

1945

*Present: Wijeyewardene J.*

**KIRI BANDA, Appellant, and INSPECTOR OF POLICE,  
GAMPOLA, Respondent.**

*1,109—M. C. Gampola, 8,606.*

*Food control—Unlawful possession of ration books by authorised distributor—Possession bona fide—Accused discharged with a warning—Regulation 11 (8) of head E of Part 3 of Food Control Regulations.*

Under Regulation 11 (8) of head E, Part 3, of the Food Control Regulations no authorised distributor shall keep in his possession the ration book of any person other than himself or a member of his household.

The accused, an authorised distributor of controlled commodities, was directed by a headman who was acting on the authority of the Deputy Food Controller to instruct his customers to bring their ration books to his boutique for inspection by the headman.

The accused, instead of telling the customers that they should wait for the arrival of the headman, had permitted thirty-eight book holders to leave their ration books at his boutique for examination by the headman in their absence.

*Held*, that the accused, although he acted in contravention of the aforementioned Food Control Regulation, did so in good faith and should be discharged with a warning under the provisions of section 325 of the Criminal Procedure Code.

**A** PPEAL from a conviction by the Magistrate of Gampola.

*G. E. Chitty* for the accused, appellant.

*M. P. Spencer, C.C.*, for the Crown, respondent.

March 21, 1945. WIJEYWARDENE J.—

The accused is an authorised distributor of controlled commodities. He was convicted on a charge of having kept in his possession thirty-eight ration books belonging to persons other than himself and members of his household, and thus acted in contravention of the Food Control Regulation 11 (8) of head E, Part 3, Food Control Regulations, 1938, as, amended by Regulations published in the *Government Gazette Extraordinary* No. 8,996 of August 27, 1942, and made under the Food Control Ordinance.

The Magistrate imposed a fine of Rs. 500.

Police Sergeant Guneratne stated that he seized the thirty-eight books at the boutique of the accused on August 12, 1944, shortly after 4 p.m. The Vidane Aratchie of the village, who was called as a witness for the prosecution, stated that he received an order from the Divisional Revenue Officer to make a list of "all householders drawing rations from two dealers". Those instructions are contained in the circular D2 of August 10, and require the headman to make the list before August 19. The headman said that on receiving those instructions he told the accused that he "wanted to see the books" of his customers. The headman

expected to examine these books at accused's boutique. According to D 1 of November 29, 1943, which is a list of instructions issued to authorised dealers, the accused was required "to observe any instructions given by the Deputy Food Controller or by any of his duly authorised persons". If he failed to do so, D1 proceeded to say that "his name would be struck off from the list of authorised distributors and that he would be prosecuted". Crown Counsel conceded that the headman would be an authorised person within the meaning of D1. The accused, therefore, had no alternative but to obey the directions given by the headman.

Mudalihamy, another witness called by the prosecution, stated that he was a holder of one of the ration books seized by the Police. He kept the books usually at his place. He took his books to the accused's boutique at about 3 P.M. on August 12, and left them there as accused asked him to bring the books for the examination of the Aratchie. The accused himself gave evidence and stated that the Aratchie told him on August 12, that he wanted to see the ration books of his consumers and he accordingly informed the ration book holders. It appears that thirty-eight out of about seventy ration book holders served by him came and left the books in the boutique and that those were the books seized by the Police.

No doubt, the accused is technically guilty of the offence with which he is charged. The Aratchie did not ask him to take the books from the ration book holders and keep them in the boutique for inspection. The Aratchie wanted to see the books at the boutique. But I have no doubt on the evidence as to the good faith of the accused. He asked the book holders to bring their books that evening. Some of them came about 3 P.M. and a number of these preferred to leave their books at the boutique for examination by the Aratchie rather than to wait there for the Aratchie's arrival. Of course if the accused was a very careful man, he could have told the customers that his instructions from the Aratchie were for them to come to the boutique and have their books ready for inspection and that he was not prepared to keep their books at the boutique for inspection by the Aratchie.

The accused has no previous convictions. I think this is eminently a case where I should deal with the accused under the provisions of section 325 of the Criminal Procedure Code. I set aside the conviction and direct the Magistrate to discharge the accused with a warning without proceeding to conviction.

*Conviction set aside.*

*accused discharged under section 325 of the Criminal Procedure Code.*

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