

1943

Present : Jayetileke J.

SINNIAH, Appellant, and TRINCOMALEE POLICE, Respondent.

235—M. C. Trincomalee, 5,505.

Defence (Miscellaneous) Regulations 14 (1) (f)—Attempt to obtain information relating to the conveyance of secret despatches—Defence of accused that the act was not likely to prejudice defence of Island or the efficient prosecution of the war—Failure of Magistrate to apply the proviso to the regulation to the defence.

Where the accused was charged with attempting to obtain information relating to the conveyance of secret despatches which would or might be directly or indirectly useful to the enemy in breach of Regulation 14 (1) (f) of the Miscellaneous Regulations and where the defence was that the questions put by the accused were not likely to prejudice the defence of the Island or the efficient prosecution of the war,—

Held, that the failure of the Magistrate to apply the proviso to the regulation to the defence of the accused was a misdirection, which vitiated the conviction.

A PPEAL from a conviction by the Magistrate of Trincomalee.

E. F. N. Gratiaen, for accused, appellant.

E. H. T. Gunasekera, C.C., for Crown, respondent.

Cur. adv. vult.

June 22, 1943. JAYETILEKE J.—

In this case the accused was charged with attempting to obtain information relating to the conveyance of secret despatches which would or might be directly or indirectly useful to the enemy in breach of Regulation 14 (1) (f) of the Defence (Miscellaneous) Regulations. He was convicted and sentenced to undergo six weeks' simple imprisonment.

The object of the regulation is, according to the marginal note, to "safeguard information". The regulation does not involve the intent to assist the enemy and is clearly of the widest possible nature. There are, however, certain safeguards in the proviso that it "shall not apply to anything done by any servant of His Majesty as a public servant acting in the course of his duty as such" and "a person shall not be guilty

of an offence against this regulation in respect of anything done by him if he proves that the doing of that thing was not likely to prejudice the defence of the Island or the efficient prosecution of the war”.

The prosecution arose out of a conversation between the accused and Gunner Jenkyn of the Royal Artillery whilst travelling by train from Colombo to Trincomalee. The accused met Jenkyn for the first time on the day in question in a railway carriage at the Fort Railway Station. He invited Jenkyn to have a drink with him at the Refreshment Room. Jenkyn accepted the invitation and went with the accused leaving his secret despatches with Lance-Corporal Jayesinghe of the Ceylon Engineers. They had a glass of gin each and returned to the compartment.

At Maradana the accused bought two bottles of beer which he shared with Jenkyn and two others who were in the same compartment. Then in the course of conversation he asked Jenkyn whether he was carrying despatches for the Army or the Navy, where he dropped and picked up despatches on the line, and whether he was returning to Colombo the next day.

The present charge is in respect of these questions. There can be little doubt that the information which the accused sought would or might be directly or indirectly useful to the enemy.

The defence was that the questions were not likely to prejudice the defence of the Island or the efficient prosecution of the war. Mr. Kreltsheim, the senior technical assistant at the Colombo Observatory, said that the accused was one of the trusted officers in his Department and that he was in charge of the Observatory at Trincomalee. His work was of a confidential nature and from time to time he had to send weather reports to the Military. This evidence was obviously led to prove that the accused was not likely to disclose confidential information to anyone much less to the enemy.

The learned Magistrate has not dealt with this evidence. He seems to have misunderstood the defence, for he says in his judgment: “I can see no substance in Counsel’s contention that even if the accused did ask these things he is protected by proviso 3 of section 14 (1). The accused was not asking these questions in the course of his duty.”

This is a serious misdirection which vitiates the conviction. Learned Crown Counsel very frankly stated that he could not support the conviction but he urged that as there is no finding that the accused’s action was not likely to prejudice the defence of the Island or the efficient prosecution of the war there should be a retrial.

I have given my anxious consideration to this question and have come to the conclusion that, having regard to the responsible position held by the accused in the Observatory and the opinion still held by the Head of his Department as to his loyalty and integrity as will appear from the certificate marked A and annexed to the affidavit which was produced before me at the hearing of the appeal, it is unlikely that the accused would have conveyed to the enemy any information which he may have received from Jenkyn. The accused is thus protected by the proviso to Regulation 14.

I would accordingly set aside the conviction and sentence and acquit the accused.

Set aside.