

1972

*Present : Rajaratnam, J.*

WAHAB and another, Appellants, and INSPECTOR  
OF POLICE, PETTAH, Respondent

*S. C. 726-727/71—M. C. Colombo, 40610/A*

*Control of Prices Act—Section 4 (5)—Charge of contravention of a Price Order—Date  
of Minister's approval of the Price Order—Desirability of referring in the charge  
to the relevant Gazette.*

In a prosecution for contravention of a Price Order under the Control of Prices Act, it would be very desirable if the charge refers to the *Government Gazette* giving the date of the Minister's approval of the Price Order in terms of section 4 (5) of the Control of Prices Act, especially when there is a long interval of time between the date of the Price Order and the offence.

**A**PPEAL from a judgment of the Magistrate's Court, Colombo.

*M. Tiruchelvam*, with *A. Sivanathan*, for the accused-appellants.

*P. Ramanathan* Counsel for the State, for the Attorney-General.

*Cur. adv. vult.*

July 20, 1972. RAJARATNAM, J.—

The accused-appellants in this case were charged under the Control of Prices Act for having sold a pound of beef for Re. 1.50 when the controlled price was Re. 1.25 and were sentenced to a term of imprisonment and fined Rs. 2,000 each.

Learned Counsel for the appellants submitted that the prosecution evidence was unreliable and of a contradictory nature and since the defence had called evidence that the benefit of the doubt should have been given to the accused.

I have anxiously considered the evidence in this case and the learned Magistrate's findings, and I see no reason to interfere with his judgment on the facts:

Learned Counsel for the appellants made certain legal submissions with regard to the charge which was attached as defective in that there was no mention of the Price order being approved by the Minister under s. 4 (5) of the Act.

This question was considered in *Food and Price Control Inspector v. Piyasena*<sup>1</sup> by Weerasooriya, J. who held that it was not obligatory on the prosecution to place before the Court the fact (whether as a matter to be proved by evidence or to be taken judicial notice of) that the price order has duly received the Minister's approval.

Samerawickrame J. in the case of *Cooray v. Sub-Inspector of Police, Borella*<sup>2</sup> held the same views but added—

“it may be open to the defence to put before Court material which shows prima facie that no steps have been taken under s. 4 (5) to place the matter before the Minister or that the Minister has failed either to approve or rescind the order. In such a case the Court may well require to be satisfied by the prosecution that there has been no default in complying with s. 4 (5).”

<sup>1</sup> (1955) 57 N. L. R. 310.

<sup>2</sup> (1970) 73 N. L. R. 397.

In the present case the accused are in the beef trade in the Edinborough Market and were represented by Counsel and it is a matter that I can take into consideration that at no time did they question the fact that the price order which the prosecution alleged was in operation in the charge, was so in operation.

In his reply, learned Counsel for the State brought to my notice *Government Gazette Extraordinary* No. 14,762/4 of 24.8.67 which I take judicial notice of. The price order in this case has been approved by the Minister. It would have been much more desirable if the charge had contained this additional information and I hope in future without relying on the decision in the case of *Cooray v. Sub-Inspector of Police, Borella* (supra) prosecutors reveal this additional information in the charge especially when there is a long interval of time between the date of the price order and the offence. In the present case there was an averment however that the order was in operation. With great respect I agree with Silva J. when he observed in the case reported in 74 N.L.R. 230 at 235,<sup>1</sup> that

“ if at the stage when the notification is published the Order is elevated to the position of an enactment, I do not see any reason why an accused should be continued to be charged under an Order of the Controller of Prices when he can be charged in terms of a provision that has assumed the form of an enactment.”

I do hope that the Legal Departments advising the Police and the Price Control officers give strict instructions to them to follow this rule to prevent such matters to be considered in the appeal Courts from time to time.

I have also considered the decision in the case of *Gunawardena v. Inspector of Police, Ratnapura*<sup>2</sup>, where the *Gazette* in which the Price Order was published was not produced and the prosecuting officer did not say in evidence that the Price Order mentioned in the charge was in operation in the area on the date of the alleged offence.

In the present case this *Gazette* was produced and there was evidence that the market was within the Colombo Municipal limits. There is also this evidence “ I produce *Government Gazette*, P4, at the time this Price Order was in operation.”

In the circumstances, I dismiss the appeals. Conviction and sentence of each accused affirmed.

*Appeals dismissed.*

<sup>1</sup> (1971) 74 N. L. R. 230 at 235.

<sup>2</sup> (1970) L. R. 142.