

1944

Present: Soertsz J.

WAIDYARATNE, Appellant, and AMBALAVANAR, Respondent.

665—M. C., Colombo, 40,022.

Control of Prices Ordinance—Ordinance No. 39 of 1939—Regulations 2 and 3—Disclosure of stocks—Failure to specify the place—Order of forfeiture without notice to show cause.

Where a person is convicted of a breach of regulations 2 and 3 of the Control of Prices (Supplementary Provisions) Regulations not in respect of a failure on his part to disclose the stocks of the relevant articles in his possession or control but in respect of his failure to specify in his return that he kept part of his stock in a certain place.

Held, that the articles were not liable to forfeiture.

An order of forfeiture should not be made without giving the person affected by the order an opportunity of showing cause against it.

A PPEAL from a conviction by the Magistrate of Colombo.

H. V. Perera, K.C. (with him *J. E. M. Obeyesekere* and *D. W. Fernando*), for accused, appellant and petitioner.

W. Jayawardene, C.C., for the Attorney-General.

Cur. adv. vult.

¹ (1923) 25 C. L. J. 650.

(1930) 31 C. L. J. 975.

August 22, 1944. SOERTSZ J.—

The first matter for consideration is the appeal from the order of confiscation of articles to the value of Rs. 18,000 made by the Magistrate, apparently in the exercise of the power conferred upon him by regulation 7 of the Control of Prices (Supplementary Provisions) Regulations. That regulation is in these terms:—

“ The Court which convicts any person of an offence under this Ordinance (*i.e.*, Control of Prices Ordinance, No. 39 of 1939) may order the forfeiture of any article in respect of which the offence was committed.”

In this case the conviction in consequence of which the order of confiscation was made was a conviction entered against the appellant on his tendering a plea of guilty to charges framed against him as follows:—

(2) You are hereby charged that you did at 71, Rosmead Place, being a person who desired to keep a stock of price controlled articles to wit:—drugs described in attached list A which are controlled by the Controller of Prices (Misc. Articles) published in *Government Gazette* No. 9,141 of June 25, 1943, failed to furnish to the Controller of Prices a return specifying such stock in breach of regulation 6 of the schedule and thereby committed an offence punishable under section 5 of the Control of Prices Ordinance, No. 89 of 1939, as amended by the Defence (Controller of Prices) (Supplementary Provisions) Regulation 2 (2)

(2) As above in respect of similar articles described in attached list B.

(3) As above in respect of similar articles described in attached list C.

On the facts of this case it is obvious that the charges as framed are misconceived in that the allegation is that they are in breach of regulation 6. That regulation as the use of the words “ every person who desires ” show is merely concerned to inform persons who desire in the future (*i.e.*, after October 9, 1942) to keep a stock of price controlled articles that in order to put their desire lawfully into effect they must obtain registration of themselves and of the places in which they desire to keep their stocks by furnishing to the Controller a return specifying all the stores and other places in which they desire to keep their stocks and regulation 4 renders them liable in default.

The relevant regulations for the purpose of the charges made against the appellant who had been in business before October 9, 1942, are regulations 2 and 3.

This point was not, however, taken either in the Court below or in appeal and it seems clear that the appellant was well aware of what the actual charges against him were although the wrong regulation was referred to in the charges framed. I am therefore dealing with the case on the footing that the convictions entered against the appellant were entered as in breach of the proper regulations. Even so it is obvious that the confiscation of the goods in the list D cannot be supported at all

for the reason that there was not even a *charge* in regard to those goods and an order of confiscation may only be made in respect of articles in respect of which *there, has been a conviction.*

But in my opinion the order forfeiting the articles in the lists A, B and C referred to in the charges is also bad. First of all the forfeiture was ordered as a matter of inevitable course without the appellant being given an opportunity to show cause against it. Such a proceeding is in violation of the fundamental rule that no order shall be made affecting a person without his being heard. The Magistrate appears to have wrongly interpreted regulation 7 as if the word "may" meant "shall" and on that interpretation to have assumed again *wrongly* that the petitioner was not entitled to be heard whereas even if the regulation had said that "the court which convicts . . . shall order the forfeiture of any articles in respect of which the offence was committed" the appellant was surely entitled to be heard at least on the question whether these were such articles; secondly by no legitimate stretch of interpretation can it be said that these articles were liable to forfeiture. The convictions entered against the appellant were in respect of his failure to specify in his return that he kept part of his stock at No. 71, Rosmead Place, and not in respect of failure on his part to disclose the stocks of the relevant articles in his possession or under his control. He had it is conceded made a full disclosure in that respect. It cannot be said therefore, that on the charges as framed against him he had committed offences in respect of the articles enumerated in lists A, B and C. The order of forfeiture was therefore *ultra vires*. I ought to say that Crown Counsel quite properly did not seriously seek to support that order. I set it aside.

The next matter that arises for consideration arises on the application for revision of the sentence passed on the petitioner for his failure to specify No. 71, Rosmead Place, as a place in which he kept part of his stocks. The sentence passed was a fine of Rs. 4,000 the maximum fine provided being that is to say in the case of a first offender Rs. 7,500. It was contended for the petitioner that his offence was a technical one inasmuch as he had not only declared his stocks correctly but had also supplied in the course of another case the information which led to the discovery of the fact that he was using 71, Rosmead Place, as another place for keeping a part of his stock. Although I feel disposed to take those facts into account in mitigation of his offence to some extent, I cannot but take adequate notice of the fact that the petitioner who has been carrying on business for a long time on a large scale had not on his own showing taken the trouble which every businessman ought to take in this time of emergency to acquaint himself with the relevant Defence Rules and Regulations. I do not agree that a nominal fine will suffice. It must be a fairly substantial fine. I would therefore direct that the petitioner shall pay a fine of Rs. 1,000 in default one month's rigorous imprisonment. I hardly think that this is a case for awarding a part of the fine to the Police Reward Fund.

Forfeiture set aside.