

1967

*Present : Tennekoon, J.*

A. SOMALINGAM, Appellant, *and* K. A. JAYAWARDENE  
(Food and Price Control Inspector), Respondent

*S. C. 682/67—M. C. Badulla (holden at Bandarawela), 46873*

*Control of Prices Act—Charge of selling imported foodstuffs in excess of maximum controlled price—Inspector of Foodstuffs—Competency to give evidence as an expert.*

In a prosecution for selling Masoor Dhal Imported Split (Grade I) in excess of the maximum controlled retail price, an Inspector of Foodstuffs who has sufficient experience and practical knowledge in the examination of imported foodstuffs is competent to give evidence as an expert in order to establish that the subject of the sale was Masoor Dhal Imported Split (Grade I).

**A**PPEAL from a judgment of the Magistrate's Court, Badulla.

*Colvin R. de Silva, with Nimal Senanayake and Bala Nadarajah, for the Accused-Appellant.*

*Faisz Mustapha, Crown Counsel, for the Attorney-General.*

*Cur. adv. vult.*

November 6, 1967. TENNEKOON, J.—

The accused-appellant was convicted of the offence of selling a pound of Masoor Dhal imported split (Grade I) at a price in excess of the maximum controlled retail price and sentenced to one month's rigorous imprisonment and also to a fine of Rs. 1,000.

The main submission in appeal was that the learned Magistrate had misdirected himself in holding on the evidence that the article sold was Masoor Dhal imported split (Grade I). The Price Order in question referred to two varieties of Masoor Dhal—

1. Masoor Dhal—Imported Split (Grade I)
2. Masoor Dhal—Locally Milled (Grade II)

In order to establish that the subject of the sale was Masoor Dhal Imported Split (Grade I) the prosecution called one Gooneratne. He testified to the effect that P1 the subject of the sale was submitted to him for an opinion and that he identified it as Masoor Dhal imported split Grade I. Gooneratne testified that he was an Inspector of Foodstuffs attached to the wharf for the last 24 years. He had joined the Food Department in 1945 ; in 1965 he was sent to India to follow a course of training in the physical analysis of foods. His ordinary duties were the examination of foodstuffs imported into the Island by the Government or the C. W. E. for quality, condition and variety ; he issues reports in respect of all foodstuffs taken over or imported for purposes of payment ; he stated that the Government has been the sole importer of Masoor Dhal for the last 12 years, and that he had given expert evidence on foodstuffs in a number of cases in courts. He also stated the points of distinction between Masoor Dhal imported split (Grade I) and Masoor Dhal locally milled (Grade II). Gooneratne also stated that while it may be possible to produce Grade I quality Masoor Dhal from the unmilled Masoor Dhal that is imported and distributed to millers, he himself was unaware of Grade I Masoor Dhal being produced by millers in Ceylon.

On the question of whether Gooneratne was rightly treated as a person " specially skilled " on the science of identifying foodstuffs and in particular different varieties of Masoor Dhal, I need only refer to the judgment of my brother T. S. Fernando, J. in the case of the *Solicitor-General v. Fernando*<sup>1</sup>. It was held in that case that in a prosecution for unlawful possession of an excisable article, viz., fermented toddy, an excise inspector who has sufficient experience, and practical knowledge in the detection of excise offences relating to fermented toddy may be qualified to give evidence as an expert on the question whether the liquid claimed to have been found in the possession of the accused was fermented toddy. I think that on this principle Gooneratne's opinion that the subject of the sale in this case was Masoor Dhal Imported Split (Grade I) was properly treated by the Magistrate as relevant evidence.

<sup>1</sup>(1965) 67 N. L. B. 159.

In the course of cross-examination, Gooneratne was asked whether he was aware that any local miller could produce Grade I Masoor Dhal from unsplit Masoor Dhal that is imported and distributed by the Government to millers. Gooneratne's answer was that millers to whom imported unsplit Masoor Dhal is given by the Government are only authorised to mill the dhal up to Grade II quality, and that he himself was unaware of millers, contrary to instructions, producing Grade I Masoor Dhal. He was also asked whether it is not possible for millers to utilise the percentage that is allowed to them for processing and wastage by the Government for conversion into Grade I Masoor Dhal. His answer was that he was unaware of any such practice. This suggestion having been denied by the expert, the learned Magistrate said: " Even if that be so it was for the accused who has preferred to sell such a variety in open market in spite of the Price Order in P4 to satisfy court that this dhal was locally milled (Grade I). " It was submitted by Counsel for the appellant that here the Magistrate was ignoring the principle that in a criminal prosecution the burden was on the prosecution to establish its case, and that there was no burden on the accused. I do not think that the Magistrate had misdirected himself at all. There was sufficient *prima facie* evidence on which the Magistrate was entitled to, and indeed did, call upon the accused for his defence. If the case of the accused was that what he sold was Grade I dhal produced in some unusual fashion by millers from imported unsplit dhal, a practice of which the expert himself was unaware, he should have placed evidence of that fact before court.

In the absence of such evidence I do not think the Magistrate has misdirected himself in holding on the evidence of the expert and the failure of the accused to produce any evidence on that point, that the prosecution has proved beyond reasonable doubt that the dhal that was sold in this case was Masoor Dhal Imported Split (Grade I).

The appeal is dismissed. The conviction and sentence are affirmed.

*Appeal dismissed.*

