

1963

Present : Herat, J.

R. CORNELIS and another, Appellants, *and* INSPECTOR
OF POLICE, KAMBURUPITIYA, Respondent

S. C. 923-924—M. C. Matara, 73567

Food Control Act—Section 4 (1) (i)—Order No. 184 made thereunder on January 26, 1962—Charge of transporting rice without a permit—Burden of proof—Evidence Ordinance, s. 105.

In a prosecution for transporting rice without a permit in contravention of the relevant Order published under section 4 (1) (i) of the Food Control Act, the burden of proving that the rice was locally grown rice, as mentioned in the proviso to the Order, is upon the accused.

APPEAL from a judgment of the Magistrate's Court, Matara.

Colvin R. de Silva, with M. L. de Silva, for accused-appellants.

R. I. Obeyesekere, Crown Counsel, for Attorney-General.

March 8, 1963. HERAT, J.—

This charge relates to an offence against an Order, No. 184, published in *Government Gazette* No. 12,886 of 26.1.62, made by the Minister for Food by virtue of the powers vested in him by section 4 (1) (i) of the Food Control Act, No. 25 of 1950. The relevant parts of that Order are to the following effect :—

“ I do by this order prohibit the transport or removal of any quantity of any rice from any one place in Ceylon to any other place in Ceylon, except under the authority of a permit issued by or on behalf of the Food Controller

Provided that nothing in the preceding provisions of the order shall apply—

- (a) to the transport or removal of any quantity of locally grown rice ;
- (b) to the transport or removal of any rice by any person on behalf of the Government of Ceylon ;
- (c)”

In other words, where the order has been declared to be effective, it is an offence to transport any rice without a permit from the Food Controller or the specific officers designated in the order, provided the rice is not so far as is relevant for this case locally grown rice.

The charge against the accused-appellant was that admittedly he was found transporting without a permit some 3,556 measures of rice, weighing 7,113 lbs. of rice, which the prosecution alleged and described in the charge as milchard rice.

At the trial the prosecuting officer said that he was not an expert as regards milchard rice but that he had heard what was milchard rice and that he thought the rice was milchard rice.

Upon this evidence counsel for the accused took up the position in the Court of first instance that the charge had not been proved.

The learned Magistrate however relied on section 105 of the Evidence Ordinance which reads as follows :—

“ When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the court shall presume the absence of such circumstances ”.

Relying on this section, the learned Magistrate thought that it was for the accused to prove that the rice transported came within the description of locally grown rice mentioned in the proviso to the order creating the offence in question, and as there was no explanation to that effect, he presumed the absence of that explanation and proceeded to convict the accused.

From that order the accused has now appealed. I think the view of the learned Magistrate is correct, and that the burden of proving that the rice was locally grown rice, as mentioned in the proviso to the order, was upon the accused-appellant.

There was no application on the part of the prosecution to prove anything more than that rice was being transported without the necessary permit. It was not obligatory on the prosecution to prove that the rice was milchard rice.

However, in the circumstances of this case, as the accused apparently relied on the advice given to him by his lawyer in the court of first instance and therefore did not give any explanation as regards the nature of the rice if such an explanation was available to him, I would direct that the case be returned for trial to the lower court to enable the defence to give any evidence available to them to the effect that the rice falls within the description of locally grown rice if they so desire.

The conviction is therefore set aside *pro forma* and the case returned to the court of first instance for the above mentioned purpose.

Conviction set aside pro forma.
