

1942

Present : Wijeyewardene J.

RAMALINGAM NADAR, Appellant, and LEWIS
APPUHAMY, Respondent.

431—*M. C. Dandagamuwa, 10,664.*

Control of Prices Regulations, 1939—Breach of Regulation 6—No evidence of regulation—Fatal irregularity.

Where, in a charge for breach of regulation 6 of the Control of Prices Regulations, 1939, there was no evidence that an order as contemplated by regulation 6 was in operation at the material date in the area in question and where no reference was given to any *Gazette* or other publication to assist the court to ascertain the nature and scope of the order,—

Held, that the irregularity was fatal to the conviction.

A PPEAL from a conviction by the Magistrate of Dandagamuwa.

E. A. G. de Silva for accused, appellant.

H. W. R. Weerasooriya, C.C., for complainant, respondent.

July 14, 1942. WIJEYWARDENE J.—

The accused-appellant was convicted by the Magistrate on a charge of having failed to supply a quarter pound of chillies to one Deonis Appuhamy in contravention of regulation 6 of the Control of Prices Regulations, 1939.

The evidence led in this case does not show that any tender of payment was made to the accused. Deonis Appuhamy's own evidence is that he went to the boutique of the accused and "asked" for a quarter pound of chillies.

Moreover, there is no evidence that an *Order* as contemplated by regulation 6 was in operation at the material date in the area where the offence was alleged to have been committed. Not even a reference is given to any *Gazette* or other publication to assist the Court to ascertain the nature and scope of the *Order*.

Under these circumstances I am compelled to acquit the accused. Those responsible for prosecutions of this nature should not fall into the error of thinking that because these prosecutions are for breaches of regulations passed in a state of emergency, the Courts would regard the failure to establish by evidence the essential elements of an offence, as a mere irregularity curable under section 425 of the Criminal Procedure Code.

Set aside.
