

1968

Present : Samerawickrame, J.

L. T. Z. ABDEEN, Appellant, and A. W. H. WICKREMASINGHE
(Food and Price Control Inspector), Respondent

S. C. 734/67—M. C. Kalmunai, 28152

*Control of Prices Act—Food Price Order C. 418—Dried chillies—Sale to a decoy—
Applicability of maximum retail price to a consumer.*

A sale of a small quantity (half a pound for instance) of dried chillies to a decoy is a sale to which the maximum retail price to a consumer laid down by Food Price Order C 418 applies, even though the decoy does not require the chillies for consumption but wants them only for the purpose of the raid.

APPEAL from a judgment of the Magistrate's Court, Kalmunai.

A. H. C. de Silva, Q.C., with *K. C. Kamalanathan* and *P. Nagendran*,
for the accused-appellant.

F. Mustapha, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 2, 1968. SAMERAWICKRAME, J.—

This appeal raises the question whether a sale to a decoy of an article in respect of which Food Price Order No. C 418 had been made under the Control of Prices Act, is one in respect of which a price in excess of the maximum retail price to a consumer may not be paid. The Price Control Inspector who sent the decoy to make the purchase said that he asked the decoy to buy any price controlled article and that, at that time, he did not require chillies for consumption and that he wanted them only for the purpose of the raid.

The relevant part of Food Price Order No. C. 418 is as follows :—
“ I, Mahinda Brian Senanayake, Deputy Controller of Prices (Food), for the Island do by this Order—

- (i) fix with immediate effect the prices specified in Columns 2 and 3 of the Schedule hereto to be a wholesale dealer's maximum wholesale price per hundredweight gross and a retail dealer's maximum retail price per pound nett to a consumer, respectively, above which the article specified in the corresponding entry in Column 1 of the Schedule shall not be sold within the Island of Ceylon ;

(ii) direct that for the purpose of this Order—

(a) any sale of any quantity of an article specified in Column 1 of the Schedule for the purpose of re-sale, or any sale of an article specified in column 1 of the Schedule in a quantity of one hundredweight gross or more at a time shall be deemed to be a sale by wholesale ;

(b) any sale of any quantity of an article specified in Column 1 of the Schedule, less than one hundredweight gross for the purpose of consumption or use shall be deemed to be a sale by retail ;”.

Learned Counsel for the accused-appellant referred me to the fact that the price fixed was a maximum retail price to a consumer and also that by reason of paragraph (ii) (b) of the Order, a sale to be deemed to be a sale by retail had to be one for the purposes of consumption or use. He, accordingly, submitted that upon the evidence in the case, the sale of chillies to the decoy was not one that was caught up by the provisions of the Food Price Order and was, therefore, not one in respect of which the price was controlled.

The ordinary meaning of the term “ wholesale ” is selling in bulk or selling of articles in large quantities to be retailed by others. The ordinary meaning of the term “ retail ” is the sale of goods in small quantities. The sale in small quantities may be either to a dealer who buys it for the purposes of resale or to an user of the article. It appears from paragraph (ii) (a) of the Food Price Order that for the purpose of this Order it was intended that the sale of small quantities for the purposes of resale should be considered a sale by wholesale. It was apparently for the purpose of indicating that a retail sale was limited to one made to the user of an article that the words “ Maximum retail price to a consumer ” have been used. In paragraph (i) of the Order, therefore, the term ‘ consumer ’ has been used as opposed to a dealer, who buys articles for the purpose of resale to others for retailing, and in this context, means a person who buys for his own use or for a purpose other than that of resale.

I should point out that the Order contains no definition of the terms ‘ wholesale ’ and ‘ retail ’. Paragraph (ii) of the Order merely provides that certain sales which may not ordinarily have been sales by wholesale or sales by retail should, for the purposes of the Order, be deemed to be such sales. Thus, it provides that the sale of any quantity for the purpose of resale should be deemed to be a sale by wholesale. It has also provision that the sale of a quantity of one hundredweight or more shall be deemed to be a sale by wholesale. A doubt may arise in respect of a sale of a quantity slightly less than one hundredweight as to whether it was a sale by wholesale or by retail. For example, as wholesale has not been defined and as one of the primary meanings of wholesale is a sale in bulk, the question may arise whether a sale of a hundred pounds of chillies to a user was not a sale by wholesale. Accordingly, paragraph (ii) (b) has the

provision that the sale of any quantity less than one hundredweight for the purpose of consumption or use should be deemed to be a sale by retail.

