

1967

Present : Tennekoon, J.

H. M. PODIMENIKE, Appellant, and INSPECTOR OF
POLICE, KIRIELLA, Respondent

S. C. 807/67—M. C. Ratnapura, 26330

Control of Prices Act—Price Order relating to maximum retail price of red onions—Sale in contravention thereof—Quantum of evidence as to question whether article sold was red onions—Sale to a decoy in the course of a raid—Whether it is a sale for “consumption or use”—Fixing of maximum price for Ratnapura District at a few cents above the price fixed for Colombo—Validity.

In a prosecution for the sale of a pound of red onions to a decoy at a price in excess of the maximum retail price fixed by the relevant Price Order—

Held, (i) that the failure of the accused to cross-examine the prosecution witnesses who referred to the article purchased and produced in Court as “red onions” was sufficient to justify the inference that the article sold was red onions, even though a letter written to the Magistrate regarding the quality of the onions by a person who called himself a Systematic Botanist was inadmissible in evidence.

(ii) that where a person who is a retailer of red onions sells a quantity less than one hundredweight, the sale is from the point of view of the seller intended for “consumption or use” and it is irrelevant to enquire what, if any, purpose the buyer had in view. In such a case the proper question to ask is not what purpose the buyer had in view, but for what purposes the seller sold the onions. Accordingly, a sale to a decoy in the course of a “raid” is a sale for purposes of consumption or use.

(iii) that the fixing of maximum price for Ratnapura at a figure increased by a few cents over the Colombo price was not an unauthorised delegation or a surrender of his statutory powers by the Assistant Controller of Prices of the Ratnapura District.

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

L. W. Athulathmudali, for the accused-appellant.

Faisz Musthapha, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

November 22, 1967. TENNEKOON, J.—

The accused-appellant was convicted of the offences of selling a pound of red onions at a price in excess of the maximum retail price fixed by the Price Order No. R/42/1965 of 8/6/65 read with Price Order No. 420 of 8/1/67.

Counsel for the appellant made three submissions. The first was that in order to prove that the article sold was red onions, the prosecution produced a written opinion from a person who called himself a Systematic Botanist. In a letter addressed to the Magistrate he stated that he had examined the pound of onions that had been sold, that he found it was onions of the variety commonly known as "red onions". The Systematic Botanist was not called, and it needs no discussion to conclude that his letter is completely inadmissible. Counsel for the appellant submitted that the accused should accordingly be acquitted. This does not follow, because the purchaser of the onions and other witnesses have clearly stated that what they purchased on this occasion was red onions. The witness Abeywardena who made the purchase stated in evidence that he asked the accused for a pound of red onions, and the accused sold to him the pound of red onions which was later produced in Court. There was no cross-examination of this or other witnesses who referred to the article purchased and produced in Court as "red onions". I think that in these circumstances there is ample evidence that the article sold was red onions even when the letter of the Systematic Botanist is rejected as being inadmissible evidence on that question.

The second point taken by Counsel for the appellant is that the onions were not purchased by the decoy Abeywardena for consumption or use, but that it was purchased in the course of a "raid". The Price Order fixes the maximum price for sales wholesale, and for sales retail, and the following definition is given to what is meant by the sale wholesale, and to a sale retail:—

- "(a) any sale of any quantity of an article specified in column 1 of the Schedule for the purpose of resale or any sale of such article in a quantity of one hundredweight gross or more at a time shall be a sale by wholesale ;
- (b) any sale of any quantity of an article specified in column 1 of the Schedule less than one hundredweight gross for the purpose of consumption or use shall be deemed to be a sale by retail ;"

The charge in this case relates to a sale above the maximum retail price. It is not suggested that a sale of red onions (of a lesser quantity than 1 cwt.) by the accused to any ordinary customer at her boutique would not be a sale by retail within the meaning of the Price Order. What is argued is that the purchaser in this case did not have any need for the onions when he purchased them, nor had the organiser of the "raid" and that neither of them had in contemplation any use for the onions because the only purpose of making the purchase was to test whether the accused was selling by retail above the price fixed by the Price Order.

