

1945

*Present: Cannon J.*

CASSIM BAWA, Appellant, and S. I. POLICE, Respondent.

635—M. C. Vavuniya, 19,578.

*Defence (War Equipment) (Purchase by Civilians) Regulations of 1944—Possession of property of His Majesty—Limits of burden of proof on prosecution—Accused, an employee of Government, with a long record of service—Effect on sentence.*

The accused was convicted under the Defence (War Equipment) (Purchase of Civilians) Regulations of 1944 of having been in possession of 2 pairs of shorts, 2 shirts, 1 R. A. F. pull-over, 2 singlets and 1 bed-sheet, the property of His Majesty.

The Magistrate did not accept the explanation of the accused that he bought the articles at various times, most of them from members of a Labour Corps, and that he acted in ignorance of the fact that such articles were articles to which the Regulations applied.

There was no affirmative evidence given by the prosecution that the articles were not the personal property of some member of the fighting forces.

*Held*, that the Regulations were aimed at preventing trafficking in property supplied by the Government for the use of the fighting forces and there was no *onus* on the prosecution to show that the articles came direct from the Government Store and were not the property of a member of the forces.

*Held, further*, that the Court should take into consideration, while passing sentence, that the accused who had a record of long service in Government employment would lose his employment and pension rights if a conviction were recorded against him.

## **A** PPEAL from a conviction by the Magistrate of Vavuniya.

*U. S. Barr Kumarakulasinghe*, for the accused, appellant.

*D. Jansze, C.C.*, for the complainant, respondent.

July 13, 1945. CANNON J.—

This was a charge under the Defence (War Equipment) (Purchase by Civilians) Regulations of 1944, the appellant being convicted of being in possession of 2 pairs of shorts, 2 shirts, 1 R. A. F. pull-over, 2 singlets and 1 bed-sheet, the property of His Majesty. The articles were identified as the property of His Majesty, some by official arrow marks, some by similarity of pattern and so on. The defence did not dispute possession of the articles, but the appellant gave evidence that he bought them at various times, most of them from members of the Cochin Labour Corps, and that he acted in ignorance of the fact that such articles were articles to which these Regulations apply. The Magistrate did not accept the appellant's explanation and fined him Rs. 100, or in default 3 weeks' rigorous imprisonment. The appeal is against the conviction and sentence. The main ground of appeal is that the articles were not proved to be articles of His Majesty within the meaning of the Regulations.

Section 4 of the Regulations describes such property as follows:—

“ The articles to which these Regulations apply are arms of every description, ammunition, articles of uniform accoutrements and stores which:—

- (a) are the property of His Majesty or of the Government of any part of His Majesty's dominion, or of any Power allied for the time being with His Majesty of any foreign authority recognised by His Majesty as competent to maintain naval, military or air forces for service in association with the forces of His Majesty; and
- (b) are intended for the use of the fighting forces ”.

Mr. Barr Kumarakulasinghe, for the appellant, submits that, quite apart from the explanation given by the appellant, the articles may well have been the personal property of a member of His Majesty's forces and, if so, could not have been intended for the use of the fighting forces; and that no affirmative evidence had been given that they were not the personal property of some member of the forces. In short, his argument is that for such articles to be within the meaning of the Regulations, they must be shown to have come direct from the Government Store or Warehouse and not to be the property by purchase or otherwise of a member of the forces. If this be so, it is difficult to understand why the Regulations were made, as the provisions of the Penal Code should suffice.

For the Crown, Mr. Jansze submits that His Majesty's Government has an interest in all such articles until the member of the forces who has acquired them has lawfully left the forces or is dead, and it is to protect

this interest that these Regulations were framed. Some support for the Crown contention is to be found in section (c) of the Regulations, in which it is stated that it shall be a defence for the person charged to prove:—

“ that the article was the personal property of an officer who had retired or ceased to be an officer, or of a soldier who had been discharged, or the lawful heir of an officer or soldier who had died, before the date on which the article was sold to him ”.

It seems apparent that the Regulations are aimed at preventing trafficking in property supplied by the Government for the use of the fighting forces during the War. If the appellant's contention were upheld, the Regulations would be made nugatory. Having accepted the evidence, the Magistrate was right in holding that the case was proved.

As regards the sentence, an affidavit by the appellant has been read in which he says that he is likely to lose employment and pension rights as a Kangany in the Ceylon Government Railway in consequence of these proceedings. I should be very sorry if, with 30 years' service in Government employment, he were to lose his pension rights, and I am, therefore, going to reserve judgment on the matter of sentence pending further information being furnished to me by the appellant's counsel.

July 26, 1945.

Counsel have since seen me in Chambers, and Mr. Janze informs me that he has been in communication with the Railway and has been given to understand that dismissal usually follows a conviction of an employee unless it be for a minor offence. The accused has a record of long service. In this case the appellant has worked satisfactorily for 28 years, and the penalty imposed would be some guide to the authorities as to what action they should take. Mr. Barr Kumarakulasinghe suggests that instead of a fine it would meet the interests of justice if the appellant were required to pay Rs. 100 to a charity. The appeal against the sentence is allowed and the following order made:—that the appellant be bound over for two years in Rs. 200 to be of good behaviour and come up for judgment when called upon, a condition of the recognizance being that he pays within 14 days Rs. 100 to the Deaf and Blind School, Ceylon.

*Appeal against sentence allowed.*

