

1946

Present : Nagalingam A.J.

DARLIS, Appellant, and ASSISTANT GOVERNMENT AGENT,  
MATARA, Respondent.

1,116—M. C. Matara, 62,865.

*Regulation 2A of Defence (Food Control) (Special Provisions) (No. 3) Regulations 1943—Scope of—Right of authorised person or his nominee to search premises for controlled article—Penal Code, ss. 183, 344.*

Regulation 2A of the Defence (Food Control) (Special Provisions) (No. 3) Regulations, 1943, does not entitle an authorised person to search any premises for a controlled article unless the article had been transported or removed thereto at a point of time in sufficient proximity to the time at which the search is attempted to be made. Neither does it empower a search for the purpose of ascertaining whether there is any hoarding of a controlled article.

The person or persons upon whose suspicion action could be taken under the aforesaid Regulation are the Food Controller or a Peace Officer and not any person authorised by either of them. It is also necessary that the suspicion must be with regard to the transport or removal of a controlled article to some particular place or premises.

**A** PPEAL against a conviction from the Magistrate's Court, Matara.

L. A. Rajapakse, K.C. (with him C. J. Ranatunge and V. Wijetunge),  
for the accused, appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

*Cur. adv. vult.*

December 12, 1946. NAGALINGAM A.J.—

The appellant in this case has been convicted under sections 183 and 344 of the Penal Code of having obstructed a public servant in the discharge of his public functions and with having used criminal force on him in the execution of his duties as such public servant and has been sentenced to undergo imprisonment for a term of six months on each count, the sentences to run concurrently.

The case for the prosecution is that a Food Control Field Assistant went to search the house of the accused with a view to discovering whether paddy or rice was hoarded in the house of the accused and, while the Field Assistant was engaged in examining certain bags which he suspected contained paddy or rice, he was obstructed by the accused and certain others from discharging his duties and criminal force was also used on him to prevent him from carrying out his functions.

On appeal the point is taken on behalf of the accused that the Field Assistant had no legal right and was vested with no lawful authority to enter the house of the accused and make the alleged search and that as his entry was not only unlawful but illegal the accused was entitled, even if he did so, to resist the Field Assistant from carrying out acts which he was not empowered by law to do.

The Field Assistant who was supported by the Deputy Food Controller for the area, who is also the Assistant Government Agent, asserted that he was empowered to make the search by reason of the authority conferred on him by three documents granted to him by the Deputy Food Controller. These documents were produced in evidence marked P1, P2 and P2A. The date on which the accused is alleged to have committed the offence is set out in the charge sheet as 19.2.46 and there is no error in regard to that date. The document P1, however, which was produced by the Field Assistant, is one bearing date 23.5.46, and the appellant rightly contends that document P1 cannot in any way be relied upon by the prosecution to justify an entry made on 19.2.46. The document P1, therefore, is of no assistance to the prosecution. The document P2A is one which has been issued to the Field Assistant on 18.12.45, but it purports to be an authority granted by the Assistant Government Agent by virtue of the powers vested in him by section 4 of the Defence (Paddy Cultivations) Regulations published in *Government Gazette* No. 9,077 of 3.2.43. It is pointed out that these Regulations were rescinded on 27.9.43 by new Regulations published in *Government Gazette* No. 9,116 of that date. It is therefore manifest that when in December, 1945, the Assistant Government Agent issued letter of authority P2A, he purported to act under non-existent Regulations and therefore the authority P2A was bad and conferred no powers of search on the Field Assistant.

The prosecution, therefore, has to fall back upon document P2 dated 18.12.45 in order to establish the lawfulness of the entry and search. This document is stated to have been issued by the Deputy Food Controller by virtue of powers vested in him "by rules (strictly speaking regulations) 2 (1), 3 of Part B and 2A of the Food Control Regulations, 1938 and 1943" made under section 5 of the Food Control Ordinance, Cap. 132. The Food Control Regulations, 1938, framed under sub-section 5 of the Food Control Ordinance are set out in the 1940 Supplement, Vol. III., at page 154. It is in three sections lettered A, B, and C. It is conceded that the reference to the Regulations is to those under section B. The Regulations under head B have been amended by the Defence (Food Control) (Special Provisions No. 3) Regulations, 1943, and it is necessary to consider these Regulations to ascertain whether the powers conferred by the document P2 on the Field Assistant are within the enabling powers vested in the issuing authority. The powers granted may be divided into three parts, (1) to inspect or search vehicles suspected to be conveying any controlled foodstuffs, (2) to seize such foodstuffs transported or removed in contravention of any order for the time being in force, (3) to inspect and search any premises in which controlled foodstuffs are suspected to be stored in contravention of any order for the time being in force and to seize such foodstuffs. It is unnecessary for the purpose of this appeal to consider heads (1) and (2).

