

1947

*Present : Nagalingam A.J.*SHERIFF *et al*, Appellant, and BONGSO (S.I., Police), Respondent122-125—*M. C. Trincomalee, 5,547**Defence (Purchase of Foodstuffs) Regulations, 1942—Offence under—Arrest without warrant—Legality of such arrest.*

An offence under the Defence (Purchase of Foodstuffs), Regulations, 1942, is not a cognizable one.

A PPEALS against four convictions from the Magistrate's Court, Trincomalee.

S. N. Rajaratnam, for the accused, appellants.

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

Cur. adv. vult.

April 1, 1947. NAGALINGAM A.J.—

There are four appeals in this case. The first accused-appellant was charged with having escaped or attempted to escape from the custody of Constable Silva and the other three appellants with having rescued

or attempted to rescue the first appellant from the custody of the constable and with having obstructed the constable in the discharge of his public functions, namely, the conducting to the Police Station of the first accused-appellant who had been arrested for an offence of transporting rice without a permit. The point taken on behalf of all the appellants is that the arrest and consequential custody of the first appellant was illegal and that therefore the escape or attempted escape of the first appellant from the custody of the constable and the action of the other appellants in rescuing the first appellant or obstructing the constable cannot therefore be made the subject of criminal charges.

The case for the prosecution is that Constable Silva apprehended the first appellant in the act of transporting a large quantity of rice and took him into custody. The provision of law which prohibits the transport of grain is said to be Regulation 4 of the Defence (Purchase of Foodstuffs) Regulations, 1942 (page 54 of the Consolidated Reprint of the Defence Regulations dated October 1, 1946) which will hereinafter be referred to as the Purchase of Foodstuffs Regulations. Learned Crown Counsel concedes that this is the only provision of law relative to the subject. These Regulations do not declare an offence under them to be a cognizable one. It has, however, been stated that under Regulation 51 of the Defence (Miscellaneous) Regulations certain provisions had been enacted making such an offence a cognizable one, but Regulation 51 has ceased to be law since February, 1946, so that at the date of this offence in October, 1946, an offence under the Purchase of Foodstuffs Regulations cannot be said to have been declared a cognizable one by any of the Defence Regulations. It has, however, been contended that by the Food Control Amendment Ordinance (Cap. 132, page 70 of Vol. I. of 1941 Supplement) such an offence is made a cognizable one. Sub-section 3 of section 6 of the principal Ordinance that is relied upon runs as follows:—

“Notwithstanding anything in the First Schedule to the Criminal Procedure Code every offence under this Ordinance shall be a cognizable offence within the meaning of that Code”.

It will be observed that the offence that is made cognizable is not one under the Defence Regulations but one under the Food Control Ordinance itself. Learned Crown Counsel suggests that as there are references to the Food Control Ordinance in the Purchase of Foodstuffs Regulations it is permissible to treat section 6 (3) of the Food Control Ordinance as extending to offences created by the Purchase of Foodstuffs Regulations themselves. This is an unwarrantable construction to be placed on a statute, especially a penal one. It may be useful to contrast the provisions of the Food Control Ordinance and the Purchase of Foodstuffs Regulations with those of the Control of Prices Ordinance, No. 39 of 1939, and the Defence (Control of Prices) (Supplementary Provisions) Regulations, where these latter regulations substitute certain provisions for those in the Control of Prices Ordinance and declare that every offence under the Ordinance shall be a cognizable one within the meaning of the Criminal Procedure Code. *Vide* section 5 (10) of the Price Control Ordinance as enacted in the Defence (Control of Prices) (Supplementary

Provisions) Regulations. It would, therefore, be seen that the Defence (Control of Prices) (Supplementary Provisions) Regulations extend the provisions of the Control of Prices Ordinance and every offence in connection with the control of prices is an offence under the Ordinance itself and is declared a cognizable offence; but in regard to offences relating to purchase of foodstuffs, certain offences are declared to be such under the Food Control Ordinance and the orders made thereunder, while others are declared to be offences under the Purchase of Foodstuffs Regulations. Although offences under the Food Control Ordinance are declared to be cognizable offences, there is no such provision in regard to the offences under the Purchase of Foodstuffs Regulations.

The resultant position, therefore, is that the arrest by Constable Silva of the first appellant without a warrant was illegal and therefore the escape or the attempted escape of the first appellant cannot be regarded as an offence under section 220A of the Penal Code nor can the other appellants be said to have committed any offence either under section 220A or under section 183 of the Penal Code. I would, therefore, allow the appeals and acquit the accused.

Appeals allowed.

