

1962

Present : T. S. Fernando, J.

R. LOVELL (Range Forest Officer), Appellant, and
T. SINNADURAI and another, Respondents

S.C. 193 of 1961—M. C. Chavakachcheri, 13,741

Forest officer—Authority to prosecute in Magistrate's Court—Transit of forest produce—Validity of Regulation 5—Forest Ordinance, ss. 24 (1) (b), 24 (2), 25, 37–40—Interpretation Ordinance, s. 17 (1) (c).

A person who is a forest officer within the meaning of the Forest Ordinance and a public officer within the meaning of the Criminal Procedure Code is entitled to enter a prosecution under the Forest Ordinance and to conduct it in the Magistrate's Court. It cannot be contended that he "cannot appear in Court except through the Government Agent or the Assistant Government Agent as contemplated in sections 37, 38 and 39 of the Forest Ordinance."

Regulation 5 (1) prohibiting the removal of timber, without a pass, within or beyond the limits of any specified area is not *ultra vires* of the provisions of section 24 (1) of the Forest Ordinance. The matters described in clause (b) of section 24 (1) are only illustrative of but do not set limitations on the powers of the Minister to make regulations respecting the transit of all forest produce.

When Regulation 5 (1) prohibited removal of timber within or beyond a specified local area it in effect prohibited a moving out of the timber from the specified local area to another beyond it. It follows, therefore, that in order to succeed in a prosecution for a contravention of Regulation 5 (1) the prosecutor must establish *inter alia* that the timber in question came from the specified local area itself.

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

A. C. Alles, Deputy Solicitor-General, with V. S. A. Pullenayegum and E. D. Wilkramanayake, Crown Counsel, for the complainant-appellant.

No appearance for the accused-respondents.

Colvin R. de Silva, with M. L. de Silva, as *amicus curiae*, at the request of Court.

Cur. adv. vult.

June 5, 1962. T. S. FERNANDO, J.—

When this appeal came on for hearing there was no appearance for the accused-respondents. I reserved order after I had heard the learned Deputy Solicitor-General in support of the appeal but, deeming it necessary that I should hear argument contra, I requested that counsel's assistance be furnished to me, and I must here express my indebtedness to Mr. Colvin R. de Silva for the assistance he has rendered in this matter.

The charge against the two accused persons as framed in the Magistrate's Court was as follows :—

“ That they did, at Elephant Pass on 3rd August 1960, after sunset and before sunrise, within the limits of an area specified by the Conservator of Forests by notification published in Government Gazette No. 10,743 of December 10, 1954, and amended by notification published in Government Gazette No. 10,771 of March 4, 1955, for the purposes of section 24(1)(b) of the Forest Ordinance as an area within or beyond the limits of which timber of any species specified in that notification may not be removed without a permit or pass, to wit, the Jaffna District, remove in lorry No. CN 6966 without a permit or pass issued by an authorised officer one palu and nine satinwood logs valued at Rs. 385/05, in breach of Regulation 5(1) of the Regulations relating to the transit of forest produce published in Government Gazette No. 8,057 of June 8, 1934, as amended by the Regulations, made by the Minister of Lands and Land Development by virtue of powers vested in him under section 24 of the Forest Ordinance as modified by the proclamation published in Government Gazette Extraordinary No. 9,773 of September 24, 1947, published in Government Gazette No. 10,424 of July 11, 1952, and amended by notification in Government Gazette No. 10,743 of December 10, 1954, and that they did thereby commit an offence punishable under the second proviso to section 25 of the Forest Ordinance read with section 40 of the same Ordinance .”

The charge reproduced above is undoubtedly unwieldy and verbose in the extreme but, having regard to the requirements of the Criminal Procedure Code and the practice relating to the framing of charges in criminal cases that has developed in this country, it is not uncommon to come across charges as cumbersome as this, particularly in the case of offences under the Forest Ordinance and the Shop Act.

The learned Magistrate has found on the evidence led before him at the trial that the accused did transport by lorry the ten logs of timber specified in the charge and that they were detected while doing so by the complainant who is a forest officer within the meaning of the Forest Ordinance. They had neither a permit nor a pass of any kind in respect of such transporting. The Magistrate was satisfied that the officer authorised by law to issue a permit or pass was the Divisional Revenue Officer of Pachchilapallai. He however acquitted the accused because he came to the conclusion (1) that the regulation alleged to have been contravened by the accused was *ultra vires* the Forest Ordinance and (2) the complainant had no authority to prosecute the accused in the Magistrate's Court.

In regard to the second reason given by the learned Magistrate to support the order he made, viz. the lack of authority in the complainant to enter a prosecution, both Mr. Alles and Mr. de Silva were agreed that that reason was invalid. Indeed, the case of *Lushington v. Mohamadu*¹

¹(1913) 16 N. L. R. 366.

which was cited also to the Magistrate is conclusive on the point. Said Pereira J. in that case :—“ But assuming property has been seized, I think the procedure under section 39 (of the Forest Ordinance) is merely cumulative : it does not displace the procedure of the Code.” The complainant, being a forest officer within the meaning of the Forest Ordinance and a public officer within the meaning of the Criminal Procedure Code, was in every way entitled to enter prosecution and to conduct it in the Magistrate’s Court. The learned Magistrate was in error, if I may say so with respect, when he stated that “ an officer of the Forest Department cannot appear in court except through the Government Agent or the Assistant Government Agent as contemplated in sections 37, 38 and 39 of the Forest Ordinance.”

The first reason given by the learned Magistrate was also canvassed by Mr. Alles who contended that the matters described in clause (b) of section 24 (1) of the Forest Ordinance as being some of the matters in respect of which regulations may be made by the Minister are only illustrative of but do not determine the powers of the Minister.

