

1955

Present: Fernando, J.

K. MUTHIAH, Appellant, and K. A. L. PERERA (Police Sergeant),
Respondent

S. C. 1,151—M. C. Nuwara Eliya, 11,454

Driving when drunk—First or second offence—Suspension of offender's driving licence—Motor Traffic Act No. 14 of 1951, ss. 133, 153, 218.

Under section 133 of the Motor Traffic Act a first offender's driving licence may be suspended for a period not normally exceeding six months for driving a motor vehicle when drunk, an offence punishable under section 218.

APPEAL from a judgment of the Magistrate's Court, Nuwara Eliya.

J. C. Thurairatnam, for the accused appellant.

Shiva Pasupati, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 13, 1955. FERNANDO, J.—

The accused in this case was convicted on his own plea of driving a motor vehicle under the influence of liquor, an offence punishable under section 218 of the Motor Traffic Act No. 14 of 1951. He was sentenced to pay a fine of Rs. 25 and his driving licence was suspended for a period of 18 months.

Counsel for the appellant has referred me to a judgment of my brother Swan in an unreported case *Caitan v. Sheriffdeen* (Application in Revision 389; M. C. Negombo 2103; S. C. Minutes 26.1.53). In that case Crown Counsel had conceded that the order suspending the licence for a similar offence had been made without jurisdiction, apparently for the reason that it was a first offence; and the order of suspension was set aside apparently in view of that concession.

Sub-section (2) of section 133 of the Act provides that where a driving licence of a person convicted of contravening section 153 contains at the time of the conviction not less than two and not more than four previous convictions for the same offence, the Court *shall* either cancel the licence or suspend the licence for a period between six months and two years. The view taken by Crown Counsel in the case to which I have referred was apparently that in the case of a breach of section 153, the only power of suspension is that conferred by section 133 (2). But sub-section (1) of the same section provides that in the case of *any* offence under the Act the Court may suspend the licence for a period not exceeding two years. Sub-section (1) has to be read "subject to the provisions of sub-section (2)", but in my opinion the effect of the sections read together is that whereas in the case of a first or second offence the power of suspension

is discretionary, a suspension or cancellation is compulsory under sub-section (2) in the case of a third or subsequent offence. Sub-section (2) does not in my opinion qualify the discretion to suspend in the case of a first or second offence.

It should be noted that the Legislature deals with the case of a third offence by insisting on a suspension for at least six months and I think that the intention thus expressed should be a fair guide as to the appropriate period of suspension in the case of a first offence, and that accordingly, unless there are special circumstances of aggravation, the period of suspension, if any, ordered for a first offender should not normally exceed six months. I would therefore affirm the conviction but order that the period of suspension of the appellant's licence be reduced to one of six months commencing from 1st September, 1955.

Sentence reduced.

