

Present: Bertram C.J.

1920.

DURAYA *et al.* v. APPUHAMY *et al.*

60-61—P. C. Gampaha, 50.

Selling rice above controlled price—Misjoinder of charges—Failure to specify particulars of offence—Criminal Procedure Code, s. 187—Inquiries at the spot by Police Magistrates.

Four persons (from two different boutiques) were charged with "selling rice at various dates in December, 1919, at thirty-four cents per measure, that is, above the controlled price, an offence against the Defence of the Colony Regulations, at Attange Udagama."

Held, that the charge was irregular (a) as there was a misjoinder of parties; and (b) as it did not particularize the sales which are said to have been an infringement of the regulations.

Observations as to the procedure to be followed by Magistrates in inquiries at the spot into complaints made by villagers.

THE facts appear from the judgment.

J. S. Jayawardene, for the appellant, in No. 60.—The accused should not have been charged together, as they are alleged to have sold rice at various times and places. The charge also fails, as it does not specify the particular time and place where the offence was committed, and does not state what the controlled price of rice was at the time. *Inspector of Police, Ambalangoda, v. Fernando*.¹

Peri Sunderam, for the appellant, in No. 61.—This accused has not been charged in accordance with section 187 of the Criminal Procedure Code, and no evidence on oath has been taken against him. Twelve persons from the crowd assembled in the course of the inquiry, raised their hands as having bought rice from the accused, and he was convicted.

February 11, 1920. BERTRAM C.J.—

In this case the learned Magistrate has behaved in a very zealous but, unfortunately, in a very irregular manner, and the case contains so many flaws in procedure that the convictions cannot stand. The action of the learned Magistrate in proceeding to the spot to inquire into complaints made by villagers that certain tradesmen in the village were over-charging them in the sale of rice is highly to be commended. In any case, however, where such action is taken, a Magistrate should take special care when he passes from an executive

¹(1919) 6 C. W. R. 296.

1920.

BETHAM
C.J.*Durya v.
Appuhamy*

to a judicial position to see that all the formalities of justice are strictly observed. In this case, after holding an inquiry of an informal nature, he framed a charge. In the charge he included four accused: two of them boutique-keepers, and two of them salesmen. He charged these four persons with "selling rice at various dates in December, 1919, at thirty-four cents per measure, that is, above the controlled price, an offence against the Defence of the Colony Regulations, at Attange Udagama." It is plain that this charge was wholly irregular. It joins two sets of parties whose cases could only be justly considered separately. It does not particularize the sales which are said to have been an infringement of the regulations. It merely refers to various dates in December, 1919. No persons accused under this charge could have an opportunity of dealing with the facts alleged against them as they ought according to our system of justice.

There are other points in the course of the case in which the learned Magistrate's action is open to criticism, but this charge is of itself fatal to the proceedings. In case other Magistrates should think it fit to follow the example of what was done in this case, and proceed to the spot for inquiries of this nature, I would add a word of advice as to the course they should follow. It is quite proper that they should assemble the villagers and call upon those who have complaints to make to come forward, and take their statements from those who do come forward. But having cleared the ground in this preliminary way, if they are going to frame a charge against any person complained of, they should do so with particularity. They should demand the day on which the sale took place, get the circumstances stated, inquire who were present, and what complaints, if any, were made to any neighbour or to any village authority. These particulars being obtained the charge should be framed in as precise a manner as possible. An opportunity should be given to the person complained of to consider the charge. I do not say that an adjournment should necessarily be granted, but there should be some short interval in which the person complained of can refresh his recollection with regard to the period to which the charges apply, and call any of his customers or friends who can speak to his course of business in the matter complained of. When the charges are thus defined they should be strictly inquired into. I would further deprecate in cases of this kind the free use of the power of the Court to punish witnesses for a contempt of Court where it does not believe their evidence. Intermediate sentences of this kind in an inquiry held among simple people may be liable to produce false impressions. It is also, of course, undesirable, when once a charge has been formally framed, that a Magistrate should invite the opinion of villagers by a show of hands in regard to any particular matter. He may, at the initiation of the inquiry, ask the villagers

to hold up their hands if they wish to make any complaints, and then given an opportunity to those holding up their hands to come forward, and do so. But to invite such demonstrations during the course of such inquiry is a grave irregularity. I hope that nothing I have said will deter any Magistrate from dealing with complaints on the spot in regard to a matter in which the public are so vitally interested, and where the course of justice may be assisted by such action being taken. But I trust that every Magistrate who so acts will take care to see that any proceedings thus taken are taken with all the safeguards which the law requires.

In this case the Magistrate appears to have endorsed on the proceedings a note which shows that executive action has been taken, which, no doubt, will prove sufficient for the purpose. In view of this circumstance, I make no order as to any further proceedings, more particularly as it appears that, with regard to the second accused, there was no sufficient evidence to justify a conviction, even if his case had been dealt with separately.

The appeals are, therefore, allowed.

Appeals allowed.

1930.
BIRRAM
C.J.
*Duraya v.
Appuhamy*