

1946

*Present : Wijeyewardene J.*

JUWANIS PERERA, Appellant, and GORDON (INSPECTOR OF POLICE), Respondent.

638—*M. C. Colombo, 15,749.*

*Defence (Control of Textiles) Regulation 14 (1)—“ Dealer ” means a dealer holding a textile licence —Penal Code, s. 67 applicable to breaches of Defence Regulations—Penal Code, ss. 38, 67.*

The word “ dealer ” in Regulation 14 (1) of the Defence (Control of Textiles) Regulations means a dealer holding a textile licence.

Section 67 of the Penal Code would apply to breaches of the Defence Regulations and, in a case falling within it, separate convictions can be entered under two or more counts on the same set of facts provided that the sentence passed is not in excess of the sentence which can be awarded for any one of the counts.

**A** PPEAL against a conviction from the Magistrate's Court, Colombo.

*S. Nadesan*, for the accused, appellant.

*S. Mahadevan, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

October 1, 1946. WIJEYWARDENE J.—

The accused was charged—

- (1) with having exposed for sale certain regulated textiles in breach of Regulation 4 (2) of the Defence (Control of Textiles) Regulations published in *Gazette* No. 9,388 of March 28, 1945, as amended by Regulation 3 in *Gazette* No. 9,430 of July 11, 1945, and
- (2) with having been in possession of a quantity of regulated textiles in excess of that which he as a consumer could have purchased from a dealer by surrendering all the coupons issued to him for a year in breach of Regulation 14 (1) of the above Regulations.

Each of these offences is punishable with a fine of not less than Rs. 500 and not more than Rs. 5,000 or with imprisonment of either description for a period not exceeding one year or with both such fine and imprisonment (Regulation 59.)

The Magistrate convicted the accused on both the counts and sentenced him to pay a fine of Rs. 1,000 and in default to undergo rigorous imprisonment for three months.

Admittedly the accused was a hawker and was, therefore, a person carrying on business as a dealer within the meaning of Regulation 2. He did not hold a textile licence authorising him to carry on such business. I see no reason, therefore, to interfere with his conviction on the first count.

Mr. Nadesan contended against the conviction on the second count—

- (i.) that Regulation 14 (1) penalised only the possession by persons other than dealers and that the accused who was admittedly a dealer, though an unlicensed one, would not be liable under that Regulation.
- (ii.) that there was no proof of the quantity of regulated textiles that the accused could have purchased by surrendering all the coupons issued to him for a year.

Regulation 14 (1) reads :—

“ No person other than a dealer shall, except under the authority of a permit granted by the Controller, transport, or have in his possession or under his control at any one time, whether for his own use or for any other purpose whatsoever, any quantity of regulated textiles in excess of that which a consumer can purchase from a dealer by surrendering all the coupons issued to the consumer for a year : provided, however, that the preceding provisions of this paragraph shall not apply in any case where a person employed by any dealer transports any regulated textiles to a registered store of that dealer. ”

Part II of the Regulations consisting of Regulations 3 to 14 deals with trading in regulated textiles and the importation, transport and possession of such textiles. Regulation 2 empowers the Controller to issue a textile licence and Regulation 4 prohibits any person who does not hold such a licence from carrying on business as a dealer. Regulation 7 requires a “ dealer ” to exhibit his textile licence and Regulation 13 states that every “ dealer ” importing regulated textiles shall obtain an invoice containing such particulars as the Controller may prescribe. The proviso of Regulation 14 (1) itself states that the earlier provisions of that Regulation shall not apply where a person employed by any “ dealer ” transports any regulated textiles to a registered store of that “ dealer ”. A study of these Regulations shows clearly that the word “ dealer ” in “ No person other than a dealer ” in Regulation 14 (1) means a dealer holding a textile licence. The accused who is not such a dealer would, therefore, be a person coming under that Regulation.

With regard to the second objection it is sufficient to state that the Inspector of Textile Control who gave evidence as to the quantity that the accused was entitled to possess was not even cross-examined. That evidence stands uncontradicted.

The accused is however charged with being in possession of the textile goods at the time and place that he was exposing the identical goods for sale. Could the prosecution frame two charges on the same set of facts and ask for separate convictions and sentences on the two charges ?

Section 67 of the Penal Code states that “ where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or published . . . the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences ”.

This section would apply to breaches of the Defence Regulations (*vide* Section 38 of the Penal Code). It enacts a rule of substantive law regulating the measure of punishment and it does not affect the question of conviction. The conviction therefore under both the counts would be in order and as the sentence passed is not in excess of the sentence which the Magistrate could have given for any one of them I do not see any reason for interfering with the sentence.

For the reasons given by me I dismiss the appeal.

*Appeal dismissed.*