

1975 Present : Wijesundera, J. and Ratwatte, J.

MAGILIN WICKREMASEKERA, Applicant and K. ARIYATILLEKE, Inspector of Police, Respondent.

*S. C. Application 24/75 M. C. Galle No. 2185*

*Statutory Offence, Emergency (Paddy Marketing) Regulations, No. 12 of 1974—1st accused convicted—Forfeiture of security furnished by the 3rd accused who had been discharged at the end of the trial—Interpretation of Regulations 16 and 17.*

The 1st Accused, the driver of a lorry used in transporting paddy in contravention of Emergency Regulations, pleaded guilty to the charge and was convicted. The charge against the third accused and two others was withdrawn and they were discharged. The Magistrate thereupon ordered the forfeiture of the security deposited by the third accused.

Where the applicant, i.e. the third accused, who had been discharged by the Magistrate, made the present application to set aside the order made by the Magistrate confiscating the security deposited,

*Held :*

That while Regulation 16 requires that the Magistrate shall order the forfeiture of the vehicle seized and the security furnished upon the conviction of any person, Regulation 17 does not empower the Magistrate to release the vehicle or the security, where only one of several accused was convicted and the other acquitted. This necessarily means that where more than one accused have been charged, all should be acquitted for the vehicle or the security to be released. When even one out of several accused has been convicted, regulation 17 has no application.

**A**PPPLICATION in Revision.

G. C. Mendis, for the Applicant.

G. L. M. de Silva, State Counsel, for the Respondent.

March 17, 1975. WIJESUNDERA, J.—

This is an application to have the order made by the Magistrate, Galle, confiscating security in a sum of Rs. 40,000 set aside. It arises out of the conviction of one Udugama Gamage Ariyapala for transporting 360 lbs. of rice in contravention of the Emergency (Paddy Marketing) Regulations No. 12 of 1974 published in *Government Gazette* No. 135/35 of November 1st, 1974.

On the 14th of November, 1974, the Galle Police produced four accused, one of whom is the present applicant, before the Magistrate on a charge of transporting on the 11th November 1974 360 lbs. of rice in lorry No. 24 Sri 6840, without the requisite permit, in breach of regulation 4 (1) of the

aforementioned regulations. The contravention of any regulation is an offence and punishable under regulation 14 of the same regulations. The lorry and the rice were produced before the Magistrate as required under regulation 15. On the 14th of November 1974 the Magistrate made order releasing the lorry, as he was empowered to do, on security being furnished in a sum of Rs. 40,000. The 3rd accused in that case, who is the present applicant, executed a bond for securing the payment of the said sum on the day after and the lorry was released. On the 9th of December 1974 the 1st accused, who was the driver of the lorry, withdrew his earlier plea and pleaded guilty to the charge. He was fined Rs. 500. The charge against the others was withdrawn and they were discharged. The Magistrate thereupon ordered the forfeiture of the security deposited. The present application is to have that order set aside.

It was argued that regulation 17, in as much as three persons charged had been discharged, requires that the security furnished should be released. Regulation 17 reads:—

“ Where no legal proceedings have been instituted against any person in respect of an offence under these regulations within three months of the detection of such offence or where any person charged in respect of such offence has been acquitted or discharged, any vehicle or vessel seized and produced before the Magistrate under regulation 15 shall be returned to such person or where security has been deposited in lieu thereof such security shall be released ”.

“ මේ නියෝග යටතේ වූ යම් වරදක් අනාවරණය වී මාස තුනක් අතුළතදී ඒ වරද සම්බන්ධයෙන් යම් තැනැත්තකුට විරුද්ධව නඩු වක් පවරා නොමැති අවස්ථාවකදී හෝ එවැනි වරදක් සම්බන්ධයෙන් චෝදනා කරනු ලැබූ තැනැත්තා නිදහස් බවට පත් කරනු ලැබූ හෝ නිදහස් කරනු ලැබූ අවස්ථාවකදී 15 වන නියෝගය යටතේ තහනම්ව ගෙන මගෙස්ත්‍රාත්වරයා වෙත ඉදිරිපත් කරනු ලැබූ වාහනයක් හෝ යන්ත්‍රාංගයක් ඒ තැනැත්තා වෙත ආපසු භාරදිය යතුය : නැතහොත් ඒ වාහනය හෝ යන්ත්‍රාංගය ටොන්ඩෝන් ආපසු තබා තිබුණේ නම් ඒ නිදහස් කළ යුතුය.

The charge to which the 1st accused pleaded guilty was transporting rice in this lorry. The 1st accused, who was the driver of the lorry, pleaded guilty on the basis that this lorry was used in the commission of that offence. Regulation 16 says :—

“ Upon the conviction of any person of an offence under these regulations the Magistrate shall, in addition to any punishment imposed under regulation 14 order the forfeiture of any vehicle or vessel seized or the security deposited in lieu thereof under regulation 15 ”.

This requires that the Magistrate shall order the forfeiture of the vehicle seized or of the security furnished upon the conviction of any person. Regulation 17, reproduced, above, does not empower the Magistrate to release the vehicle or the security where only one of several accused was convicted and the others acquitted. That regulation contemplates the case where an accused charged has been acquitted. This necessarily means that where more than one accused have been charged all should be acquitted for the vehicle or the security to be released. Where even one out of several accused has been convicted, regulation 17 has no application. A reference to the Sinhala regulation 17 reproduced above confirms this view. Where one out of several persons has been convicted, as in this case, it has been affirmatively proved that the vehicle was used in the commission of the offence. Hence the release of the vehicle or the security will be in contravention of regulation 16. It was also argued that the lorry was registered in the name of the 11 year old son of the 3rd accused and therefore as the 3rd accused was acquitted the lorry should have been released. What has to be remembered in making an order of confiscation is whether it was used in the commission of the offence and not whether the owner was convicted of the offence. Therefore the order made by the Magistrate is correct. Hence the application is refused.

RATWATTE, J.—I agree.

*Application refused.*

