

1968

Present : H. N. G. Fernando, C.J.

L. P. R. PODIAPPUHAMY, Appellant, and FOOD & PRICE
CONTROL INSPECTOR, KANDY, Respondent

S. C. 676/66—M. C. Madugoda, 2877

Control of Prices Act—Contravention of a Prices Control Order—Mitigatory circumstances—Applicability of section 325 of Criminal Procedure Code.

The Regulation made on 27th November 1967 to the effect that section 325 of the Criminal Procedure Code shall not apply in the case of a person charged with an offence under the Control of Prices Act as amended by Act No. 16 of 1966 does not exclude the application of section 325 of the Criminal Procedure Code in the case of offences committed before the Regulation became law.

Observation that the fetter on the discretion of Court in regard to punishment, which the Emergency Regulation of 1967 imposes for offences which occur after its enactment, is not prudent or necessary.

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

J. W. Subasinghe, with T. Wickremasinghe, for the accused-appellant.

A. N. Ratnayake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

May 17, 1968. H. N. G. FERNANDO, C.J.—

The accused in this case is shown by the evidence to have sold two loaves of bread for 64 cents. The loaves were immediately weighed by a Price Control Inspector who found that the two loaves together weighed 30½ ounces.

The controlled price of a 16 oz. loaf is 32 cents and the Price Order provides that the controlled price of a loaf of a different weight must be calculated proportionately.

The position for the accused was that he is not a manufacturer of bread but that he buys about 15 loaves of bread every day from a Bakery. On each purchase all the loaves are weighed together in the scales at the Bakery, and the accused is therefore not aware of the actual weight of any particular loaf. Because the loaves are sold to him from the Bakery as 1 lb. loaves, he sells them as such and charges the controlled price of 32 cents for each loaf.

The circumstances are certainly mitigatory, there being no proof of actual intention to sell bread at a price over the controlled price.

There are conflicting judgments of this Court on the question whether there is power to act under s. 325 of the Criminal Procedure Code in the case of contraventions of Price Control Orders. The latest of these judgments was that of Samerawickrame J., in S. C. Appeal No. 163/67 with Application No. 186/67 decided on 6th December, 1967¹. In my opinion, it correctly sets out the legal position.

A Regulation was made on 27th November 1967 under s. 5 of the Public Security Ordinance to the effect that s. 325 shall not apply in the case of persons charged with an offence under the Control of Prices Act as amended by Act No. 16 of 1966. This regulation removes any doubt as to the question whether s. 325 was applicable despite the enactment of Act No. 16 of 1966. In the present case the offence was committed and the trial concluded prior to 27th November 1967, and even the petition of appeal was filed on 3rd May 1967, long before the Emergency Regulation was enacted. The Regulation does not exclude the application of s. 325 in the case of offences committed before the Regulation became law.

I must take this opportunity to point out that s. 325 of the Criminal Procedure Code gives expression to the fundamental principle of Justice that contraventions of the law, which are purely technical and not substantial, do not call for the exercise of the punitive powers of the Courts. The principle *de minimis non curat lex* receives practical application through the discretion vested in the Courts by s. 325. I am fully conscious of the need to check profiteering in foodstuffs, and our Courts have not in recent months hesitated to impose severe sentences in profiteering cases. Thus the fetter on the discretion in regard to punishment, which the Emergency Regulation of November 1967 imposes for offences which occur after its enactment, is not in my opinion prudent or necessary. I have rarely come across any case in which the discretion of leniency conferred on the Courts by s. 325 has been unreasonably exercised. If the Courts have that discretion even in cases of homicide, why not also in cases of profiteering?

Acting in revision, I set aside the conviction and sentence passed on the accused, and without proceeding to conviction I warn and discharge him.

Accused warned and discharged.

¹ *Don Edirisinghe v. De Alwis* (71 N. L. R. 88).