In this case, if one takes the view, upon the evidence given by the Price Control Inspector, that the sale of chillies was not for the purpose of consumption or use, paragraph (ii) (b) would not apply, but the question would still remain whether it was sale by retail giving the terms 'sale by retail' its ordinary meaning. The amount alleged to have been sold to the decoy was half a pound of dried chillies. This was certainly a sale of an article in a small quantity and, in my view, falls within a sale by retail. The decoy was not buying for the purpose of reselling the chillies and on the view that I have taken as to the meaning which that term has in paragraph (i), he is a consumer. I am of the view, therefore, that the sale of dried chillies made to the decoy was a sale to which the maximum retail price to a consumer applied and that the accused has charged a price in excess of the said maximum retail price.

Learned Counsel for the accused-appellant referred to the judgment in *Brierley v. Phillips, Brierley v. Brear*¹ in which Lord Goddard, C.J., dealing with the price control order in respect of the sale of eggs said, "What does 'consumer' mean? If I were asked what 'consumer' meant in an order or a statute, the first thing I would direct myself to do would be to give to the word the ordinary meaning which the English language attaches to it. The ordinary meaning which the English language would attach to that word in relation to an egg is a person who is going to eat the egg or to use it in the process of cooking in his own house. If I buy an egg for the purpose of putting one of my hens on it to hatch it, I do not consume that egg. I should not have thought anybody could by any possibility have said that a person who buys an egg for the purpose of hatching it is a consumer of an egg."

The provision that he was dealing with prohibits the buying or selling the eggs where the seller was a producer owning 25 head of poultry or less to a consumer at a price above the maximum price laid down. There were apparently also other provisions which prohibit the producer who owned 25 head of poultry or less from selling eggs to any person for the purpose of a catering establishment and any person from buying eggs from such producer for resale to a catering establishment. Price was controlled under that provision, therefore, in respect of a transaction in which both the seller and the buyer belonged to different categories and were on the one side a producer owning only 25 head of poultry or less and on the other side a consumer. There were, therefore, indications in that legislation that the term 'consumer' was used in a limited sense and Lord Goddard, C. J. held that it must be given its ordinary meaning and that, therefore, it did not include a person who bought the eggs for the

¹ (1947) 1 K. B. 541.

purpose of hatching. In the price order under consideration by me, however, the indications are not that the term 'consumer' has been used in a limited sense but rather the contrary.

Lord Goddard, C.J., stated that orders should be stated in a language which ordinary persons who will be affected by them can understand. He said, "It is surely desirable that orders creating criminal offences should be stated in language which the persons who may commit the offences—in this case, quite humble people, like cottagers—can understand. It is a very serious thing to produce orders, whether under Defence Regulations or otherwise, which create serious offences, if they are couched in language which does not make it clear whether a person is committing an offence or not. I am certainly not prepared to support such orders and to find persons guilty of criminal offences when the orders which they are charged with violating are couched in language which is open to all sorts of meanings and causes all sorts of difficulties, so that the persons to whom they apply cannot know whether they are acting legally or not, unless possibly they get counsel's opinion, or at any rate a solicitor's advice."

Unlike the Order in that matter, the price order under consideration, in my view, is not couched in language which is open to all sorts of meanings and likely to cause all sorts of difficulties. The meaning of the provision is reasonably plain. While there is no obscurity or want of clearness, a semblance of them was made to appear, quite legitimately of course, by the adroit use of legal technicalities and by forensic ingenuity of a high order. The mists of uncertainty so caused, however, yield to and are dispelled by careful examination of the language of the provisions unhampered by preconceived notions as to the meanings which are to be attributed to the terms used in them.

I am, therefore, of the view that the sale to a decoy of the said chillies was one to which the maximum retail price to a customer laid down by Food Price Order No. C. 418 applied. I am fortified with the view that I have taken by the fact that G. P. A. Silva, J. in *K. A. Martin v. Kandy Police*¹ and Tennekoon, J. in *H. M. Podimenike v. Inspector of Police, Kiriella*² have held that a sale to a decoy was a sale by retail for the purpose of the Price Control Act and an order made thereunder. They have gone beyond what I have found it necessary to do and held that such a sale was one for consumption or use and fell within the provisions in paragraph (ii) (b) of the Order. I am, therefore, of the view that the conviction of the appellant must be affirmed.

Learned Counsel for the appellant submitted that the sentence of three months rigorous imprisonment was without justification. There is nothing on the record to show that the appellant had any previous convictions and I do not see any reason why the Magistrate should have imposed anything more than the mandatory term of four weeks R. I.,

¹ (1967) 70 N. L. R. 141.

² (1967) 72 N. L. R. 306.

which the Legislature, in its wisdom has enjoined on Courts to impose on all persons found guilty of this offence, irrespective of ages, previous record, antecedents and physical or other conditions. I, accordingly, alter the sentence of imprisonment to one of four weeks R. I. The fine of Rs. 2,000 in default six weeks R. I. imposed by the Magistrate will stand. Subject to this variation, the appeal is dismissed.

Appeal mainly dismissed.

