

1942

Present : Hearne J.

GUNARATNE v. DE ALWIS.

465—M. C. Colombo, 43,312.

Defence (Miscellaneous) Regulations No. 50—Information contained in article in a newspaper—Failure to furnish source of information—Proviso to Defence Regulation No. 14.

Where a person is charged under Regulation 50 of the Defence (Miscellaneous) Regulations with failing to furnish the name and address of the person from whom he obtained information on which an article in a newspaper was based and, if the information was contained in a document, to state the name and address of the person from whom he obtained the document.

Held, that it is no defence to the charge that possession of the document in respect of which the charge was made was not likely to prejudice the defence of the Island or the efficient prosecution of the war in terms of the proviso to Regulation 14 of the Defence Regulations.

Regulation 50 should not be read subject to Regulation 14.

A PPEAL from an acquittal by the Magistrate of Colombo.

M. W. H. de Silva, K.C., A.-G. (with him *H. W. R. Weerasooriya, C.C.*), for complainant, appellant.—The accused was charged under the Defence (Miscellaneous) Regulations for failure to comply with the request of a “competent authority” acting under Regulation 50. The Magistrate held that the accused had got the material for the newspaper article from the secret memorandum (P5) itself or from someone who had read it. As the accused failed to disclose his source of information, in answer to the requisition, he should have been found guilty under that Regulation. It is submitted that the Magistrate misdirected himself when he held that the accused, who was charged under Regulation 50, had not committed any offence under Regulation 14.

[HEARNE J.—The Magistrate, rightly or wrongly, tacked on Regulation 50 to Regulation 14.]

Yes, the requisition stated that the information was sought by the competent authority “in the interests of public safety, the defence of the Island, the efficient prosecution of the war, and for the purposes of Regulation 14”. The Magistrate has erroneously read Regulation 50 as being subject to the proviso in Regulation 14. The Court has no power to inquire into the grounds for the belief of the competent authority that the information for which he asked was necessary “in the interests of public safety”, &c. See *Liverside v. Anderson and Morrison*¹; *Green v. Secretary of State for Home Affairs*². The accused has contravened Regulation 50 and is not excused by reason of a proviso in another Regulation.

R. L. Pereira, K.C. (with him *H. V. Perera, K.C., A. R. H. Caneke-ratne, K.C.* and *J. E. M. Obeysekere*), for accused, respondent.—It is for the prosecution to prove that accused had in his possession a copy of the document.

¹ (1941) 3 All. E. R. 338.

² (1941) 3 All. E. R. 388.

[HEARNE J.—The accused was not charged with being in possession of any document. He was charged with failing to disclose the source of information.]

That presupposed that there was a document in his possession. The mere fact that there were certain resemblances in the newspaper article and in the secret memorandum should not render the accused liable unless there was further proof that the document was with him. The requisition had not asked the accused how he came to write the article but wanted him to give the name and address of the person who gave the document or information to him. The prosecution should also establish that the requisition was necessary within the three grounds specified in Regulation 14. Regulation 14 penalised publication. If accused could not be punished for publication he could not be guilty of any offence under Regulation 50. Regulation 50 should be taken in conjunction with Regulation 14. Accused came well within the provision of Regulation 14 and was not therefore guilty.

[At this stage Mr. H. V. Perera, K.C., addressed the Court.]

H. V. Perera, K.C.—The second part of Regulation 14 required that the competent authority making the requisition considered it necessary to obtain the information in the interests of public safety, the defence of the Island, and the efficient prosecution of the war. If a disclosure under the Regulation could be obtained for a particular purpose and not for a mixed purpose then it was a question as to whether the power was properly used. If one was a direct purpose and the other in ulterior purpose then the Court would say that the act of the competent authority was really done for a purpose which did not come within the law, which referred to a direct and dominant purpose.

M. W. H. de Silva, K.C., in reply.—With regard to the argument that the object of the competent authority was an ulterior object, viz., to prevent future leakages—it is submitted that the requisition mentioned all the purposes for which it was served. If the object was to prosecute, the competent authority could have prosecuted under Regulation 14, without sending a requisition under Regulation 50. The requisitions under these Regulations should be liberally interpreted by Court.

Cur. adv. vult.