The only question is whether the rules relied on confer on the Assistant Government Agent power to confer authority to inspect or search any premises for any controlled articles and to seize such articles. Regulation 2 (1) relates to the transport or removal of the controlled article in a

vehicle or vessel and is the basis for the authority embodied under head (1). Regulation 3 is the source of the authority conferred under head (2) and Regulation 2 (A) is said to be the foundation for the issue of the authority under head (3). The charge sheet shows that the search was in pursuance of the authority conferred under head (3), for it specifies the function performed by the Field Assistant when he was obstructed as "while searching a house for hoarding of rice". Regulation 2 (A) runs as follows :—

"Where a Food Controller or peace officer has reason to suspect that any cattle, food or article of food has been transported or removed to any place or premises in contravention of any order for the time being in operation, the Food Controller or any Peace Officer or any other person authorised thereto in writing by the Food Controller may enter, inspect and search such place or premises."

It would be noticed that this Regulation does not empower the search of any premises for discovering whether there has been hoarding of any of the controlled articles. But what it does empower is that where there is reason to suspect that a controlled article has been transported or removed to any place or premises, then the place or premises to which the controlled article may have been removed may be entered, inspected and searched. It has been contended that the existence of a controlled article in a house would presuppose the transport or removal of that article thereto and therefore a search of the house would be in order. There are two objections to this argument. In the first place when the Regulation refers to the controlled article having been transported or removed it must necessarily mean that the removal or transport was at a point of time in sufficient proximity to the time at which the entry or search of the place where the article has been removed to is attempted to be made. To my mind, it is clear that under this Regulation it would be an unjustifiable act for an authorised person to make a search of premises on the footing, to take an extreme case, that the removal or transport to the premises had been effected a year earlier. What particular period of time should be regarded as sufficiently close to the date of removal or transport to justify a search under this Regulation would depend upon the particular facts of each case and also dependent upon a number of factors. Secondly, in the present case, however, the Field Assistant did not purport to enter or make search of the premises on the footing that any controlled article had been transported or removed into the premises. It cannot therefore be said that Regulation 2 (A) empowers the issue of the authority under head 3 to inspect and search premises for the purpose of ascertaining whether there is any hoarding of a controlled article. The authority P2, therefore, is one which did not empower the Field Assistant to make a search of the accused's premises for investigating if any controlled article had been hoarded. In this view of the nature of the authority it must follow that the attempted search of the premises was illegal and that the accused was entitled to resist and prevent a search from being made.

There is another matter which has been argued before me and in regard to which I would wish to make some observations, and that is whether even if the authority had been in the express terms of Regulation 2 (A) such authority could have been issued in general terms, that is to say, empowering the search not of any particular place or premises but of such places or premises as the Field Assistant or other authorised person may decide to search. There is a marked difference in the language used not merely in analogous Regulations but in these Regulations themselves in regard to the nature of the power conferred on a person who is authorised to make a search. For instance, the language that is used in Regulation 2 (1) in regard to the authority to be conferred on a person empowered to search is different from that used for a similar purpose under Regulation 2 (A). Under Regulation 2 (1) the words are "Where the Food Controller or a Peace Officer or any person authorised thereto in writing by the Food Controller has reason to suspect", that is to say, where either the Food Controller suspects or a Peace Officer suspects, or where a person authorised in writing to perform the functions under this Regulation by the Food Controller has reason to suspect, then each of those persons may take such steps as are permitted under it. The point to be stressed is that it would be sufficient for the purpose of this Regulation that the person authorised has reason to suspect, and it is immaterial whether the person who issues authority entertains any suspicion or not. Now, if one examines the language of Regulation 2 (A) it would be found that the person or persons upon whose suspicion action could be taken under this Regulation are the Food Controller or a Peace Officer and not any person authorised by either of them, and where either the Food Controller or a Peace Officer has reason to suspect, then either of them may authorise any other person to enter and search the place or premises. It must also be noted that the authority should be in writing. The authority, therefore, should show on the face of it that the person issuing the authority to inspect or search has reason to suspect and that in pursuance of his suspicions he issues the authority, and it is also necessary that his suspicion must be with regard to the transport or removal of any controlled article to some particular place or places or premises and that the authority that is issued must empower the person authorised to inspect such place or places or premises to which the issuing authority has reason to believe the controlled article has been removed or transported. It would not be a proper exercise of the functions of the power conferring authority to empower a subordinate officer or other person to make search of all or any places generally, as it is only to inspect *such* places or premises as those to which the controlled article has been transported or removed that the Regulation authorises the search.

A similar view was taken in an allied matter in the case of *Gnanananda Thero v. Village Headman of Madakotuwa*<sup>1</sup> where Soertsz J. held that it was irregular for a competent authority to have issued in blank a requisitioning form enabling a subordinate officer to fill it with a view to requisitioning paddy, which was the controlled article dealt with in that case. It is unnecessary to stress the fact that these Regulations curtail very considerably the right a subject has of excluding the unwarranted

<sup>1</sup> (1946) 47 N. L. B. 188.

interference with the privacy of his home, and where the legislature has taken special precautions to vest the exercise of a discretion in a particular class of persons and not in others, it would be manifestly wrong to permit a subordinate officer to enter houses at his own discretion uncontrolled by that of a higher authority.

The appeal is therefore entitled to succeed, and I allow the appeal and acquit the accused.

*Appeal allowed.*

