

1945

Present: Canekeeratne J.

COREA, Appellant, and FERNANDO *et al.*, Respondents.951—*M. C. Kalutara, 32,825.*

*Defence (Miscellaneous) Regulations—Order made under Regulation 37 prohibiting removal of paddy without permit—Offence under—A previous order of requisition of the paddy is not a necessary ingredient.*

In a prosecution for removing paddy without obtaining a removal permit from the village headman, in contravention of an order made under Defence (Miscellaneous) Regulation 37 and published in the *Gazette*, an order of requisition is not a condition precedent to an order prohibiting removal of the paddy.

**A** PPEAL against an acquittal from the Magistrate's Court, Kalutara.

*T. K. Curtis, C.C.*, for the complainant, appellant.

*U. A. Jayasundere* (with him *Vernon Wijeyetunge*), for the accused, respondents.

*Cur. adv. vult.*

October 18, 1945. CANEKERATNE J.—

The complainant made a report to Court under section 148 (1) (b) of Chapter 16 (Legislative Enactments of Ceylon) that the three persons named therein did . . . reap the crop of the field named Digapatha situated at Karandagoda, without notifying . . . and removed the said crop on or about August 31, 1944, without obtaining a removal permit thereto from the village headman of Karandagoda, in contravention of an order dated July 20, 1944, under Defence (Miscellaneous) Regulation 37, published in the *Ceylon Government Gazette* No. 9,296 of July 28, 1944, and thereby committed an offence punishable under Defence (Miscellaneous) Regulation 52.

The learned Magistrate after reading the report ordered summons on the persons named therein. At the trial the headman of Karandagoda testified that the three accused persons reaped the field on August 31, 1944, that they had removed all the paddy and that they did not inform him before removing the paddy. In cross-examination he stated that as headman he had power to act in the case and that he did not requisition the paddy of the accused. The evidence of the Vel Vidane of the place showed that one cannot remove paddy from his field without a permit from the village headman, that a person must get a permit on the same day he receives the report and that the accused persons took the paddy to their house without a permit.

The Court is bound to take notice of all laws and rules having the force of Law; where a charge is laid under a statutory rule, regulation or bye-law, the prosecution is not bound to produce the *Gazette* in which appears the rule, regulation or bye-law in proof thereof in order to establish the charge. (*Sivasampu v. Juan Appu* <sup>1</sup>.)

<sup>1</sup> (1937) 38 N. L. R. p. 369.

The first count (reaping the crop) in the charge was dropped. The learned Magistrate came to the conclusion that a permit from the headman was required by the order in question for the removal of the paddy, that it was conclusive on the evidence placed before him that this permit was not obtained by the accused and that the removal was in breach of the order. He, however, acquitted the accused on the ground that an order of requisition was a condition precedent to an order prohibiting removal of the paddy.

It was contended in appeal on behalf of the respondents that there was no evidence that the order prohibiting removal had been made and that it was essential to produce the *Gazette* referred to in the complaint; the case of *de Zoysa v. Cumarasuria*<sup>1</sup> was referred to by Counsel for the accused. The accused in that case was acquitted on the ground that although the Minister had proclaimed by notification in the *Gazette* that a partial black-out should be observed in the district concerned, there was no proof that a "competent authority" for that area had notified the public of the Minister's decision as regulated by section 3 of Part 2 of the Lighting Restriction Ordinance of 1940. That decision has no application to the present case.

The *Gazette* notice No. 9,296 referred to in the case shows that the Assistant Government Agent has by virtue of the powers vested in him by the Defence (Miscellaneous) Regulations (referred to therein) directed that no cultivator, owner . . . shall remove or cause to be removed any paddy from any threshing floor until . . . a permit has been obtained for such removal from the village headman of the area where the paddy is. It was not contended that the Assistant Government Agent was not a competent authority to make the order or that the order was invalid.

In every one of the cases referred to at the argument the point was expressly taken in the lower Court: the learned Magistrate considered it and gave reasons for accepting one view. The accused had obtained a report from the Vel Vidane on August 31, 1944: this showed "the amount" of paddy reaped by them and the quantity due from each of them to the Government. There was no dispute as regards the facts in the lower Court; the only contention being that an order requisitioning the paddy ought to have been made before there was a prohibition of removal. As the learned Magistrate considered the terms of the order it may be presumed that the order was before him. In the circumstances the non-production of the *Gazette* as an exhibit cannot be considered a defect—if it was a defect—that is vital.

The competent authority is given power to requisition certain articles: two conditions, however, are enforced: first it must appear to the authority to be necessary or expedient and second, whatever he purports to do must be done for the purpose of securing the public safety, defence of the Island, efficient prosecution of the War or for maintaining supplies and services essential to the life of the community. (Regulation 37 (1).) Requisitioning is the taking possession of the property or requiring the property to be placed at the disposal of the requisitioning authority (section 2); in effect it is a seizure of property during a period of limited

<sup>1</sup> (1942) 44 N. L. R. p. 92.

time, though it may be of uncertain duration. Sub-section 4 of the Regulation confers a limited power, it is a preventive method for securing the desired end; it enables a person to be restrained from doing something with regard to his property which, if free and unfettered, it is reasonably probable he would do. The condition for acting under sub-section 4 is that the competent authority is of opinion that it is necessary for putting into operation the powers conferred by the earlier sub-section (*i.e.*, powers to requisition) for the order to be made. The opinion may be formed before the authority in question has decided to requisition the article. The clause states not that the order is necessary for requisitioning the article but that it is necessary for putting into operation the powers conferred by the sub-section. The language used in sub-paragraph B supports this view: it enables the authorised officer to ascertain from the owner or occupier of any premises whether a particular article will be on his premises on a future date. The object is to ensure that the article will be available if the officer makes an order of requisition.

I set aside the order of acquittal and convict the accused-respondents on the second count. I remit the case to the learned Magistrate for sentence.

*Acquittal set aside.*

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