested with powers under Section 7". Dakota J. in the course of his judgment referred to the case of *Abeygunasekera v. Suwari's Appu*² where it was held that an officer or other person appointed or invested with powers under Section 7 was an excise officer within the meaning of Section 49. He also referred to the case of *Sub-Inspector, Mirigama v. John Singho*³ upon which Counsel for the appellant relies. In that case Garvin J. dismissed an appeal by the Crown against an order of acquittal based on similar grounds. The learned Judge in so doing made reference to the judgment of de Sampayo J. in *Miskin v. Fernando*⁴. As Dalton J. pointed out the proceedings in *Miskin v. Fernando*⁴ were instituted by a Police Constable. It is clear that in *Sub-Inspector, Mirigama v. John Singho*³ Garvin J. did not consider who was an excise officer for the purposes of Section 49.

I find that the notification of 13.12.1912 has been superseded by a notification published in the *Government Gazette* of 8.12.1950 in which the authority is extended to all Police Officers. But learned Counsel for the appellant submits that I cannot take judicial notice of these *Gazette* notifications. On this point there cannot be any doubt because the Excise Ordinance has been amended by Ordinance No. 25 of 1938 and a new Section has been added, namely Section 58, which expressly requires a Court to take judicial notice of every excise notification.

The last submission of learned Counsel for the appellant was that the Sub-Inspector who reported the matter to Court should have asserted that he was an excise officer by virtue of the *Gazette* Notification. I do not think so, but even if he should have done that, the omission would be only a mere irregularity that would not vitiate the proceedings.

The appeal is dismissed.

Appeal dismissed.

¹ (1929) 30 N. L. R. 464.

² (1913) 16 N. L. R. 510.

³ (1926) 4 T. L. R. 71.

⁴ (1914) 2 C. A. R. 34.