

1972

Present : Rajaratnam, J.

A. M. ABDUL SALAM, Appellant, and S. SENEVIRATNE,
Respondent

S. C. 770/71—M. C. Matala, 33685

Sentence—Detention in precincts of court in lieu of imprisonment—Not permissible where a minimum jail sentence of more than seven days is imperative—Punishment for profiteering in contravention of Control of Prices Act—Criminal Procedure Code, ss. 15A, 15B, 325.

Where an offence is punishable with an imperative jail term, section 15B of the Criminal Procedure Code empowers the court, in appropriate circumstances, to impose a sentence of detention in the precincts of the court in lieu of imprisonment. But where an offence is punishable with an imperative jail term and there is a *minimum imperative* term of more than seven days to that jail term, the court cannot act under section 15B of the Criminal Procedure Code.

Accordingly, where a person is convicted for an offence of profiteering in contravention of the Control of Prices Act, and the penal provision for the offence carries a minimum jail sentence for four weeks which is imperative, the court cannot make an order under section 15B of the Criminal Procedure Code.

APPPEAL from a judgment of the Magistrate's Court, Matale.

L. D. Guruswamy, for the accused-appellant.

S. L. Gunasekara, State Counsel, for the Attorney-General.

Cur. adv. vult.

July 13, 1972. RAJARATNAM, J.—

I see no reason to disturb the learned Magistrate's finding on the facts.

Learned Counsel for the appellant invited me to vary the sentence and bind over the accused under Section 325 or detain him till the rising of Court under Section 15B of the Criminal Procedure Code.

The accused-appellant was convicted after trial for an offence of profiteering under the Control of Prices Act. The penal provision for this offence carries a minimum jail sentence for 4 weeks which is imperative.

The facts in this case do not justify any order under either of these Sections of the Code.

Since learned Counsel strenuously argued that the Court can act under Section 15 (B) of the Code even in cases where jail term is imperative whether a minimum term is laid down or not, it will not be out of place to consider this argument.

No doubt under Section 15 (A) of the Criminal Procedure Code the Court cannot impose any term of imprisonment for less than 7 days. Therefore learned Counsel argued every jail term has a minimum terminal point of 7 days and on this basis Section 15 (B) enables Court in lieu of imprisonment to detain an accused person in Court as provided therein, even for offences where the legislature has fixed an imperative minimum terminal for a jail sentence. But there is a difference where the offence carries with it a minimum sentence and where there is a procedural restriction under the Criminal Procedure Code.

For instance the offence of voluntarily causing grievous hurt carries with it an imperative jail term which can extend to seven years which means from one day to seven years but there is a procedural restriction under Section 15 (A) not to impose a term of less than seven days, unless in lieu of imposing a term of less than 7 days, the Court avails itself of Section 15 (B) and detains the offender as therein provided.

But if the offence of voluntarily causing grievous hurt carries with it an imperative jail term as well as a minimum sentence of 8 days, Section 15 (A) cannot be availed of because the imperative minimum terminal of imprisonment attached to the offence must be imposed. The procedural restriction will operate only where the minimum terminal is less than 7 days.

From a practical angle too, it is only when the Court wishes to reduce an imperative jail term to less than 7 days that it will be disposed to avail itself of Section 15 (B) as in a case where the grievous hurt is only very technically so and there are other mitigating circumstances. When or where else will there be an occasion or necessity for a Court to consider detention under Section 15 (B)? When however a heavier sentence is called for it will never avail itself of Section 15 (B).

Therefore I am of the view—

(1) where the offence is punishable with an imperative jail term Section 15 (B) can be availed of in appropriate circumstances.

(2) where the offence is punishable with an imperative jail term and where there is a *minimum imperative* terminal of more than 7 days to that jail term the Court cannot act under Section 15 (B) of the Criminal Procedure Code.

I dismiss the appeal. Conviction and sentence affirmed.

Appeal dismissed.

