

1970

Present: Samerawickrame, J.

D. K. GUNAWARDENA, Appellant, and
INSPECTOR OF POLICE, RATNAPURA, Respondent

S. C. 441/69—M. C. Ratnapura, 31748

*Control of Prices Act (Cap. 173)—Subsections (1) and (7) of s. 4—Price Order—Proof—
Evidence Ordinance, s. 91.*

A conviction for selling sugar at an excessive price in contravention of a Price Order that is governed by subsections (1) and (7) of the Control of Prices Act would not be valid unless the Magistrate has stated in his order that he has taken judicial notice of the Price Order or else the prosecuting officer has at least said in evidence that the Price Order was in operation in the area on the date of the alleged offence.

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

Sidat Sri Nandalochana, for the accused-appellant.

K. Wijayatilake, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 16, 1970. SAMERAWICKRAME, J.—

The appellant was convicted of an offence under the Control of Prices Act on the ground that he sold two pounds of white sugar for Re. 1.40, a price in excess of the maximum controlled price of Re. 1.36. The decoy did not state that he inquired from the appellant the price of a pound of sugar but he stated that he asked for two pounds of sugar and tendered a two-rupee note and was given 60 cents change. It is because the odd 4 cents change was not given that the appellant is alleged to have committed the offence.

Learned counsel appearing for the appellant submitted that there was no proof that the controlled price of white sugar was 68 cents per pound because the Price Order has not been produced. He submitted that in view of Section 91 of the Evidence Ordinance the controlled price of white sugar could only be proved by the production of the Gazette in which the Price Order was published. It is correct that the controlled price is to be ascertained from the Price Order. The Price Order as well as the Government Gazette in which it was published have been referred to in the charge. As no fact of which the Court will take judicial notice need be proved, the production of the Gazette containing the Price Order was not necessary if the Court was prepared to take judicial notice of the Order.

The Price Order referred to in the charge is one made by the Controller in terms of s. 4 (1) of the Control of Prices Act (Cap. 173). Though

such an Order by itself is sufficient to maintain the charge it is only where the Order is approved by the Minister and notification of such approval is published in the Gazette that the Order is "to be deemed to be as valid and effectual as if it were herein enacted." vide s. 4 (7) of the Act. The Price Order has been made on 5th November, 1964, which is nearly 3 years prior to the date of the alleged offence, namely 31st August, 1967. Price Orders of commodities like sugar are often changed and the Order itself refers to two previous Food Price Orders revoked by it which had been made in the course of the previous year. In the circumstances, I think that the prosecuting officer should at least have undertaken to say in evidence that the Price Order referred to in the charge was in operation in the area on the date the offence is alleged to have been committed. There is no such evidence. Even in the absence of such evidence the Court may take judicial notice of the fact that the Price Order was in operation but the learned magistrate has not stated in his order that he has taken judicial notice of it and, in the circumstances of this case, sitting in appeal, I do not propose to do so.

I allow the appeal and set aside the conviction and the sentence passed on the accused-appellant.

Appeal allowed.

