

1959

*Present : Weerasooriya, J.*

WILBERT, Appellant, and INSPECTOR OF POLICE,  
WELLAWATTE, Respondent

*S. C. 495—M. C. Colombo South, 88,695*

*Emergency (Miscellaneous Provisions and Powers) Regulations, 1958—Regulation 26—  
Charge framed thereunder—Public Security Ordinance, No. 25 of 1947, s. 5.*

Paragraphs (1) and (4) of Regulation 26 of the Emergency (Miscellaneous Provisions and Powers) Regulations deal with two distinct offences. The former deals with possession of an "offensive weapon" or "offensive substance" and the latter with possession of unlicensed guns.

**A**PPEAL from a judgment of the Magistrate's Court, Colombo South.

*S. B. Lekamge*, for Accused-Appellant.

*J. A. D. de Silva*, Crown Counsel, for Attorney-General.

*Cur. adv. vult.*

January 16, 1959. WEERASOORIYA, J.—

The material portion of the charge on which the accused-appellant was tried and convicted is as follows:—

That he "did without lawful authority or reasonable excuse have in his possession or under his control an unlicensed and offensive weapon to wit a 'La Rapide' pistol bearing No. 1985 with a live ammunition (sic) in breach of Regulation 26 of the Emergency (Miscellaneous Provisions and Powers) Regulations published in *Government Gazette* No. 11,321 of 27.5.58 and made by the Governor-General under section 5 of the Public Security Ordinance No. 25 of 1947 as amended by Act No. 22 of 1949 and Act No. 34 of 1953 and thereby committed an offence punishable under section 26 (4) of the said Regulations . . . ."

Regulation 26 referred to in the charge reads—

"26 (1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has in his possession or under his control any offensive weapon or any offensive substance shall be guilty of an offence against this regulation.

(2) A police officer, a member of the Ceylon Army of a rank not below that of Sergeant, a member of the Royal Ceylon Navy of a rank not below that of Petty Officer, or a member of the Royal Ceylon Air Force of a rank not below that of Sergeant, may remove any offensive weapon or any offensive substance which is in the possession or under the control of any person whom he has reasonable cause to believe to be committing an offence against this regulation.

(3) In this regulation—

‘Offensive substance’ means any inflammable, corrosive or volatile substance; and ‘offensive weapon’ means a bomb or grenade or any other device or contrivance made or intended for a use or purpose similar to that of a bomb or grenade, or any article capable of being used for causing injury to the person.

(4) Notwithstanding anything in the Firearms Ordinance, any person who is convicted of an offence against that Ordinance by reason of the contravention of the provisions of section 22 of that Ordinance relating to the custody, or possession or use of unlicensed guns shall be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a term not exceeding five years or to both such fine and imprisonment.”

It will be seen that paragraphs (1) and (4) of Regulation 26 deal with two distinct offences. Paragraph (1) makes it an offence against the regulation for any person without lawful authority or reasonable excuse to have in his possession or under his control (*inter alia*) any “offensive weapon” as defined in paragraph (3). Such offence would be punishable under Regulation 42. Paragraph (4) of Regulation 26 refers to an offence committed under the Firearms Ordinance (Cap. 139) by reason of the contravention of the provisions of section 22 of that Ordinance relating to the custody, possession or use of unlicensed guns, and renders a person convicted of such an offence liable to the enhanced punishment specified in that paragraph.

The charge framed against the accused-appellant does not, however, state clearly whether the offence which he is alleged to have committed is the one referred to in paragraph (1) of Regulation 26 or the one referred to in paragraph (4). In my opinion the charge has not been framed in accordance with the requirements of section 168 (1) of the Criminal Procedure Code. The defective nature of the charge is such that the accused must necessarily have been misled in his defence. I therefore quash his conviction and the sentence passed on him, and remit the proceedings to the Court below for a new trial to be had before another Magistrate on a charge framed in accordance with the requirements of section 168 (1) of the Criminal Procedure Code.

*Conviction quashed.*