

1948

Present: Cannon J.

PERERA, Appellant, and VAN SANDEN (INSPECTOR OF POLICE), Respondent.

578—*M. C. Panadura, 36,025.*

Sentence—Confiscation of property regarding which offence committed—Not provided for in Defence (Miscellaneous) Regulations, s. 52—Nor in Criminal Procedure Code, s. 413.

Where the accused was convicted, under a defence regulation, of buying cement without a permit and the Magistrate ordered the confiscation of the cement—

Held, that, in the absence of provision for forfeiture in the penalties paragraph No. 52 of the Defence (Miscellaneous) Regulations, the Magistrate had no power to order confiscation. Section 413 of the Criminal Procedure Code did not justify the Magistrate's order as the words "for the disposal of" in the section were not sufficiently wide to include confiscation.

A PPEAL from a conviction by the Magistrate of Panadura.

M. M. Kumarakulasingham (with him *K. C. Nadarajah*) for the accused, appellant.

J. A. P. Cherubim, C.C., for the Attorney-General.

July 13, 1945. CANNON J.—

The appellant was convicted of buying cement without a permit. The Magistrate treated it as more or less a technical offence because the cement purchased was damaged and the appellant's case was that he did not apprehend that a permit was necessary for cement of that nature which was merely so-called cement. The Magistrate, therefore, imposed a nominal fine of Rs. 50 and ordered the confiscation of the cement which was bought for some Rs. 90.

Mr. Kumarakulasingham for the appellant submits that the Magistrate had no power to order confiscation and points out that in the penalties paragraph No. 52 of the Defence Miscellaneous Regulations, 1939, no reference is made to forfeiture. Sub-section (3) states that a convicted defendant "is liable to imprisonment of either description for a term not exceeding Rs. 1,500, or to both such imprisonment and such fine".

Mr. Cherubim for the Crown referred me to section 413 of the Criminal Procedure Code by which the Court is empowered to make such order as it thinks fit "for the disposal of" property produced before it regarding which an offence has been committed, and the question arises whether the words, "for the disposal of" embrace confiscation. No authority has been cited for that proposition, but *Ennis J.* in 20 N. L. R. 115 and 28 N. L. R. 350* was inclined to think that the words "for the disposal of" were not sufficiently wide to include confiscation. In the Defence (Control of Prices) Regulations, section 2, sub-section (7), the Court is expressly given power of forfeiture. I think if the Legislature had intended to give that power it would have clearly said so, such an order being capable of serious consequences to the person affected by it.

The appeal is, therefore, allowed as regards the order for forfeiture, which is cancelled. The fine of Rs. 50 remains.

Order for forfeiture set aside.

*28 N. L. R. 348 at 350. *Dalton J.* not *Ennis J.*