

1971

Present : Samerawickrame, J.

H. M. ARIYADASA, Appellant, and INSPECTOR OF
POLICE, NAWALAPITIYA, Respondent

S. C. 699/68—M. C. Nawalapitiya, 8297

*Control of Prices Act—Charge of selling price-controlled article at excessive price—
Omission to state therein the name of the buyer—Effect—Criminal Procedure
Code, s. 171.*

In a prosecution for selling a price-controlled article at an excessive price the failure to state in the charge the name of the person to whom the article was sold would not *per se* vitiate the conviction of the accused if the accused was not misled by the omission.

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

G. E. Chitty, Q.C., with *E. A. G. de Silva*, for the accused-appellant.

Ranjith Gunatilake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

September 1, 1971. SAMERAWICKRAME, J.—

The charge against the appellant read :—“ You are hereby charged, that you did, within the jurisdiction of this court, at No. 46, Gampola Road, Nawalapitiya, on 23rd August, 1967 being a place in the Divisional Revenue Officer's division of Pasbage Korale in the Kandy District in which Food and Price Order No. KD. 129 made by Assistant Controller of Prices (Food) under section 4 read with section 3 (2) of the Control of Prices Act (Chapter 173) and published in Government Gazette Extraordinary No. 14,707/2 of 7.8.1966 was in operation in fixing the maximum retail price per lb. above which wheat flour shall not be sold in that area, sell 2 lbs. of wheat flour for cents 65 price in excess of the maximum control price of cents 59 for the said 2 lbs. of wheat flour and thereby you did commit an offence punishable under section 8 (6) of the said Chapter 173 as amended by section 2 (2) of Act No. 44 of 1957 and section 2 of Act No. 16 of 1966.”

Learned counsel for the appellant submitted that the charge failed to set out the person to whom the sale was made and that on this ground the conviction of the appellant was vitiated and should be set aside. He referred to the cases reported in 21 N. L. R. page 492 and 22 N. L. R. page 380. In the first case relied on, the charge did not specify any person to whom the sale was made nor the price above the controlled prices at which the rice was sold. Three witnesses deposed to the fact that the accused sold rice to each of them and none of them said anything as to the sale to the others. The accused in that case would not have known in respect of which sale he was being charged. Similarly, in the other case relied on, the charge did not give particulars as to the quantity sold or to whom it was sold and four witnesses gave evidence that on the day in question the accused sold to each of them a bag of rice for over the control price.

In this case the prosecution evidence which has been accepted is that the gramasevaka of an adjoining area acted as decoy and he pointed out the appellant as the person who sold the wheat flour to him. Thereupon the appellant's cash box was searched, the marked two rupee discovered, the wheat flour was weighed and the parcel containing it was sealed with the left thumb impression of the appellant. There is no evidence of any other sale and it is not suggested that there was any other sale of wheat flour which was either detected or was the subject of a complaint.

Section 171 of the Criminal Procedure Code states :—

“ No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.”

On an examination of the evidence and the facts of the case I am unable to take the view that the appellant was misled by the omission in the charge of the name of the person to whom he sold wheat flour and I hold accordingly that his conviction is not vitiated even if the name of the person to whom the sale was made was necessary for a correct formulation of the charge.

Learned counsel also submitted that the excess over the maximum control price in respect of two pounds of wheat flour was only six cents, that is, three cents per pound and that the appellant might be dealt with under s. 325 of the Criminal Procedure Code. An excess of three cents in respect of an article the control price of which is 29½ cents though small is not negligible and is not to be treated lightly in the case of a trader who deals in that article. The appellant appears to be a first offender but no other circumstance that might make s. 325 applicable has been shown. I do not however think there was any justification for a sentence of imprisonment in excess of the mandatory minimum term. I alter the sentence of six weeks' rigorous imprisonment to one of four weeks' rigorous imprisonment. The fine imposed by the learned magistrate will stand. Subject to the variation in the sentence the appeal is dismissed.

Appeal mainly dismissed.
