

1945

*Present:* **Wijewardene J.**

BASTHIA, Appellant, and INSPECTOR OF POLICE,  
VEYANGODA, Respondent.

913—*M. C. Gampaha, 27,168.*

*Sentence—Accused's false allegation, for purposes of defence, of bribery against Police—Should not be made reason for enhanced punishment.*

Where the accused, who was charged with unlawful possession of property belonging to the War Department, received a heavy jail sentence because, for the purposes of his defence, he made a false allegation of bribery against the Police—

*Held*, that the Magistrate had proceeded on an indefensible principle. If the accused committed an offence in making the false allegation of bribery, he could be charged for that offence separately and punished.

**A** PPEAL against a conviction by the Magistrate of Gampaha.

*E. A. G. de Silva* (with him *G. T. Samarawickreme*), for the accused, appellant.

*T. K. Curtis, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

September 19, 1945. WIJEYWARDENE J.—

The accused was charged with having had in his possession two tins of paint belonging to the War Department in breach of Rule 3 of the Defence (War Equipment) (Purchase by Civilians) Regulations 1944, published in *Gazette* No. 9,298 of August 4, 1944.

As the evidence given by the Police Constables regarding the statement made by the accused at the time of his arrest was somewhat contradictory I called for the Police Information Book and the diaries of the Constables. One of the diaries was reported to be missing. After an examination of the information book and the diary available to me I find it difficult to say that the decision of the Magistrate as to the guilt of the accused is erroneous.

The Magistrate sentenced the accused to six months' rigorous imprisonment. In his judgment the Magistrate stated that there were "two circumstances which induced (him) to impose a heavy jail sentence on the accused". The first circumstance was "that thefts of war property must necessarily impede the war effort" while the second circumstance was stated by him as follows:—

"The accused has made a bribery charge against the Police alleging that they asked him for a bribe. That is a serious allegation which should not be made unless there are good grounds for making it. . . . The circumstances surely suggest that the allegation is false".

I cannot understand why the learned Magistrate thought that an accused person charged with unlawful possession of property should receive a heavy jail sentence because for the purposes of his defence he made a false allegation of bribery against the Police. If the accused committed an offence in making such an allegation in defending himself, the accused could be charged for that offence separately and punished. As the Magistrate has proceeded on an indefensible principle in passing a sentence of six months' rigorous imprisonment in this case, I reduce the sentence to three months' rigorous imprisonment.

*Sentence reduced.*

