

1920.

*Present:* De Sampayo J.

MISKIN *v.* BABUN APPU

97—P. C. Galle, 12,066.

*Charge of selling rice over price fixed by Food Controller—Person to whom, and price at which, rice was sold not stated in charge—Several persons giving evidence as to rice being sold to them—Improper admission of evidence—Irregular charge.*

Accused was charged with having sold rice above controlled price. Neither the complaint nor the charge specified any person to whom rice was sold.

The price at which accused sold the rice was also not stated.

The evidence consisted of three witnesses, who each deposed to the sale of rice by the accused to him, and none of them said anything as to the sale of rice to others.

*Held,* that the proceedings were irregular, as the charge was defective and as evidence was improperly admitted.

**T**HE facts appear from the judgment.

*J. S. Jayawardene*, for appellant.

*Jansz, C. C.*, for the Crown.

March 4, 1920. DE SAMPAYO J.—

This is a case in which the accused, Babun Appu, has been charged with committing a breach of an order of the Deputy Food Controller of the Southern Province fixing the maximum price of rice. The complaint was made by a police sergeant in a written report, in which he stated that the accused on December 25, 1919, at Horumogoda, sold rice over the controlled price, to wit, 26 cents a measure. On this summons issued describing the charge in the

same terms. At the commencement of the proceedings the Magistrate purported to read the charge from the summons, and at the conclusion of the trial he convicted the accused on a charge in the very same terms. It will be thus noticed that neither the complaint, nor the summons, nor the charge embodied in the judgment specified any person to whom rice is alleged to have been sold, nor the price above the controlled prices at which accused is alleged to have sold the rice. An accused person is entitled to have sufficient particulars stated in the charge which he is called upon to meet. In my opinion the charge is wholly defective in this particular case. The Police Magistrate's judgment does not advance the matter, because he does not find that the accused sold rice at any particular price to any particular person; all that he says is that he believes the evidence for the prosecution. The only question for me here is whether the conviction can be sustained on the ground that the accused was not really prejudiced by reason of the defect in the proceedings.

I am not sure that the accused was not prejudiced. The evidence consisted of the evidence of three witnesses, who each deposed to the sale of rice by the accused to him, and none of them had anything to say as to the sales of rice to the others. It was pointed out in the case of *Inspector of Police, Ambalangoda v. Fernando*<sup>1</sup> that not only was a charge such as that in the present case defective, but that the evidence of several purchasers of rice in this way was not properly admissible, for though the charge might be specific and stated that the accused sold rice to a particular person, the evidence of other persons to whom other quantities had been sold would be irrelevant, and would be prejudicial to the accused, because the Magistrate, in the circumstances of the case, would necessarily be influenced by the combined effect of the evidence of all the witnesses in regard to a charge relating to one.

I think it right to interfere in this case on the ground of irregularity of proceedings, and send the case back for a proper trial on specific charges such as may be properly combined, but if they are such as are incapable of being joined, for the trial of the offences separately.

*Sent back.*

1920.

DE SAMPA YO  
J.

*Miskin v.  
Babun Appu*