

1946

Present : Nagalingam A.J.

APPUHAMY *et al.*, Appellants, and EKANAYAKE (S. I. Police), Respondent.

910-911—M. C. Kandy, 23,126.

*Charge of transporting wheat without permit—No reference made to Gazette constituting the offence—Reference made to other Gazettes which had no application—Proper order for Court to make.*

The appellants were convicted of having transported wheat without a permit. The charge, however, was defective in that there was no reference to the *Gazette* which constituted the offence but, on the contrary, reference was made to certain other *Gazettes* which had in fact no application whatsoever.

*Held*, that the Court should, in the circumstances, discharge the accused and not remit the case for further proceedings.

**A** PPEALS against two convictions from the Magistrate's Court, Kandy.

L. A. Rajapakse, K.C. (with him H. W. Jayewardene), for the accused, appellant.

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

*Cur. adv. vult.*

December 17, 1946. NAGALINGAM A.J.—

The two appellants in this case have been convicted of having transported 80 bags of wheat from one place in Ceylon to another place without a permit and the first accused-appellant has been sentenced to pay a fine of Rs. 25 and the second accused-appellant a fine of Rs. 800.

The only point taken in appeal is that the charge is defective in that the laws the breach of which was alleged to have been committed by the accused have not only not been set out with any degree of precision but that on the contrary the laws referred to in the charge do not disclose the offence with which they have been charged. In view of the objection taken to the conviction I think it best to set out the relevant portion of the charge, which reads as follows :—

“You are hereby charged that you did within the jurisdiction of this Court at Kadugannawa on 22.3.46 transport a quantity of grain, to wit, 80 bags broken wheat in lorry No. CE 4939 from one place in Ceylon to another place without a permit in breach of section 4 of the Defence (Purchase of Foodstuffs) Regulation published in *Gazette* No. 9,004 of 11.9.42 and 9,380 of 16.3.46 and 9,530 of 12.3.46 and thereby committed an offence punishable under section 52 (1) and (3) of the Defence (Miscellaneous) Regulations.”

Later the charge was amended by the deletion of the word “broken” before the word “wheat”, but the amendment has no material bearing on the question that has now arisen for determination.

The first *Gazette* quoted is *Gazette* No. 9,004 of September 11, 1942, which refers to transport of country rice and country paddy and makes no reference to wheat. The next *Gazette* referred to is one bearing

No. 9,380 of March 16, 1946, but it is clear that there is no such *Gazette* bearing that date. Learned Crown Counsel says that the number of the *Gazette* quoted is correct but that the date is erroneous in that the year set out should be 1945 and not 1946. Learned Counsel for the appellant says that he is unable to admit or deny the correctness of his statement but that he can only say that he has made search for a copy of the *Gazette* No. 9,380 of March 16, 1946, but that there is no such *Gazette* in existence. The third *Gazette* that is referred to is one bearing number 9,530 of March 12, 1946, but this *Gazette* refers to transport of flour and not of wheat. It is therefore obvious, and learned Crown Counsel is obliged to concede, that no offence declared by any of the *Gazettes* to be a breach of any Regulation has been committed by the accused.

Learned Crown Counsel, however, invites me on the authority of *Kandasamy v. Navaratnarajah*<sup>1</sup> to send the case back for the charge to be properly framed and for proceedings to be taken afresh against the accused. In that case there was an omission to specify the order under which the Regulation penalising the act was made and the case was remitted to the Magistrate's Court for proceedings to be taken after the conviction had been quashed. But learned Counsel for the appellant relies upon the later case of *Carolus Appu v. A. G. A., Haputale*<sup>2</sup> where in circumstances very similar to the present and dealing in fact with the Regulations relating to transport of grain, this Court refused to remit the case for further proceedings. This was a case where as in the present there was not only no reference to the *Gazette* which constituted the offence but on the contrary express reference was made to certain other *Gazettes* which were said to embody the regulations constituting the offence with which the accused was charged, and which had in fact no application whatsoever. This later case, therefore, is more apposite to the facts of the case before me and following it I would set aside the conviction and discharge the accused.

*Conviction set aside.*

<sup>1</sup> (1944) 45 N. L. R. 546.

<sup>2</sup> (1945, 46 N. L. R. 262.