

1944

*Present : Howard C.J.*

TAMBY LEBBE Appellant, and VAVUNIYA POLICE,  
Respondent.

1316—P—M.C. *Vavuniya, 19,173.*

*Defence (War Equipment) (Purchase by Civilians) Regulations, 1944—Purchase of military rations by accused—Burden of proof—Regulation 2 (1) and (2).*

Where the accused is charged under the Defence (War Equipment) (Purchase by Civilians) Regulations with the purchase of military rations and the prosecution establishes that the accused purchased an article within the meaning of the regulations the burden is cast upon the accused of bringing himself within the terms of sub-regulation (2), viz., of proving that he acted in ignorance of the fact that the article was one to which the regulations apply.

**A**PPEAL against an acquittal by the Magistrate of Vavuniya.

*H. W. R. Weerasooriya* for Crown appellant.

*S. Nadesan* (with him *H. W. Jayewardene*), for the accused, respondent.  
*Cur. adv. vult.*

January 30, 1945. HOWARD C.J.—

This is an appeal against the acquittal of the respondent and made with the sanction of the Attorney-General. The respondent was charged under Regulation 2 (1) of the Defence (War Equipment) (Purchase by Civilians) Regulations, 1944, that he did on August 21, 1944, purchase from one J. F. Sankey of the Royal Air Force, Ceylon, 100 tins of corned beef, 50 tins of jam, 50 tins of cheese and 48 tins of herrings being the property of His Majesty and intended for the use of the fighting forces. It was established by the prosecution that at 5.15 P.M. on August 22, 1944, the articles specified in the charge were found by Flight-Lieutenant Smith in the boutique of the respondent at Vavuniya. The respondent

told Lieutenant Smith that he purchased the articles from two members of the Royal Air Force who were pointed out by the respondent at an identification parade one of whom was J. F. Sankey a witness called by the prosecution. Sankey testified to the fact that about 11.30 A.M. on August 21, 1944, he and another man called Hyde, both in uniform, went in a military lorry to the boutique of the respondent and offered him the articles specified in the charge which the respondent agreed to purchase. Sankey went away and returned at 2.30 P.M. with the goods in a lorry and received Rs. 75 in advance. Sankey says that he told the respondent that the articles were military stores. Sankey, in evidence, also said that the articles were not his but the property of the R. A. F. In cross-examination he said that he had been charged with the theft of the articles and Court-martialled. Also that he drew the articles from the main ration stores and had them with him in the Cook-house. Seven days rations are issued in bulk to him as rations for a certain number of people and there was always a surplus quantity of tinned food in the store of the Cook-house which was separate from the main store. In cross-examination Sankey stated that the food in the Cook-house store belonged to the persons who get their food at the Cook-house. In re-examination, however, he said that the surplus rations belong to the R. A. F. and he was not entitled to sell them. No evidence was called on behalf of the respondent.

In his judgment the Magistrate states that there is nothing on the articles to indicate that they are military stores. The only evidence that they are military stores is supplied by the testimony of Sankey who says that he told the respondent that they were military rations. The evidence of Sankey being uncorroborated, he is not prepared to act on it. In these circumstances there is no evidence on which he can hold that the respondent knew that the articles were military rations. He, therefore, found the respondent not guilty.

Crown Counsel appearing on behalf of the appellant has contended that as a matter of law there was no burden on the prosecution to prove that the accused-respondent knew that the said articles were military rations. I am in agreement with this contention. The regulation under which the respondent was charged is worded as follows:—

“ 2. (1) Every person who purchases any article to which these regulations apply, or accepts or takes any such article by way of gift, loan or otherwise, from any member of the fighting forces, shall be guilty of an offence.”

If the prosecution establishes that the respondent purchased an article within the ambit of the regulations, the burden is cast upon the respondent of bringing himself within the terms of sub-regulation (2). He can prove that he acted in ignorance of the fact that such article was an article to which the regulations apply. The respondent did not give evidence or call any witnesses. Nor does proof of such ignorance emerge from the evidence called by the prosecution. The respondent did not, therefore, discharge this onus.

It has, however, been further argued on behalf of the respondent that the articles were not the property of His Majesty inasmuch as they

had passed from the main store to the cook-house. It is contended that, as they were surplus rations, they became the property of the individual soldiers who would eventually consume them. I cannot accept this contention. The rations on issue from the main store did not become the property of the cook or the person in charge of the cook-house. No doubt when issued to an individual soldier they became his property, but previous to such issue such rations remain the property of His Majesty. There is no doubt on the evidence that the articles were the property of His Majesty.

In these circumstances the appeal is allowed and I remit the case to the Magistrate so that he may convict the respondent and pass sentence commensurate with the gravity of the offence. In coming to this decision I have not been unmindful of the fact that this court does not reverse a finding of acquittal unless it is satisfied that there has been a miscarriage of justice. In this case I am so satisfied.

*Appeal allowed.*

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