

1948

Present: **Wijewardene J.**

J. L. RODRIGO, Petitioner, and INSPECTOR OF POLICE
MIRIGAMA, Respondent.

In revision—*M. C. Gampaha, 24,444.*

Firearms Ordinance (Cap. 139), s. 22 (2) (e)—Watcher convicted of using and possessing a gun without a permit—Power of Court to confiscate gun.

Where the watcher of an estate is convicted of possessing and using a gun, which belonged to the owner, without a permit from the proper authority, the Court has no power to confiscate the gun.

THIS was an application to revise an order of the Magistrate of Gampaha.

Mackenzie Pereira in support.

E. H. T. Gunasekara, C.C., as *amicus curiae*.

Cur. adv. vult.

May 21, 1945. WLJEYWARDENE J.—

The respondent, a Police Sergeant, instituted proceedings under section 148 (1) (b) of the Criminal Procedure Code charging one Brumpy, "a watcher under one Mr. J. L. Rodrigo of Negombo," for possessing and using a gun without a permit from the proper authority in breach of section 22 (2) (e) of the Firearms Ordinance.

The charge also set out the fact that the accused was a watcher under J. L. Rodrigo. On the accused pleading guilty the Magistrate convicted him and fined him. The Magistrate, then, made an order confiscating the gun and said in the course of his order:—

"I think great care should be used in giving guns to watchers. The accused had no permit to use the gun. The responsibility is the owner's".

The above statement of facts shows that the Magistrate was aware at the time of the order that the accused was not the owner of the gun.

The present application is made by J. L. Rodrigo, the owner of the gun, asking that the order of the Magistrate confiscating the gun be set aside. The section of the Firearms Ordinance under which such an order could be made is section 44 and that section enacts:—

"Where any person is convicted of an offence under sections 22 of this Ordinance any gun in respect of which the offence was committed shall, if the person convicted is the owner of the gun, be subject at the discretion of the Court to confiscation."

The accused was not the owner of the gun, and, therefore, the Magistrate could not have confiscated the gun.

I set aside the order and direct the gun to be returned to the petitioner.

Set aside.