July 30, 1942. HEARNE J.—

The facts relevant to this appeal may be stated shortly. On April 21, 1942, the Financial Secretary prepared a secret memorandum (P5) for the information of the Board of Ministers and on April 23 there appeared in the "Daily News" an article written by the accused. The Financial Secretary drew his own conclusions from a comparison of the article with P5. The accused, in his opinion, had had access to the latter and a formal requisition was made requiring him "to furnish the name and address of the person from whom he had obtained the information" on which the article was based. "If the information is contained in any documents", he was also asked to state "the name and address of the person from whom he had received the documents". The accused

replied that he had not obtained the information from any person or from any document "save and except articles and reports in the newspapers and the published Budget Estimates."

The accused was charged with a breach of Regulation 50 of the Defence (Miscellaneous) Regulations. It was held by the Magistrate that the accused must have obtained the facts appearing in the article from a perusal of P5 or from conversation with a person who had seen it. In the requisition it was stated that the Financial Secretary deemed it to be necessary to obtain the information sought "in the interests of public safety, the defence of the Island, the efficient prosecution of the war and for the purposes of Regulation 14". What was undoubtedly meant by the words "for the purposes of Regulation 14" was that it was proposed, on receipt of the name and address of the unknown person who, it was believed, had communicated the contents of P5 to the accused, to prosecute him for a breach of that Regulation. For this reason the Magistrate read Regulation 50 as being subject to the proviso to Regulation 14. In doing so, he was, in my opinion, wrong.

Regulation 14 provides, *inter alia*, that no person shall have in his possession "any document or any record whatsoever containing information of any matter as to which would or might, directly or indirectly, be useful to the enemy". The proviso states that no person shall be adjudged guilty of an offence against this Regulation, if he shows that the possession by him of the document or record in respect of which a charge has been made was not likely to prejudice the defence of the Island or the efficient prosecution of the war.

But the accused was not charged with the possession of any document or with obtaining, recording, communicating or publishing any document. It is to these facts that the proviso applies. He was charged with failure to comply with the request of a competent authority acting under Regulation 50, and a contravention of that Regulation is not excused by reason of a saving clause in another Regulation.

Two arguments were addressed to me on appeal which do not appear to have been addressed to the Magistrate.

One of the arguments was this. While it was conceded that the Court had no power to inquire into the grounds for the belief of the Financial Secretary, that the information for which he asked was necessary "in the interests of public safety", &c., it was argued that the dominant purpose of the requisition was a prosecution under Regulation 14. It was then argued that the words "for the purposes of any regulation" appearing in Regulation 50 refer to the carrying out of duties under the Regulations and not to the initiation of a prosecution which is not a duty imposed by the Regulations. Whatever merit there may be in this argument, I see no reason to speculate in regard to the question of what the Financial Secretary regarded as his dominant or subsidiary purpose. It is enough that he stated that the requisition was, in his opinion, necessary for all the reasons stated therein.

The other argument was that the requisition assumed that the accused had obtained information from a person or from a document which was in his possession and that it was, therefore, necessary for the prosecution to prove that he could not have obtained the information otherwise

than in one of those two ways. It was argued that the accused, who had been accustomed to calling on Ministers as well as the Financial Secretary himself, may have gleaned the information from a copy of the secret memorandum on the table of a Minister or the Financial Secretary while they were in their rooms or away. If this was so he would not have obtained his information from a person or from a document *in his possession*.

Counsel has, however, overlooked the fact that while for the purpose of his argument it has been assumed that the accused may have seen a document which was not in his possession, the accused in his reply to the requisition stated he had seen no document at all "save and except articles and reports in the newspapers and the published Budget Estimates".

But, apart from this, it appears from P3 that the Editor of the "Daily News" thinks well of the accused and I refuse to regard it as being even remotely possible that an employee of this reputable daily paper would abuse the courtesy of an interview given to him by a Minister or the Financial Secretary, much less that he would gain entrance to their rooms in their absence, with the connivance of their peons or otherwise.

The Magistrate's finding of fact was unexceptionable. No person comparing P5 and the article in the "Daily News" could possibly take another view; and had he not misdirected himself in regard to the law, he would certainly have convicted.

The appeal is allowed. The case will be remitted to the Magistrate to record a conviction and pass sentence.

Appeal allowed.
