

1946

Present : Wijewardene J.

SUPPIAH *et al.*, Appellants, and DE SILVA (INSPECTOR OF POLICE), Respondent.

1,086–1,088—M. C. Nuwara Eliya, 952.

Defence (Miscellaneous) Regulations—Controlled Articles (Coconut Poonac) No. 2 Order, paras 10, 11—Transportation of coconut poonac—Proper receipts should be shown—Duty to show receipts to Police Officer.

In a prosecution for transporting coconut poonac in contravention of paragraph 10 of the Controlled Articles (Coconut Poonac) No. 2 Order—

Held, that receipts referring to coconut poonac were not *per se* sufficient evidence in defence when the case for the defence was that the poonac was obtained on permits issued by the Controller of Sediment Poonac.

Held, further, that the accused should have shown the necessary receipts to the police officer at the time his vehicle was stopped for examination.

A PPEALS against three convictions from the Magistrate's Court, Nuwara Eliya.

G. E. Chitty (with him *C. de S. Wijeyeratne*), for the accused, appellants.

S. Mahadevan, C.C., for the Crown.

Cur. adv. vult.

October 4, 1946. WIJEWARDENE J.—

The three accused were convicted on a charge of having transported in a lorry 6,691 pounds of coconut poonac in contravention of paragraph 10 of the Controlled Articles (Coconut Poonac) No. 2 Order made under

Regulation 43D of the Defence (Miscellaneous) Regulations and published in the *Government Gazette* No. 9,333 of November 21, 1944.

Paragraph 10 of the Order enacts—

“ No person shall, on or after the appointed date, transport from any place to any other place in Ceylon any quantity of any scheduled article, unless—

- (a) “ in each case where such quantity was purchased or otherwise acquired from a manufacturer or an authorised dealer, he has in his possession the receipt issued by that manufacturer or dealer, as the case may be, in respect of that quantity ”.

The Police Officer who stopped the lorry found 9,491 pounds of poonac in bags. The first accused was driving the lorry at the time and the second and third accused were seated by his side. The second accused produced a “ permit for the transport ” of 2,800 pounds of poonac and the first accused produced receipt P2 for 1,120 pounds.

The only evidence against the third accused is that he was seated by the first and second accused. There is nothing to suggest that he was in any way concerned with the transportation of the poonac. I would, therefore, acquit him.

The prosecution is preferring the present charge for the transportation of 6,691 pounds of poonac after making a deduction in respect of the 2,800 pounds of poonac for which the second accused produced P1 which the Inspector of Police called “ a permit for transport ”.

The lorry is a vehicle owned by a Trading Company to transport the goods of various customers. The second accused was apparently one such customer and he produced the document P1 for 2,800 pounds of poonac which the Trading Company was commissioned by him to carry. As pointed out by me that quantity of 2,800 pounds of poonac does not form a part of the 6,691 pounds of poonac mentioned in the charge. I am unable to sustain his conviction and I acquit him.

The evidence shows clearly that the first accused failed to produce for the examination of the Police Officer the necessary receipts, at least in respect of 5,491 pounds of coconut poonac. A document D3 was produced in the course of the trial which was alleged to be a receipt for the poonac in question. That receipt was in respect of 3,360 pounds of poonac. On the evidence before me I am not prepared to consider that receipt or P2 as having any reference to the poonac which was transported that day, in view of the fact that the case for the defence was that the poonac was obtained from the manufacturers on the permits D1 and D2 issued by the Controller of Sediment Poonac while the documents P2 and D3 refer to coconut poonac. Moreover, paragraph 11 of the Order shows that the person in charge of the vehicle should have with him the receipts mentioned in paragraph 10 for examination by the Police Officer stopping the vehicle. Clearly the first accused had no receipts except P2 in his possession at the time his lorry was stopped.

I uphold the conviction of the first accused and dismiss his appeal.

Appeal of first accused dismissed.

Appeals of second and third accused allowed.