

1946

*Present : Nagalingam A.J.*FERNANDO *et al.*, Appellants, and HAMID, Respondent.991/992—*M. C. Colombo, 17,534.*

*Control of Prices—Maximum retail price of potatoes—Food Price Order No. C 83—Applicable equally to both imported and locally-grown potatoes—Control of Prices Ordinance, No. 39 of 1939, s. 5.*

The term "potatoes" in Schedule I of the Food Price Control Order No. C 83 (*Gazette No. 9,517 of February 8, 1946*) applies both to locally-grown potatoes as well as to the imported variety.

**A** PPEALS against two convictions from the Magistrate's Court, Colombo.

*H. V. Perera, K.C.* (with him *S. Nadesan*), for the accused, appellants.

*J. G. T. Weeraratne, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

November 27, 1946. NAGALINGAM A.J.—

The two accused in this case appeal from their conviction and sentence upon a charge of having sold 13 pounds of potatoes for Rs. 10.50, a price in excess of the maximum retail price of Rs. 3.12 for the said quantity, and thereby having committed an offence punishable under section 5 of the Control of Prices Ordinance.

Two points have been urged in appeal. One is that the article in respect of which the charge is laid is Nuwara Eliya potatoes and that the commodity controlled is not locally-grown potatoes but the imported article. The reasoning upon which this argument is based is said to be that a reading of Schedules 1 and 2 to the Food Price Control Order No. C 83 leads irresistibly to this conclusion. It is said that the first Schedule not only sets out in the 1st column the description of the articles but in column 2 the imported maximum price per cwt., in column 3 the maximum wholesale price per cwt., in column 4 the maximum wholesale price per pound and in column 5 the maximum retail price per pound, showing that the whole schedule must be regarded as one scheme, for in regard to any article there is a gradation of prices set out in the various columns pointing clearly to the interdependence of both wholesale and retail prices upon the imported price and therefore if a particular article can be shown to be not subject to an imported price that article is outside the ambit of the Price Control Order. I am not disposed to accept this argument more so as in two earlier cases *Kretser J.* and *Dias J.* have taken the view that the description of the article in column 1 does not and cannot be said to be limited by the reference to the importers price in column 2 thereof that the various columns in regard to prices are not mutually dependent but are independent. In other words if the article is imported then column 2 in regard to the importer's price would apply but, if locally-grown, then that column would not apply but the other columns would apply equally to both imported and locally-grown articles.

Learned Counsel for the appellants submits that when the matter was argued before Dias J.\* he had not brought to his notice the existence of Schedule 2 which shows that the prices in outstations would be higher than the corresponding prices in Colombo excepting for the importer's price which either has no application to outstations or, if it has, would be the same as that for Colombo: if this aspect of the matter is taken into consideration he argues that as there is evidence in this case to show that the potatoes were Nuwara Eliya potatoes despatched to the accused from Kandapola, the interpretation placed in the Order would lead to the absurd result that a trader is expected to make a purchase of the locally-grown articles at Kandapola at a price much in excess of the Colombo price and sell them in Colombo at a lower price.

The simple answer to that is that the prices are maximum prices and not the minimum and that the trader in Colombo need not necessarily pay the maximum price fixed in Schedule 2 in making his purchase. It is open to him to buy the commodity at a price lower than what is fixed in that Schedule. If he could purchase potatoes at a sufficiently low figure that would enable him—after adding to the cost price, the transport charges and allowing a margin of profit for himself—to sell the article in Colombo at a price not exceeding the controlled price there would be no objection to it, but if he cannot possibly do so, the obvious course he should pursue is to desist from undertaking such venture.

I therefore hold that the perfectly general term 'potatoes' in the Schedule I applies both to the locally-grown article as well as to the imported variety.

The second point taken is that the evidence does not disclose that the second accused took any part in the sale. It is undoubtedly true to say that two persons can be convicted upon a single charge of selling a commodity in excess of the controlled price but the question here is whether there is sufficient evidence to show that the second accused did take part in the sale. The evidence against him is that he was consulted by the first accused who actually took the order from the Price Control Inspector and after consulting the second accused, he mentioned the price to the Price Control Inspector. As to what the nature of the consultation was between the first and second accused there is no evidence; but assuming that the consultation was with regard to the price it may very well be that the second accused who was described by the prosecution as a Sales Clerk worked out the selling price having regard to the cost price, transport charges and the margin of profit, which the firm allows to itself—and conveyed the figure to the first accused who is described as a part proprietor of the business. The case may have been otherwise had the first accused been a salesman and the second accused a Sales Manager. A Sales Clerk is not a Sales Manager and the evidence does not show what his precise functions are, so that no inference adverse to the second accused should be drawn if his conduct can be given an innocent complexion; another piece of evidence which is relied upon against him is that he handed the balance out of the amount the complainant had tendered in payment of the purchase he had made. The fact that the

\* *Vide (1946) 47 N. L. R. 501—Ed.*

second accused handed over the balance shows that he acted in the capacity of a cashier and this does not lead to an inference that he had taken part in the sale.

I am not therefore satisfied that there is sufficient evidence upon which one could come to the conclusion that the second accused had taken part in the transaction.

In these circumstances I affirm the conviction and sentence imposed on the first accused but quash the conviction of and acquit the second accused.

*Conviction of first accused affirmed.  
Conviction of second accused set aside.*

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