

1945

Present: Howard C.J.

SUB-INSPECTOR OF POLICE, KANDY, Appellant, and
WASSIRA, Respondent.

1,072—*M. C. Kandy, 15,276.*

Bread—Sale of 4 oz. loaves over the controlled price—Control in respect 8 of oz. and 16 oz. loaves—Control of Prices Ordinance, No. 39 of 1939, sec. 5—Defence (Control of Prices) (Supplementary Provisions) Regulations, 1942.

Where the accused was charged with selling two 4 oz. loaves of bread for 15 cents which was excess of the controlled price for a half pound loaf.

Held, that the accused had not offended against the Defence (Control of Prices) Regulations as the amount of bread controlled was in respect of sixteen and eight ounce loaves.

Held further, the prosecution was bound to establish by satisfactory evidence the accuracy of the scales and weights on which the bread was weighed.

A PPEAL against an acquittal by the Magistrate of Kandy.

M. P. Spencer, C. C., for the complainant, appellant.

G. E. Chitty for the accused, respondent.

Cur. adv. vult.

January 31, 1945. HOWARD C.J.—

This is an appeal with the leave of the Attorney-General from an order of the Kandy Magistrate, acquitting the respondent on a charge framed under section 5 of the Control of Prices Ordinance, No. 39 of 1939, as amended by the Defence (Control of Prices) (Supplementary Provisions) Regulations, 1942, in that he did on July 18, 1944, sell two 4 oz. loaves of bread at 15 cents when the maximum controlled price thereof was 13 cents. It was proved by the prosecution that a decoy went to the boutique of the respondent and asked the respondent for half a pound of bread and tendered a fifty-cent note. The respondent then gave him 2 loaves of 4 oz. each and 35 cents in change. After the purchase, a constable came to the boutique and weighed the bread on the balance in respondent's boutique. The constable found that the two loaves weighed 8 ounces. The Magistrate acquitted the respondent for the reason that there was no evidence as to the accuracy of the scales and weights on which the bread was weighed. A further point has also been made in this Court on behalf of the respondent. His Counsel has argued that inasmuch as the amounts of bread controlled are 16-ounce and 8-ounce loaves, the respondent has not offended against the provisions of the

Ordinance in selling two quarter pound loaves at more than the controlled price for one half pound loaf. In my opinion this contention is sound. In *Weerasekera v. Subramaniam*¹ the accused was charged with the sale of 8 sulphapyridine tablets at 50 cents a tablet, a price in excess of the maximum price, in breach of an order made under section 3 of the Control of Prices Ordinance. It was held by Wijeyewardene J. that the accused had not offended against the provisions of the order as the article controlled was a bottle of tablets and not single tablets. I am of opinion that the same principle must be applied in regard to the sale of bread in this case. The regulation is a penal enactment and must be strictly construed.

With regard to the weighing of the bread on the scales of the respondent, criminal cases of this nature must be established beyond all reasonable doubt. With no evidence as to the accuracy of the scales it cannot be said that this standard of proof has been reached. I think the Magistrate's decision on this point was correct.

The appeal is dismissed.

Appeal dismissed.

¹ (44 N. L. R. 545).