

1942

Present : Keuneman J.

PANDITHARATNE, Appellant, and KOUSTZ, Respondent.

42—M. C. Colombo, 6130.

Keeping a stock of controlled article—Unglazed newsprint—Store or other place—Control of Prices Regulations, 1942, Reg. 6—Control of Prices Ordinance, s. 5.

Where a person is charged with breach of regulation 6 of the Control of Prices Regulations, 1942, which requires "every person who desires to keep any stock or quantity of an price-controlled article at any store or other place, which is not a registered store shall furnish to the Controller a return specifying such store or other place"—

Held, that the regulation applies to all persons, whether importers or wholesale traders.

Held, also that the words "or other place" means place in the nature of a store.

Where a Magistrate exercises his discretion in favour of forfeiture of the article he must give good reasons.

A PPEAL from a conviction by the Magistrate of Colombo.

J. E. M. Obeyesekere (with him *Kadirgamar*), for accused, appellant.

G. E. Chitty, C.C., for complainant, respondent.

Cur. adv. vult.

November 10, 1943. KEUNEMAN J.—

In this case the accused was charged with keeping at Epsom, Avondale road, Maradana, which is not a registered store a stock of price-controlled article, to wit, 476 reams unglazed newsprint, which is a controlled article (see *Government Gazette* No. 8,957 of June 26, 1942) without furnishing to the Controller a return specifying such store or other place—in breach of Regulation 6 of the Control of Prices Regulations 1942 (see *Government Gazette* No. 9,019 of October 8, 1942) and thereby having committed an offence under section 5 of the Control of Prices Ordinance as amended by the Defence (Control of Prices Supplementary Provisions) Regulation, No. 2 (2) (see *Defence (Miscellaneous) Regulations, &c.*, P. 203).

The accused was convicted and a nominal fine of Rs. 25 was imposed upon him, in view of the fact that the stock of paper worth nearly Rs. 6,000 was forfeited. He now appeals both against the conviction and the forfeiture, and has also filed papers in revision.

Regulation 6 runs as follows:—

"Every person who desires to keep any stock or quantity of any price-controlled article at any store or other place which is not a registered store, shall furnish to the Controller a return specifying such store or other place, and the Controller may in respect of such store or other place exercise the powers conferred on him by Regulation 5."

Counsel for the appellant argued that the "person" referred to in Regulation 6 is an importer or wholesale trader. He refers to Regulations 2, 3, 4, and 5, which specifically apply to importers or wholesale traders, and contends that Regulation 6 must be regarded as applying to such persons. But I think that the failure to make any reference to importers or wholesale traders is significant and intentional, and this view is supported by the language of Regulation 7, which clearly applies to all persons, whether importers and wholesale traders or not.

Counsel for the appellant further argued that unless a restrictive interpretation was applied to Regulation 6, every person who has a very small stock or quantity of a price-controlled article in his house would be guilty of an offence unless he furnished a return to the Controller. He contended that that was clearly not the intention of the Regulation. I agree with him that the Regulation was not intended to have this meaning, for otherwise there would have been no need for Regulation 7. In my

opinion the words "at any store or other place which is not a registered store" require emphasis. In the Shorter Oxford English Dictionary the word "store" bears many meanings, but there are only two meanings which may have relevance here. One is "a place where stores are kept, a warehouse: a storehouse." The other is "a place where merchandise is kept for sale." But I note that this latter meaning of the word "store" arises chiefly in the United States and in the colonies, although the plural form "stores" has obtained currency in Great Britain from about 1850. As an adjective the word "store" is used as "denoting a receptacle, repository, depot or transport for stores or supplies", as in the words "storehouse" or "storeroom".

What is meant by the words "or other places". Clearly this does not mean any kind of place, and Crown Counsel himself conceded that it meant "a place in the nature of a store". I think this interpretation is correct.

Admittedly the house "Epsom" in which the paper was kept was not a registered store, and the paper kept there was price-controlled and no return was furnished to the Controller. Can the house "Epsom" be regarded as a store or other place in the nature of a store?

The evidence of the Police Sub-Inspector is that "Epsom" is the accused's house, which was searched on December 4, 1942. On that occasion 476 reams of unglazed newsprint were found in that house. The accused described himself as a printer, and said that Mr. Andre was the proprietor of the Lorenz Press and of a paper called "The Trespasser", which is a registered paper. As a result of the war, the circulation of the paper had to be cut, in order to economise in paper. Witness added that "the paper for the Lorenz Press is stocked in my house for the purpose of economising our paper."

There are two factors of importance. One is the large quantity of paper kept at the accused's house. The other is the admission by the accused that his house was utilized for the stocking of the paper for economical reasons. I think there is sufficient evidence that the house "Epsom" can be regarded as a store or other place in the nature of a store. There can be no question that it is substantially used for storing paper.

I have come to the conclusion that the conviction in this case is correct, and the appeal in this respect is dismissed.

The question that remains relates to the forfeiture of the stock of paper. I have examined the reasons given by the Magistrate for the forfeiture, I am inclined to agree with the comment in the petition of appeal, that the Magistrate acted upon the basis that an order of forfeiture should be made in every case, unless the defence satisfied him that such an order should not be made. It is true that Magistrate added that the evidence in the case disclosed good reasons justifying an order for forfeiture, but he has not stated what these good reasons are. The reasons examined by the Magistrate are first the plea of the accused that he only committed a technical offence due to ignorance of the law. This the Magistrate rejects. I agree that this is not a complete answer to the claim for forfeiture, but it is at least an element to be considered. The second reason considered by the Magistrate is the gravity of the penalties imposed even

in the case of a first offence. It does not however follow from this that forfeiture must follow almost as a matter of course. The Magistrate has to exercise a discretion, and if he exercises his discretion in favour of forfeiture, he must set out good reasons for this, which can be examined, if necessary, in appeal.

The only other reason, "incidentally" mentioned, is that in the accused's premises sugar and flour were also stocked for the use of a restaurant called Green's Cafe, belonging to Mr. Andre. But the position with regard to the sugar and flour is not clear, and these articles are not the subject of any charge. The accused said he had a permit for this sugar and flour, and that in his declaration at the time of purchase, he declared the premises "Epsom" as the place where he would stock those articles. I do not think this is a point which can fairly be brought against the accused.

I do not think any good reasons have been made out for the forfeiture. There is no suggestion in the case that the paper, or in fact the other articles, were brought to the house surreptitiously or with the object of concealing them. They may well have been placed there in the ordinary course of business, and may have been there even prior to the order for the control of price.

Acting in revision, I set aside the order for forfeiture of the paper in question.

The fine imposed by the Magistrate was only the nominal amount of Rs. 25, in view of his further order of forfeiture. In this case I do not consider this a sufficient penalty. The fine in this case will be increased to Rs. 250 in default six weeks' simple imprisonment.

Conviction affirmed.
