

1967

Present : Alles, J.

THE ATTORNEY-GENERAL, Appellant, and T. G. GUNAWARDENE
Respondent

S. C. 44/1967—M. C. Moneragala, 5468

Offence of selling an article in excess of controlled price—Sentence of imprisonment obligatory—Control of Prices Act (Cap. 173), as amended by Act No. 44 of 1957 and Act No. 16 of 1966, s. 8 (6)—Criminal Procedure Code, s. 15B.

Where a person contravenes any provision of the Control of Prices Act, section 8 (6) of that Act, as amended by Act No. 16 of 1966, makes the imposition of a term of imprisonment obligatory even in the case of a first offender. An order of detention till rising of Court, under section 15B of the Criminal Procedure Code, cannot be substituted in place of a sentence of imprisonment.

A P P E A L from an order of the Magistrate's Court, Moneragala.

L. B. T. Premaratne, Senior Crown Counsel, for the Attorney-General.

Nihal Jayawickrema, for the accused-respondent.

Cur. adv. vult.

May 21, 1967. ALLES, J.—

The Attorney-General appeals from the sentence imposed on the accused-respondent who was convicted on his own plea with having sold a pound of onions in excess of the controlled price in contravention of Section 8 (1) of the Control of Prices Act (Chapter 173). The penal provision is contained in Section 8 (6) of the aforesaid Act as amended by Section 6 (3) of the Control of Prices (Amendment) Act No. 44 of 1957 and as further amended by Section 2 (1) of the Control of Prices (Amendment) Act No. 16 of 1966.

When the accused pleaded guilty to the charge the Magistrate made the following observations :—

“The accused owns a small boutique with a stock-in-hand of less than Rs. 400. I convict the accused and fine him Rs. 100. He is also detained till rising of Court.”

It is the contention of the Attorney-General that the learned Magistrate has misdirected himself in law in not imposing a sentence of imprisonment on the accused-respondent.

The Control of Prices Act which was enacted in 1950, in Section 8 (6) declared that every person who contravenes any provision of the Act shall on conviction for the first offence be liable to a fine not exceeding Rs. 7,500 or imprisonment for a term not exceeding 6 months or to both such fine and imprisonment. In 1957, the penal provisions were amended and it became obligatory to sentence an offender to a term of imprisonment not exceeding 6 months and also to the imposition of a fine. In 1966, the law was further amended requiring an offender to be punished with a term of imprisonment of *not less than 4 weeks and not exceeding 6 months*.

The various amendments to the penal provisions of the Act from 1950 to 1966 indicate that the legislature took a serious view of the contravention of the provisions of the Act and thought it necessary that deterrent punishment amounting to the imposition of a term of imprisonment was obligatory even in the case of a first offender.

It would appear from the learned Magistrate's order that he has failed to consider the amendments to the law. In detaining the accused-respondent until the rising of the Court he seems to have acted under Section 15B of the Criminal Procedure Code which section *empowers* a Magistrate to detain an offender in Court in lieu of a term of imprisonment. Crown Counsel submits that Section 15B has no application to the instant case since under the amended Act of 1966 the Court is not "empowered" to act under its provisions in view of the imperative provisions of the amending Act. There is no conflict between Section 15B of the Criminal Procedure Code and Section 8 (6) of the Control of Prices Act as amended by the Act of 1966. The particular intention expressed in the amending Act would be in the nature of an exception to the general intention expressed in Section 15B of the Criminal Procedure Code (vide Maxwe on Interpretation of Statutes (11th Edition) pages 164–165). Craies only Statute Law (6th Edition) pages 373–374 expresses the same view under the heading "Curtailement without Repeal" when the author says that "if a subsequent Statute merely creates an exemption or exception from its operation by the inclusion of a condition, the previous Statute is not necessarily repealed and prior enactments may be rendered inoperative without being actually repealed. . . . In other words, a general enactment is *pro tanto* avoided by an express enactment entirely inconsistent with it." In this case the general intention expressed in Section 15B of the Criminal Procedure Code is *pro tanto* avoided by the express enactment of Section 2 (1) of the amending Act of 1966.

Learned counsel for the accused-respondent submitted that this was a case in which the appropriate order that should be made is one under Section 325 of the Criminal Procedure Code and cited in support the order of my brother Manicavasagar, J. in S. C. 58/67—M. C. Colombo

36484/A (Supreme Court Minutes of 20.3.67) where in similar circumstances the accused was dealt with under Section 325 of the Criminal Procedure Code. It does not appear that my brother Manicavasagar, J. had the advantage of a full argument on the question of law that was raised in the case — the amending Act of 1966 was not brought to his notice when the matter was first argued before him and he appears to have been convinced on the facts of the case that it was eminently a case in which the accused should be dealt under Section 325 of the Criminal Procedure Code regardless of the imperative provisions of the amending Act. With all respect to my brother Manicavasagar, J., I regret I am unable to say that the order made by him in the case before him was legally correct.

Counsel for the respondent also submitted that the amending Act of 1966 was *ultra vires* because it purported to interfere with the exercise of judicial power and cited in support the judgment of the Privy Council in *Queen v. Liyanage*¹. In *Liyanage's* case the Privy Council had occasion to consider the validity of two particular pieces of legislation — The Criminal Law (Special Provisions) Acts of 1962 which, according to Lord Pearce was “ a legislative plan *ex post facto* to secure the conviction and enhance the punishment of particular individuals ”. The Acts, he said, “ constituted a grave and deliberate incursion into the judicial sphere”, but Lord Pearce did not state that this precluded the legislature from legislating on any matter that was necessary for the good government of the country. At page 283 he said: “ It goes without saying that the legislature may legislate, for the generality of its subjects, by the creation of crimes and penalties or by enacting rules relating to evidence ”.

The amendments to the Control of Prices Act effected in 1957 and 1966 were considered necessary by the State to halt the growing prevalence of a type of offence which undermined the social structure of the country and seriously affected its subjects and which the State considered should be suppressed by the imposition of a deterrent punishment. Such an attitude on the part of the legislature in no way affects the exercise of judicial power.

I, therefore, allow the appeal of the Attorney-General and impose on the accused-respondent a sentence of 4 weeks rigorous imprisonment in addition to the fine of Rs. 100 already imposed on him.

Appeal allowed.

¹ (1965) N. L. R. 265 at 285.