

1946

Present: Keuneman J.

CASSIM (S.I., POLICE), Appellant, and THAJUDEEN,
Respondent.

1,216—*M. C. Colombo, 1,005.*

*Appeal—Prosecution under Defence (Control of Textiles) Regulations—
Dismissal on ground that sanction of the Textile Controller had not been
obtained—Time limit for appeal.*

Where, in a prosecution under the Defence (Control of Textiles) Regulations, the Court acquitted the accused on the ground that the sanction of the Textile Controller had not been obtained by the prosecution—

Held, that the order of Court was one of discharge and not of acquittal and the remedy of the complainant was by way of appeal within ten days

APPEAL against an order of acquittal entered by the Magistrate's Court, Colombo. The accused was charged with having committed an offence under the Defence (Control of Textiles) Regulations. At the commencement of the trial Counsel for the accused took an objection to the proceedings on the ground that the sanction of the Controller of Textiles had not been obtained for the prosecution. The objection was upheld and the accused discharged. The complainant appealed with the sanction of the Attorney-General more than ten days, but within twenty-eight days, after the order of discharge.

H. W. Jayewardene, for the accused, respondent.—The appeal is out of time and must be rejected. The Magistrate's order was an order of discharge and hence appealable without the Attorney-General's sanction. The appeal should have been filed within ten days of the order. The obtaining of the Attorney-General's sanction which was superfluous does not entitle the appellant to file the appeal after the lapse of the ten days—*Police Sergeant Banda v. Dalpatadu*¹; *Sumangala Thero v. Piyatissa Thero*².

¹ (1931) I. C. L. W. 2.

² (1937) 39 N. L. R. 265.

T. K. Curtis, C.C., for the complainant, appellant.—The order of the Magistrate is an appealable order and was clearly wrong. The sanction of the Deputy Controller which had been given in this case was sufficient in view of the amendment to the regulation in question.

January 31, 1946. KEUNEMAN J.—

I think the preliminary objection taken in this case is sound. The order of the Magistrate must be regarded as an order of discharge and not of an acquittal. It has to be remembered that the objection actually taken was that the prosecution had failed to obtain the sanction of the Textile Controller. If such an objection succeeded, it seems obvious that the Magistrate should not have acquitted the prisoner altogether but merely discharged him and it may have been open to the prosecution after having obtained the necessary sanction to proceed once more to charge the prisoner. The appeal is dismissed.

Appeal dismissed.

