

1944

*Present: Wijeyewardene J.*

CHANDRASEKERE, Appellant, and ASSISTANT GOVERNMENT  
AGENT, Respondent.

852—*M. C. Negombo, 41,115.*

*Defence (Miscellaneous) Regulations—Requisition of paddy—Issue of order  
by competent authority—Regulations 2 and 37.*

Where the competent authority acting under the Defence (Miscellaneous) Regulations issued an order requiring the accused to deliver paddy on a certain date and sent the Village Headman to the accused's house to take delivery of the paddy,—

*Held*, that the requisitioning authority acted within the powers conferred on it under Regulation 2.

**A** PPEAL against a conviction by the Magistrate of Negombo.

H. V. Perera, K.C. (with him Cyril E. S. Perera), for the accused, appellant.

M. P. Spencer, C.C., for the complainant, respondent.

*Cur. adv. vult.*

October 3, 1944. WIJEYEWARDENE J.

The accused was convicted of an offence punishable under Regulations 52 (1) and 52 (3a) of the Defence (Miscellaneous) Regulations, and sentenced to undergo simple imprisonment for seven days and pay a fine of Rs. 500. The charge against the accused was that " he failed to deliver 79 bushels of paddy to Government " in compliance with the order P 2 of August 12, 1943, issued by a competent authority under Regulation 37 of Defence (Miscellaneous) Regulations.

It was first argued in support of the appeal that the evidence did not show that the accused could have had 79 bushels of paddy on August 12, 1943, and it was even urged that the evidence established that the quantity of paddy with the accused was less than 79 bushels. I have examined the evidence carefully and I find that the Magistrate has reached a correct conclusion when he held that the accused had more than the requisitioned quantity of paddy on August 12. The evidence of the village headman, a brother of the accused, and the evidence of the Kachcheri clerk afforded sufficient material for the finding of the Magistrate. Moreover, the documents P 3 and P 4 written by the accused go a long way to disprove the plea put forward by him.

Towards the end of his argument the Counsel for the accused-appellant contended that the order P 8 was *ultra vires* and in support of that contention he relied on *Rex v. Loots*<sup>1</sup>.

It is not necessary for me to consider that decision as I find that the legal argument was based on an erroneous assumption of fact. In the present case the competent authority acting perhaps in an informal manner asked the various producers including the accused to bring certain quantities of paddy to the Hunnumulla School for sale to Government. As the accused failed to accede to that request, the competent authority then took action under the Defence (Miscellaneous) Regulations and issued the order P 2 requesting him to deliver the paddy on August 12 and sent the Village Headman to the accused's house to take delivery of the 79 bags of paddy, but the accused failed to place them at his disposal. Regulation 2 defines " to requisition " as " to take possession of the property or to require the property to be placed at the disposal of the requisitioning authority " and therefore the competent authority did not act *ultra vires* in issuing P 2 and sending the headman to receive the paddy. It was not the case—as was incorrectly assumed in the course of the argument—that the competent authority directed the accused to deliver the paddy at Hunnumulla School on his being served with the Requisition Order P 2.

<sup>1</sup> (1940) S. A. L. R. (O. F. S. Provi. Division) 285.

The accused has pleaded in his petition of appeal that "the sentence is too excessive considering the age and character of the appellant". I think the learned Magistrate has taken all these facts into consideration and treated him with considerable leniency.

I dismiss the appeal.

*Affirmed.*