I am inclined to the view that in deciding whether a particular sale of a quantity of red onions less than one hundredweight gross, was wholesale or retail, the proper question to ask is not what purpose the buyer had in view, but for what purposes the seller sold the onions. This may appear to be somewhat illogical because the seller cannot control the purposes of the buyer. The two tests prescribed are "for purposes of resale" and "for purposes of consumption or use", both of which appear to refer only to the purposes of the buyer in buying. It is necessary however to remind oneself that the Price Order speaks of a *sale* for one or other of those purposes and not of a *purchase* for those purposes. The definitions given to the terms "sale by wholesale" and "sale by retail" are not intended to introduce a new term or condition into day to day sale and purchase transactions indulged in by the public at large. It is a well-known fact of the political economy of this country that there are dealers who hold themselves out as wholesale dealers and others who hold themselves out as retail dealers. These dealers sell at "wholesale" rates or at "retail" rates irrespective of the purposes of the particular buyer. The wholesaler sells ordinarily for the purposes of resale: the retailer ordinarily for the purpose of consumption or use. Neither pauses to enquire of each particular buyer what *his* particular purpose is. Nor is there anything in the Price Order which requires him to do so. It seems to me therefore that where a person is a retailer of red onions and sells a quantity of red onions less than one hundredweight, the sale is from the point of view of the seller intended for "consumption or use" and it is irrelevant to enquire what, if any, purpose the buyer had in view. I am therefore of opinion that in the instant case the sale of the pound of onions by the accused at the "boutique" of her husband Dingirimahatmaya was intended for purposes of consumption or use and was accordingly a sale by retail.

It is a source of satisfaction to learn that my brother G. P. A. Silva, J. has in an unreported case (which is not available to me at the time of writing this judgment) come to the same conclusion on similar facts.

The 3rd submission which Counsel for the appellant submitted was as follows:—The Price Order No. R/42/65 of S/6/65 made by the Assistant Controller of Prices (Food), Ratnapura District, and published in the

Ceylon Government Gazette Extraordinary No. 14,422 of 12/6/65 fixes the price of red onions for the Ratnapura District in this way—

“ BY virtue of powers vested in me by section 4 of the Control of Prices Act (Chapter 173), read with section 3 (2) of that Act, I, John Vincent Gnanapragasam, Assistant Controller of Prices (Food), Ratnapura District, do by this Order—

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- (3) fix with immediate effect the price for the time being fixed under the Control of Prices Act (Chapter 173), as the retail Dealer's maximum retail price for the Colombo Municipality, increased by amounts specified in column 3 of the Schedule hereto, to be the maximum retail price per pound nett above which the articles specified in the corresponding entry in column 1 of that Schedule shall not be sold within the area or the administrative district specified in column 2, of that Schedule ”

It is submitted by Counsel that this is an unreasonable and improper manner of fixing prices for the Ratnapura District, and secondly that it is in substance a delegation of his powers by the Assistant Controller of Prices, Ratnapura District to the officer who makes Price Orders for the Colombo District. I cannot see how it can be suggested that the fixing of a price for the Ratnapura District at few cents above the price fixed for Colombo is an unreasonable exercise of the power of fixing the maximum prices for Ratnapura District. Obviously this manner of fixing the price proceeds on the basis that the market price of red onions in Ratnapura is usually a few cents higher than in Colombo for reasons which are easy to envisage and of the adequacy of which the person given the power to fix prices is the best judge. I accordingly reject this contention. In regard to the further submission that Food Price Order No. R/42/1965 amounts to a surrender of the power of fixing prices for Ratnapura to the officer who fixes prices for Colombo District, it is only necessary to refer to the fact that under section 4 of the Control of Prices Act, a Price Order is capable of being revoked at any time by the officer who makes it or by the Controller. If the prices fixed for Colombo are such that the prices in Ratnapura need to be revised, the officer who has power to make Food Prices Orders for Ratnapura has only to make and sign a fresh order for Ratnapura immediately. I do not accordingly think that there is any substance in the submission that by fixing for Ratnapura District maximum prices at a figure increased by a few cents over the Colombo price is an unauthorised delegation or a surrender of his statutory powers by the Assistant Controller of Prices of the Ratnapura District.

The appeal accordingly fails, and is dismissed. The convictions and sentences passed on the accused are affirmed.

Appeal dismissed.