

1967

*Present : G. P. A. Silva, J.***K. A. MARTIN**, Appellant, *and* **KANDY POLICE**, Respondent*S. C. 547/67—M. C. Kandy, 50042*

Price controlled article—Sale at excessive price to a decoy sent by the Police—Punishability—“ Sale by retail ”—“ Consumption and use ”—Control of Prices Act (Cap. 173), ss. 4 (1), 8.

The sale of a price-controlled article to a decoy employed by the Police for detection of offences under the Control of Prices Act is a sale by retail for the purposes of the Act and an Order made thereunder. Such a sale is a sale for “ consumption and use ” within the meaning of the relevant Price Order.

APPEAL from a judgment of the Magistrate’s Court, Kandy.

Nihal Jayawickrema, for the accused-appellant.

V. S. A. Pullenayegum, Crown Counsel, with *Faisz Mustapha*, Crown Counsel, for the Attorney-General

Cur. adv. vult.

October 27, 1967. SILVA, J.—

The accused-appellant, a trader in Kandy, was charged with having on the 24th October, 1966 sold a pound of potatoes for 38 cents being a price 6 cents in excess of the maximum retail price at which the article could have been sold according to the relevant Price Order applicable to the article. The evidence on which the prosecution relied consisted of that of a Sub-Inspector of Police who made the detection with the help of a decoy who was sent by him with a marked rupee note with instructions to purchase a pound of potatoes from the boutique run by the accused. The decoy, a labourer residing at Peradeniya, testified to the fact of having gone to the boutique of the accused with the rupee note handed to him by the Sub-Inspector and having purchased a pound of potatoes for which he was charged 38 cents. The relevant Price Order showed that the maximum retail price at which a pound of potatoes could be sold was 32 cents. Although these facts were contested in

the lower court counsel for the appellant in this court confined himself to the point of law that a sale to a decoy was not a sale by retail which, in his submission, meant a sale for consumption or use only. In other words, his submission was that, in order to succeed, the prosecution had to prove, among other things, that the alleged excess price in this case was charged by the accused in respect of a sale by retail and in view of the definition of a sale by retail contained in (iii) (b) of the Price Order the prosecution had failed to prove one element of the offence, namely, that the pound of potatoes was sold by the accused for the purpose of consumption or use.

The question that arises for consideration therefore is whether the sale of a price controlled article to a decoy employed by the Police for detection of offences under the Control of Prices Act is a sale by retail for the purposes of the Act and an Order made thereunder. In order to determine this question it is necessary to appreciate the purpose of the Control of Prices Act (Chapter 173) and to analyse the wording of the relevant sections. The words of section 4 (1) which empower the Controller to make Orders fixing the maximum prices and prescribing the conditions of sale are very significant in this regard. This section provides that if it appears to the Controller that there is or is likely to arise in any part of Ceylon any shortage of any article or any unreasonable increase in the price of any article he may by Order fix the maximum price (both wholesale and retail) above which the article shall not be sold and also prescribe the conditions of the sale of that article including conditions as to the time and place of the sale and the quantity and quality of the article to be sold. Section 8 makes it a punishable offence for any person to act in contravention of such an Order. The Price Order made by the Controller in terms of section 4 with which we are now concerned is published in *Government Gazette* No. 14716/7 of 12.10.1966. Among other articles sought to be controlled by this Order are potatoes. For the purpose of the Order, any sale of any quantity of the articles enumerated for the purpose of resale or the sale of any quantity of one hundredweight gross or more at a time is to be deemed a sale by wholesale and any sale of any quantity less than one hundredweight gross for the purpose of consumption or use is to be deemed to be a sale by retail.

It seems to me on a reading of section 4 and the Order that the sole object thereof is to protect society against unscrupulous traders and to impose a price restriction on such traders who sell the article concerned in order to ensure that no sale takes place at a price above the maximum prescribed in the Order. In doing so the legislature had necessarily to lay down two prices, one a wholesale price which covered a sale by any person for resale and a sale of more than one hundredweight and another a retail price at which the article should reach the consumer. The wholesale price would of course be slightly lower than the retail price as the retailer has necessarily to incur some further expenditure in the distribution of the article after purchasing it from the wholesaler. In making

this Order, the object of the legislature was to distinguish between a sale by wholesale and a sale by retail and the former was defined as a sale for resale or a sale of more than one hundredweight which too would presumably be for resale while the latter was defined as a sale for consumption or use. The purpose of defining a sale by retail as one for consumption or use was in my view only to draw this distinction and not to protect a seller from the penalties attaching to sales above the controlled price whenever a small quantity of the article was purchased by someone for a purpose other than consumption as food.

Secondly, it is to be noted that in both these definitions the accent is laid on the *sale* over which only the seller has control and not on the purchase over which the buyer will have control. It seems to me that the question whether an offence against the Order has been committed must be considered from the point of view of the intention of the seller at the time of the sale of the article and the question to be asked is whether or not he intended to effect a sale for the purpose of consumption or use or for some other purpose when he accepted the money from the decoy for a pound of potatoes and delivered it to him. The intention of the buyer, and the purpose for which he is purchasing the article, which the seller cannot reasonably be expected to be aware of, is not a consideration that affects the question as to the nature of the sale.

Thirdly, the word "*use*" in the phrase "for the purpose of consumption or use" is so comprehensive that it can cover almost any conceivable purpose other than consumption as food. In that view of the meaning attributable to this word, the use of the pound of potatoes by the decoy for a purpose for which the Police required it, cannot be said to fall outside the purposes contemplated by the section. Although counsel did not advance that argument another possible construction of these words is that they were used synonymously for expressing the same thing, namely, consumption or use as food. I do not however think that it was necessary for the legislature to use the second word redundantly in the context as the word consumption is quite adequate to express the meaning that is intended to be conveyed thereby. To give any other construction to the words for consumption or use in this Order would in my view defeat the clear object of this legislation.

A converse test that may be applied to determine this matter is to ask oneself the question as to what the accused was indulging in when he accepted the 38 cents and released a pound of potatoes to the decoy, if, as counsel for the appellant submitted, he did not indulge in a sale by retail. It is reasonable to think that a person who stocked potatoes and parted with them for money could only do one of two things depending on the quantity he disposed of, namely, a sale by wholesale or a sale by retail. The sale in the present case being clearly not one by wholesale there is no other sale which can be conceived of, either according to the definition in the Order or otherwise, apart from a sale by retail. This process of reasoning too helps one to deduce that the sale by the accused was a sale by retail particularly when the word "*use*" in the definition does not necessarily preclude that interpretation.

I have examined the cases of *Brierly v. Phillips* and *Brierly v. Brear*¹ but I cannot say that they are very helpful in deciding the question at issue before us. Nor do I think that the other case cited, *Cooke v. the Governor and Company of the New River*², has any application to the immediate question involved. Further, the employment of decoys being a course resorted to in many countries for the detection of offences such as the one before us, the inability of counsel to cite in his favour a case where a similar point has been considered is also a factor that makes me feel that the point raised in this case is without substance.

For all the aforesaid reasons the appellant's contention fails and the appeal is therefore dismissed.

Appeal dismissed.



¹ (1947) 1 K. B. 541.

² (1889) 14 A. C. 698.