

1946

Present: Rose J.

BRAHAMANY, Appellant, and DANGAMUWA KORALE,
Respondent.

258—*M. C. Ratnapura, 45,977.*

Order requisitioning paddy—No directions given to accused—No evidence of possession—Validity of conviction in such circumstances—Defence (Miscellaneous) Regulations 37, 52.

A person cannot be convicted of contravening an order of requisitioning made under Regulation 37 of the Defence (Miscellaneous) Regulations unless (1) directions had been given to him such as are contemplated under that Regulation and (2) there is evidence that on the date of the requisition order or on the date of any direction given in connection with the requisition order the property to be requisitioned was in fact in the possession of the accused person.

A PPEAL against a conviction from the Magistrate's Court,
Ratnapura.

C. Renganathan (with him *T. B. Dissanayake*), for the accused,
appellant.

T. K. Curtis, C.C., for the complainant, respondent.

April 1, 1946. ROSE J.—

This is an unfortunate little matter in which the appellant was convicted of having failed to comply with an order of requisitioning under Regulation 37 of the Defence (Miscellaneous) Regulations. The subject matter of the order was some eight bushels of paddy, and the appellant takes two points. He says, first, that by the terms of the requisitioning order itself, which was produced—exhibit P 1—before the Magistrate, no direction as contemplated under Regulation 37 was given to him (the appellant) at all in connection with the order. As, therefore, it is sought to convict him by virtue of the provisions of Regulation 52, which

affects any person who contravenes or fails to comply with any order or rule or direction imposed under the Defence Regulation, his appeal must succeed on the simple ground that, no direction having been given to him, he cannot be convicted of contravening it.

Apart from that, it seems to me, on the facts of this case, that the appellant would be entitled to succeed also on the second ground, which is that stated in *Bandaranayake v. Silva*¹, namely, that some evidence should be adduced by the prosecution to show that on the date of the requisition order, or any date on the date of any direction given in connection with the requisition order under Regulation 37 of the Defence (Miscellaneous) Regulation, there must be some evidence that the property to be requisitioned was in fact in the possession of the accused person. In this case it appears from the record that there was no such evidence before the Magistrate. It seems to me, therefore, that this too is a good ground of appeal.

The appeal must be allowed and the convictions quashed.

Appeal allowed.