Section 24 (1) of the Ordinance declares that the Minister may make regulations respecting the transit of all forest produce by land or water. While the expression “ forest produce ” has been defined in the interpretation section 78, section 24 (2) declares that in section 24 the terms “ forest produce ” and “ timber ” shall, unless the context otherwise requires, include timber cut in any land or property, whether the property of the Crown or any private individual. The Minister, therefore, has been vested with power to make regulations respecting the transit of timber, whether the property of the Crown or any private individual. Acting under the power granted to him by section 24, the Minister has made the regulation—regulation 5 published in Gazette 10,743 of December 10, 1954—reproduced below :—

“ 5 (1). Within or beyond the limits of any area specified by the Conservator of Forests by notification in the Gazette for the purposes of section 24 (1) (b) of the Forest Ordinance as an area within or beyond the limits of which timber of any species specified in that notification may not be removed without a pass, no person shall remove or cause to be removed any such timber without a pass issued by the Conservator of Forests, or other forest officer or person authorised in that behalf by the Conservator of Forests.

(2). No person shall transport timber of any species specified in a notification under paragraph (1) from an area other than an area specified in such notification without a pass issued by the Conservator of Forests, or other forest officer, or the nearest authorised headman stationed within the first-mentioned area.

(3). For the purposes of paragraph (2), the expression “ authorised headman ” means any headman duly authorised by the Government Agent or the Assistant Government Agent to issue passes under that paragraph.”

The accused were found, within the limits of an area specified by the Conservator of Forests by notification as contemplated in clause (b) of section 24 (1), i.e., within Jaffna District, transporting timber of species prohibited by notification from being removed without a pass. The learned Magistrate concluded that regulation 5 was *ultra vires* as, in his opinion, it was not competent for the Minister to make a regulation in derogation of the statute—(section 24 (1) (b)).

Citing section 17 (1) (c) of the Interpretation Ordinance which provides that no rule made under the authority of an enactment shall be inconsistent with the provisions of any enactment, the Magistrate held that, where the statute provides that regulations may be made prohibiting removal of timber without a pass from the landholder from whose land it was brought or from an officer duly authorised to issue a pass, when the regulation prohibited removal without a pass issued by the Conservator of Forests or other forest officer or person authorised in that behalf by the Conservator of Forests, the regulation was inconsistent with the provisions of the ordinance under which it purports to have been made, and was therefore *ultra vires*. The Deputy Solicitor-General has argued that the learned Magistrate has here assumed that the only power the legislature has conferred on the Minister is the power described in paragraph (b) of section 24 (1) of the Ordinance and has overlooked the existence of the power conferred without qualification in section 24 (1) itself by the following words :—

“The Minister may make regulations respecting the transit of all forest produce by land or water.”

He argued that the regulation in question has been made under the power referred to immediately above which sets no limitation on the Minister in regard to the nature of the regulations he may make for the purpose indicated in the opening sentence of that section. The plenitude of the power so conferred on the Minister is nowise affected, in my opinion, by the circumstance that the legislature has instanced some of the matters that may form the subject of regulations to be made under the section in question.

Mr. de Silva, while not conceding to the prosecution the point as to whether the regulation is *ultra vires*, raised a number of arguments against the conviction, the most important of which was that, even if the regulation 5 (1) was *intra vires*, it penalised only a *removal from* a specified local area and not a *moving* from one place to another within that specified local area. As I find myself in agreement with him as to the meaning of regulation 5 (1) so contended for, I shall set down shortly my reasons therefor.

If, as the prosecution contends, regulation 5 (1) prohibits the moving or transporting without a pass of specified timber from one place to another within the specified local area, having regard to the meaning of “timber” in section 24 (2) it really means that no person may move

without a pass such timber, although belonging to him as his private property, from one part of his land or estate to another part of the same land or estate within the specified local area. A regulation producing this result is obviously most unreasonable and I do not think a court of law should pronounce in favour of an interpretation leading to such a result unless for some compelling reason it is driven to do so. The meaning which the prosecution seeks to place on this regulation 5 (1) would involve placing on the word "remove" occurring therein the meaning of moving in the sense of a mere change of position. Construing what is in substance a penal provision, the Court should, in my opinion, incline towards an interpretation which not only preserves the ordinary meaning of the word "remove" (which is to take away from one place to another beyond it) but also renders immune from penalty an otherwise ordinary dealing with one's own private property. It seems to me that when regulation 5 (1) prohibited removal within or beyond the specified local area it in effect prohibited a moving out of the timber from the specified local area to another beyond it. It follows, therefore, that in order to succeed in a prosecution for a contravention of regulation 5 (1) the prosecutor must establish that the timber in question came from the specified local area itself. Proof on this point was not offered and the prosecution in my opinion was therefore bound to fail. Mr. de Silva also contended that there was no removal to a place beyond the specified local area as the seizure took place at Elephant Pass, within the Jaffna District, and on this point too the prosecution failed to establish the charge.

If one examines regulation 5 (2) it will be seen that to maintain successfully a charge in respect of transport of timber from an area other than a specified local area into or through a specified local area without a pass the prosecution must prove that the timber came from an area other than a specified local area. Mr. Alles and Mr. de Silva were both agreed on this point. If that be so, there does not appear to be anything unreasonable in expecting from the prosecution on a charge of a contravention of regulation 5 (1) proof that the timber had its origin in the specified local area.

I might add that Mr. de Silva contended that if the expression "within or beyond" was capable of the meaning which the prosecution has sought in this case to place upon it, then the charge here framed is open to attack on the ground of duplicity. As I have already interpreted that expression in this context to mean nothing more than "from", and in view of the meaning indicated by me of the word "remove" occurring in regulation 5 (1), it is unnecessary to examine this last contention.

The appeal is dismissed.

Appeal dismissed.