

1944

Present: Wijeyewardene J.

KANDASAMY, Appellant, and NAVARATNARAJAH  
Respondent.

107—M. C. Chavakachcheri, 21,475.

*Defence (Miscellaneous) Regulations—Attempt to commit a breach of a regulation—Regulations 52 (1) and 54 (1)—Controlled Articles (Chillies and Onions) Order—Regulation 6—Notice to accused of the Order under which he is charged.*

It is an offence for a person to attempt to commit an act in contravention of an Order under the Defence Regulations.

Where the accused is charged with an attempt to transport chillies and chillie powder outside the Jaffna Peninsula without the authority of a permit issued by the Civil Defence Commissioner in contravention of Regulation 6 of the Controlled Articles (Chillies and Onions) Order, 1943.

*Held*, that the prosecution was bound to prove that the chillies, which the accused was attempting to transport were chillies of the kind described in the Order.

Failure to state in the summons the Order for breach of which the accused is charged, where the charge is read out from the summons, is a fatal irregularity.

**A** PPEAL from a conviction by the Magistrate of Chavakachcheri.

C. Suntheralingam for accused, appellant.

*Cur. adv. vult.*

M. F. Spencer, C.C., for the Crown, respondent.

October 13, 1944. WIJYEWARDENE J.—

The accused appeared in Court on summons and the Magistrate read to the accused under section 187 (2 and 3) of the Criminal Procedure Code the statement of the particulars of the offence contained in the

<sup>1</sup> 15 C. A. R. 110.

<sup>2</sup> 4 C. A. R. 228.

<sup>3</sup> 44 N. L. R. 254.

<sup>4</sup> 41 N. L. R. 505.

summons. That statement was to the effect that the accused "did on January 24, 1944, at Elephant Pass . . . attempt to transport in lorry . . . 2 bags of dried chillies and 3 bags of chillie powder outside the Jaffna Peninsula without the authority of a permit valid for the time being issued by or on behalf of the Civil Defence Commissioner in contravention of Regulation 6 of the Controlled Articles (Chillies and Onions) Order, 1943, made by the Governor under the Defence Regulation 43D of the Defence (Miscellaneous) Regulations and published in *Government Gazette* No. 9,105 of April 2, 1943, and thereby committed an offence punishable under Regulation 54 (1) read with Regulations 52 (1) and 52 (3) (a) of the Defence (Miscellaneous) Regulations".

The accused was convicted after trial and sentenced to pay a fine of Rs. 300.

Mr. Advocate Suntheralingam urged the following points against the conviction:—

- (i) that Regulation 54 (1) did not make it an offence for a person to attempt to commit an act in contravention of an Order made under any defence regulation;
- (ii) that there was no proof that the chillies in question were "chillies . . . whether imported or grown in the Peninsula" as set out in paragraph 5 of the Controlled Articles (Chillies and Onions) Order, 1943;
- (iii) that the Controlled Articles (Chillies and Onions) Order, 1943, did not require a permit from the Civil Defence Commissioner for the transportation of chillie powder from any place in the Jaffna Peninsula to a place outside the Peninsula.

In support of his first argument, Mr. Suntheralingam referred to Regulation 54 (1) which reads—

"Any person who attempts to commit . . . any offence against any defence regulation shall be deemed to be guilty of an offence against that regulation";

and contended that the Regulation omitted to provide against an attempt to commit a breach of an Order. This argument however, ignores Regulation 52 (1) which says—

"If any person contravenes . . . any Order . . . made . . . under any defence regulation, he shall be guilty of an offence against that regulation".

Regulation 52 (1) defines, in fact, the words "any offence against that regulation" occurring in Regulation 54 (1) as including an act in contravention of an Order made under a defence regulation. I hold, therefore, against the accused on the first point.

Paragraph 5 of the Order mentioned in the summons reads—

"Except under the authority of a permit granted by the Civil Defence Commissioner, no person shall transport from any place in the Peninsula to any place outside the Peninsula, whether by land or sea, any chillies or onions whether imported or grown in the Peninsula."

I think that paragraph refers only to two kinds of chillies, namely—(1) chillies imported and (2) chillies grown in the Peninsula. The "chillies

imported " must necessarily mean chillies imported to the Island from some place across the seas. The paragraph does not, therefore, refer to chillies grown in some part of the Island outside the Peninsula and taken to the Peninsula and later transported to a place outside the Peninsula.

It was therefore necessary for the prosecution to prove in this case that the chillies which the accused was attempting to transport were chillies of the kind described in the Order. No evidence whatever was led on this point and, in fact, the chillies were not produced in Court. I hold that the conviction in respect of the chillies is bad.

The Controlled Articles (Chillies and Onions) Order, 1943, mentioned in the summons was published in the *Gazette* of April 2, 1943. Clearly, the provisions of that Order do not apply to chillie powder. A later Order called the Controlled Articles (Chillie Powder) Order, 1943, published in the *Gazette* of May, 4, 1943, provided that paragraph 2 and paragraphs 4 to 9 of the earlier Order should apply to " chillie powder in like manner as they apply to chillies grown in the Peninsula ". The summons does not refer to the later Order. Mr. Suntheralingam contends that the accused was prejudiced by the failure to mention the later Order in the summons. I am unable to say that the contention is without merit.

I quash the conviction and send the proceedings back for a trial of the accused on a properly framed charge in respect of the alleged attempt to transport chillie powder.

*Conviction quashed.*

