

1945

Present: Wijewardene J.

KANDIAH, Appellant, and INSPECTOR OF POLICE (C. I. D.),
Respondent.

837—M. C. Colombo, 4,817.

*Defence (War Equipment) (Purchase by Civilians) Regulations, 1944—
Regulation 3—Charge of possession of property belonging to Air
Ministry—Right of accused to plead bona fide purchase.*

Where the accused was charged for being in possession of a set of ear-phones, property belonging to the Air Ministry (War Department), in breach of Regulation 3 of the Defence (War Equipment) (Purchase by Civilians) Regulations,—

Held, that it was open to the accused to prove by way of defence that he was in possession of the article having purchased it in ignorance of the fact that it was property belonging to the Air Ministry.

A PPEAL against a conviction by the Magistrate of Colombo.

H. Wanigatunga (with him *Nihal Gunasekera*) for the accused, appellant.

T. K. Curtis, C.C., for the Crown.

Cur. adv. vult.

September 4, 1945. WIJEWARDENE J.—

The accused was convicted and sentenced to pay a fine of Rs. 75 for being in possession of a set of ear-phones, property belonging to the Air Ministry (War Department), in breach of Regulation 3 of the Defence (War Equipment) (Purchase by Civilians) Regulations, 1944, published in *Gazette* No. 9,298 of August 4, 1944.

Regulation 2 of these regulations makes it an offence to obtain by way of purchase, gift or loan an article referred to in Regulation 6 but states that it shall be a defence for a person so charged to prove that "he acted in ignorance of the fact" that the article was an article to which those regulations applied. Regulation 3 then proceeds to make the mere possession of such an article an offence and puts the burden on the person charged to prove that he was in lawful possession of the article. It is, therefore, open to the accused in this case to prove by way of defence that he was in possession of this article having purchased it in ignorance of the fact that it was property belonging to the Air Ministry.

The accused was questioned by Police Inspector Nagaratnam about a set of ear-phones, and the accused admitted promptly that he had a set which he had purchased from the priest of Welikumbura Temple, Kelaniya. The Inspector went thereupon to the accused's home and found the ear-phones kept openly in the front verandah.

The accused gave evidence and called the priest as a witness. According to the evidence, as accepted by the Magistrate, the priest had a wireless set complete with ear-phones and the accused inquired from him how he had got these articles and learnt that he had purchased them from one Piyadasa. As the accused wished to have a similar set, the priest bought a set including the ear-phones in question from Piyadasa and handed them to the accused who paid Rs. 35 for them.

The learned Magistrate convicted the accused, as he thought that the accused should and would have observed the Crown and the letters A. M. on either side of it appearing on the ear-phones and would thus have known at the time of the purchase that he was buying Air Ministry property. In view of this observation of the Magistrate I examined the ear-phones. The letters A. M. and the Crown are in black and appear on a black ground and their size moreover is such as not to attract the attention of anyone. One would easily miss seeing these marks unless one was looking for them. I see no reason whatever to disbelieve the accused when he said that he did not see these marks until they were pointed out to him after his arrest and that he had no reason to suspect that the articles were the property belonging to the Air Ministry as the priest had similar articles openly and there was no secrecy in the arrangements made by the priest to let him have the set and the ear-phones. The accused has a good record as a Police Constable for eight years and it is not likely that he would have bought the ear-phones and kept them openly if he knew them to be Air Ministry property. I allow the appeal and set aside the conviction.

Appeal allowed.
