

1970

Present: Tennekoon, J.

N. PIYASENA, Appellant, and N. B. A. GUNAWARDENA (Public Health Inspector), Respondent

S. C. 28/69—M. C. Gampaha, 25959/A

Control of Prices Act—Offence in contravention of it—Sentence—Applicability of s. 325 of Criminal Procedure Code.

Where the commission of an offence in contravention of the Control of Prices Act and the conviction of the accused occurred during the time when the operation of Section 325 of the Criminal Procedure Code was suspended in respect of such an offence by virtue of an Emergency Regulation, the Appellate Court has no power to deal with the accused under that Section even if the appeal of the accused is heard after the Emergency has lapsed.

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

E. R. S. R. Coomaraswamy, with S. C. B. Walgampaya and P. H. Kurukulasooriya, for the accused-appellant.

Tivanka Wickremasinghe, Crown Counsel, for the Attorney General.

Cur. adv. vult.

April 7, 1970. TENNEKOON, J.—

The accused was convicted of selling two Regulet laxative tablets for a sum of 15 cents which is three cents above control price, an offence punishable under section 8 (1) of the Control of Prices Act; and also of having failed to give the buyer a receipt in respect of the sale, in which the required particulars were stated, an offence punishable under section 8 (6) of the same Act.

The evidence was that of a decoy; the Price Control Inspector who had arranged the raid was so quickly upon the scene after the accused had effected the sale, that there was no time, even if the accused was so disposed, to write out a bill or receipt. I do not think that in these circumstances the conviction on the 2nd count can stand. Accordingly that conviction and the sentence of Rs. 25 fine, in default 2 weeks rigorous imprisonment are set aside.

In regard to the conviction on the 1st count Mr. Coomaraswamy has urged that having regard to the absence of any previous convictions, the age of the accused and the fact that he was a salesman in a somewhat out of the way village, the accused should be dealt with under section 325 of the Criminal Procedure Code, since the Emergency Regulation which suspended the operation of that section is no longer in force.

It would appear that under an Emergency Regulation made on 27th November, 1967 (Vide *Government Gazette Extra Ordinary* No. 13,776/S), section 325 of the Criminal Procedure Code was made inapplicable in the case of any person who is charged before a Magistrate with an offence under the Control of Prices Act. Similar regulations were made with renewal of the Emergency from month to month until the Emergency lapsed on the 17th of January 1969. The offence in the present case was committed on 16th June, 1968, and the whole of the proceedings in the Magistrate's Court, i.e., from the filing of plaint on the 25th of June, 1968, to conviction and sentence on the 25th of November, 1968, were had while section 325 was not available to the Magistrate. I do not think that the Appellate Court can in the matter of punishment exercise any larger powers than were enjoyed by the Magistrate at the time he convicted and sentenced the accused. There is no error on the part of the Magistrate for this court to correct.

The conviction and the sentence on the 1st count *viz.* Rs. 100 or 4 weeks rigorous imprisonment in default, and the further sentence of 4 weeks rigorous imprisonment are affirmed; as indicated earlier the conviction and sentence of the 2nd count are set aside.

Conviction on 1st count affirmed.
Conviction on 2nd count set aside.
