

1945

Present: Jayetileke J.

DE SILVA (S. I., POLICE), Appellant, and PIYADASA,
Respondent.

1,236—*M. C. Trincomalee, 1,773.*

Defence (Miscellaneous) Regulations—Removal order issued by Sub-Area Commander under rule 4 (3) passed under Regulation 27—Power of Magistrate to consider the reasonableness of the order.

Where the accused was charged with having entered the Trincomalee Special Area in contravention of an order served on him by the Sub-Area Commander—

Held, that the Magistrate had no power to inquire whether there were reasonable grounds for the opinion which the Sub-Area Commander had formed that the presence of the accused within the Special Area was prejudicial to the efficient prosecution of the war. A removal order issued under rule 4 (3) which was passed under Defence (Miscellaneous) Regulation 27 must be presumed to have been properly made until the contrary is proved.

A PPEAL, with the sanction of the Attorney-General, against an order of acquittal entered by the Magistrate of Trincomalee.

A. C. Ameer, C. C., for the complainant, appellant.

No appearance for the accused, respondent.

Cur. adv. vult.

December 14, 1945. JAYETILEKE J.—

This is an appeal with the sanction of the Attorney-General.

The accused was charged with having entered the Trincomalee Special Area in contravention of an order served on him by a competent authority (Brigadier A. E. Hunt) to quit and remain out of the said area. The order was issued under rule 4 (3) appearing in *Gazette* No. 9,169 dated

September 9, 1943, made under section 27 (b) of the Defence (Miscellaneous) Regulations. The order was in these terms :—

“ By virtue of powers vested in me by Rule 4 of the Trincomalee Special Area Rules, 1943 (made by His Excellency the Governor under Regulation 27 (b) of the Defence (Miscellaneous) Regulations and published in the *Ceylon Government Gazette*, No. 9,169 of September 9, 1943), I, Brigadier A. E. Hunt, R.A. Commander, H.Q. Sub-Area, Trincomalee, being satisfied that your presence within the Trincomalee Special Area, as defined for the purpose of the aforesaid rules, is prejudicial to the maintenance of public order and the efficient prosecution of the war in which His Majesty is at present engaged, do hereby require you to quit the Trincomalee Special Area before 8 p.m. on the 5th July, 1945, by Railway train.

“ And I do hereby require you to take notice that, in the event of your failing to comply with the requirement set out in the foregoing paragraph or in the event of your re-entering the Trincomalee Special Area without having first obtained written permission on that behalf from me or from the person for the time being holding the office of Commander, H.Q. Sub-Area, Trincomalee, during the continuance of the war, you will be liable under Rule 7 of the aforesaid rules, to be arrested without a warrant by any police officer and to be removed from the Special Area, and to be detained in custody pending such removal ”.

The evidence shows that the accused was a procurer and that the order was made to safeguard the troops against venereal disease. In acquitting the accused the Magistrate said—

“ I recalled Chief Inspector Arendsz to ascertain the reason for the order and he says that the accused is a pimp and the order was made in order to safeguard the troops from contracting venereal disease. In my opinion this cannot be described as prejudicial to public order or the efficient prosecution of the war ”.

His view seems to be that there is no reason why troops who are suffering from venereal disease should not fight, and fight well. Brigadier A. E. Hunt, the Commander of the Sub-Area, however seems to think that the proper place for troops suffering from venereal disease is not the fighting line but the Hospital and that if troops contract venereal disease the efficient prosecution of the war must necessarily be prejudiced. I do not think that much argument is necessary to convince one that Brigadier Hunt's view is sound. There is yet another reason why the Magistrate's order cannot stand. It seems to me that until the contrary is proved the order made by Brigadier Hunt must be presumed to have been properly made. Section 1 of the Emergency Powers (Defence) Act, 1939, of the Imperial Parliament as adapted, modified, and extended, to Ceylon by the Emergency Powers (Colonial Defence) Order-in-Council, 1939, gave His Excellency the Governor the power to make regulations as appear to him to be necessary or expedient for securing the public safety, the defence of the realm, the maintenance of public order, and the

efficient prosecution of any war in which His Majesty may be engaged and for maintaining supplies and services essential to the life of the community. In pursuance of that power His Excellency the Governor made the Defence (Miscellaneous) Regulations. Regulation 27 reads:—

“ Without prejudice to any other defence regulation the Governor may, as respects—

- (a) any protected place or protected area, or
- (b) any place in relation to which it appears to the Governor to be necessary to take special precautions owing to the presence in that place of members of His Majesty's forces or munitions of war,

make such rules regulating the conduct of persons in the said place or area as he thinks necessary for the protection of persons and property in that place or area, for safeguarding the discipline and efficiency of members of His Majesty's forces therein, or for facilitating the enforcement therein of these regulations; and a rule made in relation to any place by virtue of sub-paragraph (b) of this regulation may make provision for restricting access to that place, and for removing therefrom any person who is therein in contravention of the rule ”.

Certain rules were made under this section which are published in *Gazette* No. 9,169 dated September 9, 1943. Rule 4 reads:—

The Fortress Commander of Trincomalee shall have the power—

- (1) To require the attendance before him of any person who is within the Special Area;
- (2) To question him as to the reasons for his being in that area;
- (3) Where he is of opinion that the presence of such person in that area is prejudicial to the public safety, the defence of the Island, the maintenance of public order and the efficient prosecution of the war, to make a removal order in respect of such person, unless it is shown to his satisfaction that such person—
 - (a) is a member of His Majesty's forces or of any department of the Government of Ceylon; or
 - (b) was at the date of the publication of these rules in the *Gazette*, the owner of any land or premises situated in that area; or
 - (c) was at the aforesaid date—
 - (1) the occupier of such land or premises; or
 - (2) a member of the family of any such occupier dependent on and living with such occupier.

This rule was amended by the substitution of the words “ Sub-Area Commander ” for the words “ Fortress Commander ” (see *Gazette* No. 9,375 dated March 2, 1945). Brigadier Hunt states in the order that he served on the accused that he is satisfied that the presence of the

accused within the Trincomalee Special Area is prejudicial to the efficient prosecution of the war. The question arises whether the Magistrate had the power to inquire whether there were grounds for the opinion Brigadier Hunt had formed. I think this question is concluded by the decision of the House of Lords in the case of *Liversidge v. Sir John Anderson*¹ where it was held that when the Secretary of State acting in good faith under regulation 18B of the Defence (General) Regulations, 1939, makes an order in which he recites that he had reasonable cause to believe a person to be of hostile associations and that by reason thereof it is necessary to exercise control over him and directs that that person be detained, a Court of law cannot inquire whether in fact the Secretary has reasonable grounds for his belief. The matter is one for the executive discretion of the Secretary of State. Lord Maugham said:—

“The order on its face purports to be made under the regulation and it states that the Secretary of State had reasonable cause to believe the fact in question. In my opinion the well-known presumption *omnia praesumuntur rite esse acta* applies to this order, and, accordingly assuming the order to be proved or admitted, it must be taken *prima facie*, that is until the contrary is proved, to have been properly made and that the requisite as to the belief of the Secretary of State was complied with”.

The case of *In re Bracegirdle*² has no bearing on the present case which depends on the construction of certain emergency powers created to meet the necessities of the war.

I would set aside the order of acquittal and send the case back so that the Magistrate may impose such sentence on the accused as he thinks fit.

Acquittal set aside.

¹ (1942) A. C. 206.
² 39 N. L. R. 193.