

1946

Present : Nagalingam A.J.

HAMEED (Price Control Inspector), Appellant, and THURAI-SAMY NADAR, Respondent.

1,454—*M. C. Chilaw*, 31,347.

Defence (Control of Prices) (Supplementary Provisions) Regulations—Price Control Inspector—His right to prosecute—Requirement of proof that he acted as “authorised officer”.

In a prosecution for sale of a controlled article in excess of the control price, objection was taken on behalf of the accused that there was no proof that the prosecuting officer was in fact a public servant within the meaning of section 148 (1) (b) of the Criminal Procedure Code.

There was proof that the complainant did act as a Price Control Inspector, but there was no proof that he acted as an “authorised officer”—

Held, that the accused was entitled to be acquitted.

Perera v. Alwis (1944) 45 N. L. R. 136, followed.

A PPEAL against an acquittal from the Magistrate's Court, Chilaw.

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

Sam P. C. Fernando, for the accused, respondent.

December 19, 1946. NAGALINGAM A.J.—

This is an appeal by a person calling himself a Price Control Inspector with the sanction of the Attorney-General from an order of acquittal by the learned Magistrate of Chilaw acquitting the accused of the offence of having sold dry chillies in excess of the control price. The only point urged before the Magistrate on behalf of the accused was that there was no proof that the person who claimed to be a Price Control Officer was in fact a public servant within the meaning of section 148 (1) (b) of the Criminal Procedure Code entitling him to file plaint in the way he did, and in the case of *Perera v. Alwis*¹ the decision of Keuneman J. was cited to the Magistrate. In view of this judgment the learned Magistrate acquitted the accused. Learned Counsel for the accused argues that in the case before Keuneman J., while there was proof that the complainant in that case was acting as Price Control Inspector, even as it is shown to be the case in the present one, it was not shown in that case nor in this case that the Price Control Inspector was an authorised officer and the judgment of the Magistrate is therefore right. The regulations relied upon by learned Crown Counsel afford no assistance to the appellant because the Defence (Control of Prices) (Supplementary Provisions) Regulations, 1942, in sub-paragraph (3) of Regulation (1) in the schedule thereto defines "authorised officer" as "any other officer or person (other than a Controller or any Deputy or Assistant Controller) appointed by the Controller by a notification published in the *Gazette* to be an authorised officer". While in this case, as stated earlier, there is proof that the complainant did act as a Price Control Inspector, there is no proof that he acted as an "authorised officer". Had there been proof that the Inspector had acted as an "authorised officer" it would have been possible for the prosecution to claim the benefit of exception (1) to section 91 of the Evidence Ordinance but in the absence of such proof the learned Magistrate was right in following the authority cited to him and in acquitting the accused. The appeal is dismissed.

Appeal dismissed.