

1968

Present : Wijayatilake, J.

P. A. HAMZA NAINA, Appellant, and INSPECTOR OF POLICE,
GAMPAHA, Respondent

S.C. 668/68—M. C. Gampaha, 18233/A

Control of Prices Act—Sections 3 (2), 4—Contravention of Food Price Order—Place of offence—Whether Court can take judicial notice that it fell within Colombo District—Evidence Ordinance, s. 57—Administrative Districts Act (Cap. 392), s. 2 (2).

In a prosecution for contravention of a Food Price Order which is applicable to the Colombo District excluding the Municipal limits of Colombo, the Court is not entitled to presume that the place where the alleged offence was committed fell within the Colombo District in the absence of any evidence regarding the limits of the Colombo District.

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

E. H. C. Jayetileke, for the accused-appellant.

Priyantha Perera, Crown Counsel, for the Attorney-General.

October 30, 1968. WIJAYATILAKE, J.—

In this case the accused is charged with selling beef above the maximum price in contravention of the Food Price Order No. FC/B SF 7 (6) of 15.10.64 made by the Assistant Food Controller of Prices (Food) Colombo District under Section 4 read with Section 3 (2) of the Control of Prices Acts No. 29 of 1950 and 31 of 1952 and published in *Ceylon Government Gazette (Extraordinary)* No. 14,199 of 15th October, 1964.

The learned Magistrate has found the accused guilty and sentenced him to a term of 4 weeks' rigorous imprisonment and to pay a fine of Rs. 500/- in default 6 weeks' rigorous imprisonment. Mr. Jayatileke, learned counsel for the appellant, has referred me to the *Government Gazette* mentioned in the charge and he submits that according to the schedule this Price Order applies to the Colombo District excluding the Municipal limits of Colombo and therefore the prosecution had to establish that this offence was committed within the Colombo District and outside the Municipal limits of Colombo the beef stall in question being at No. 3 Yakkala on the Gampaha-Kirindiwela Road. He submits that the prosecution has failed to prove that the place where the beef was alleged to have been sold is *within* the Colombo district. When the sub-inspector of police gave evidence he was cross-examined particularly in regard to this point and in answer to the question as to the limits of the Colombo District he stated that the Colombo Municipality area extends up to the Peliyagoda bridge, and Colombo Municipality ends at the Peliyagoda bridge. Then when he was questioned again as to the limits of the Colombo District he confessed that he could not say what they were and he confirmed that he could not give the areas which are incorporated in the Colombo District. The learned Magistrate in his reasons has considered this objection taken by the defence that the prosecution has failed to prove that the place of offence was within the Colombo District and he has commented that in regard to this submission he has to observe that "there cannot be any doubt that No. 3 Yakkala where the accused's beef stall is situated is not a place within the limits of the Colombo Municipality". In regard to this particular observation there is the evidence of the Inspector of Police. The Magistrate, however, observes that the detection had been made by the Gampaha police in an area within the jurisdiction of that police station and he thinks that he is entitled to presume "that administratively Gampaha comes within the jurisdiction of the Government Agent, Colombo District". It may be mentioned that the prosecution has failed to produce in evidence a map of the Colombo District showing the Administrative divisions or the evidence of anyone who could authoritatively speak to the limits of the Colombo District. The Administrative Districts Act, Chapter 392, sets out the limits of the Administrative Districts. Section 2 (2) sets out that the limits of each Administrative District specified in column 1 of the first schedule to this Act shall, subject to any alterations made therein, under Section 3, be those specified in the corresponding entry in column II of that schedule. It is not at all clear how the learned Magistrate presumed that this particular place No. 3 Yakkala came within the jurisdiction of the Colombo District without a precise scrutiny of the divisions as set out in these two columns. My attention has been drawn by Crown Counsel to Section 57 of the Evidence Ordinance and he submits that Courts can take judicial notice of facts other than those mentioned in that Section. He relies on the principle set out in the case of *Bogstra v. Custodian of Enemy Property*¹. He has also drawn my attention to the cases

¹ (1943) 44 N. L. R. 272 ; 26 C. L. W. 5.

of *Galahitiyawa v. Inspector Joseph*¹ and *Menon v. Lantine*² and he submits that the Magistrate is entitled to make use of his personal observations and arrive at certain conclusions. Therefore in the instant case he was entitled to presume that this particular place fell within the Colombo District as he was the Magistrate functioning at Gampaha. However, it may be noted that the Judicial Districts of Ceylon with which a Magistrate may be familiar do not correspond to the Administrative Districts of Ceylon. In this case the Police Inspector who should have been more familiar with the area, has himself confessed that he was not aware of the limits of the Colombo District.

Mr. Jayatileke has referred me to a recent judgment of de Kretser, J. in *Mendis v. Jayawardene* S.C. 543/68 M.C. Avissawella 80838 S.C. minutes of 23.10.68 which has dealt with a similar question. With great respect I am in agreement with the judgment of my brother de Kretser, J. and the principle set out by him would be applicable to the facts before me the only evidence being that the beef stall is at No. 3 Yakkala on the Gampaha-Kirindiwela Road and I would uphold the objection raised by counsel for the accused that the Magistrate was not justified in presuming that this stall is within the Colombo District, on the facts proved in this case. Perhaps, if the evidence was that the stall in question is situated within close proximity to the Municipal limits of Colombo or within well defined and well known physical boundaries the presumption might have been justified but in the instant case it would be quite unsafe to base a conviction on a rather tenuous presumption of the Magistrate.

I would accordingly quash the conviction and acquit the accused.

Conviction quashed.

¹ (1966) 69 N. L. R. 152.

² (1941) 43 N. L. R. 34.