

1955

Present : Weerasooriya, J.

FOOD AND PRICE CONTROL, INSPECTOR, Appellant,  
and PIYASENA, Respondent

S. C. 59A—M. C., Matale, 4,316

*Control of Prices Act, No. 29 of 1950—Section 4—Price Order—Prosecution thereunder—Proof of Minister's approval of the price order not essential—Mode of proof of the price order—Judicial notice—Evidence Ordinance (Cap. 11), ss. 57, 78 (3).*

Where a person is charged with contravening a price order made and signed by the Controller and published in the *Government Gazette* under sub-sections 1, 3 and 4 of section 4 of the Control of Prices Act, it is not obligatory on the prosecution to place before the Court the fact (whether as a matter to be proved by evidence or to be taken judicial notice of) that the price order has duly received the Minister's approval.

The Court may take judicial notice of a price order which is referred to in the *Government Gazette*. Alternatively, the price order, being a public document issued by a department of Her Majesty's Government, may be proved, under Section 78 (3) of the Evidence Ordinance, by a copy or extract of it contained in the *Government Gazette*.

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

*H. A. Wijemanne*, Crown Counsel, with *Shiva Pasupati*, Crown Counsel, for the complainant appellant.

*G. E. Chitty*, with *Daya Perera*, for the accused respondent.

*Cur. adv. vult.*

November 22, 1955. WEERASOORIYA, J.—

The respondent to this appeal was charged under the Control of Prices Act, No. 29 of 1950, with the commission of an offence the gist of which was that he sold two pounds of wheat flour at a price which, in terms of a certain price order referred to in the charge, was two cents in excess of the maximum retail price of forty-eight cents.

The price order in question was one made under S. 4 (1) of the Act. S. 4 (3) provides that an order under s. 4 (1) shall come into operation when it is made and signed. The Act contains further provision for an order when signed to be published in the *Government Gazette* and also to be submitted to the Minister, who is empowered either to approve or rescind it. Under S. 4 (6), where an order is rescinded notice of such rescission shall be published in the *Gazette* and the order shall be deemed to be rescinded with effect from the date of such publication "but without prejudice to anything done or suffered thereunder or any right, obligation or liability acquired, accrued or incurred thereunder"; and under S. 4 (7)

an order which has been approved by the Minister is, upon notification of the approval in the *Gazette*, deemed to be as valid and effectual as if it were part of the Act itself.

These provisions make it clear, I think, that once an order has been made and signed (and also, perhaps, duly published) it becomes fully operative independently of any further efficacy it may receive from the subsequent notification of its approval by the Minister. That the particular order under consideration was duly made, signed and published was sought to be proved by the *Gazette* notification P 4 which was put in evidence by the prosecution. The charge framed against the respondent also contained a reference to the *Gazette* in which the order was published.

At the close of the case for the prosecution although the defence was called upon to meet the charge no evidence was adduced on its behalf and counsel for the respondent, instead, addressed certain submissions to Court on an acceptance of one of which, at least, the Magistrate acquitted the respondent. The ground for the acquittal is set out in these terms in the Magistrate's order: "The failure on the part of the prosecution to produce the *Gazette* notification of the approval by the Minister of the price order made, or even to make mention or reference to it in the *plaint* is, in my opinion, a fatal irregularity which will enure to the benefit of the accused". It would seem that the reference to the "plaint" in the above quoted passage was intended to be a reference to the charge as framed against the respondent, but whether the order of the learned Magistrate is regarded in its express terms or in the amended form suggested by me, it is clear that it is not one which can be supported. In my opinion the charge framed against the respondent (which follows the wording of the accusation in the *plaint*) contained all the particulars of the offence which need have been given under S. 167 of the Criminal Procedure Code. For the proof of the offence charged it was not obligatory on the prosecution to have placed before the court the fact (whether as a matter to be proved by evidence or to be taken judicial notice of) that the price order had duly received the Minister's approval, and it was therefore not necessary to refer to it in the charge or produce the *Gazette* notification of its approval. Indeed, Mr. Chitty who appeared for the respondent did not attempt to maintain that the ground given by the learned Magistrate for acquitting the respondent was valid. Nevertheless, he asked that this Court should not interfere with the order of acquittal since, in his submission, the prosecution had failed to adduce evidence that the price order had been duly made and signed. The basis of this submission (if I understood it correctly) is as follows: An order under S. 4 (1) of the Act is not a matter of which a Court is required to take judicial notice under S. 57 of the Evidence Ordinance. Therefore the *Gazette* notification P 4 purporting to contain a copy of the order in question did not constitute *prima facie* proof of that order, and the prosecution should have produced in evidence either the original order or a certified copy of it under The Proof of Public Documents Ordinance (Cap. 12). In support of this submission Mr. Chitty referred to the case of the *Solicitor General v. Aradiel*<sup>1</sup> where it was held that a closing order made under the Shops

Ordinance, No. 66 of 1938, did not come within the classes of documents enumerated in S. 57 of the Evidence Ordinance and a Court is, therefore, not bound to take judicial notice of it and the prosecution should have produced it in evidence. But while S. 57 of the Evidence Ordinance deals with what facts a Court is bound to take judicial notice of, there is ample authority for the view that the Court may, in its discretion, take judicial notice of various other facts not enumerated in S. 57 though not bound to do so. See, for example, *Menon v. Lantine*<sup>1</sup> and *Bogstira v. The Custodian of Enemy Property*<sup>2</sup>.

In the present case there was publication in the *Gazette* (as proved by the production of P 4) of what purported to be an order under S. 4 (1) of the Control of Prices Act, No. 29 of 1950, and I see no reason why in the circumstances the Court should not take judicial notice of the order referred to in P 4 as one which was duly made and signed under S. 4 (1) of the Act. Alternatively, even if the Court were not disposed to take judicial notice of the order referred to in P 4, it seems to me that P 4 itself constitutes *prima facie* proof that such an order was duly made and signed, since under S. 78 (3) of the Evidence Ordinance the original order (being, in my view, a public document issued by a department of Her Majesty's Government) may be proved by a copy or extract of it contained in the *Government Gazette*.

I, therefore, set aside the order of acquittal and remit the case for a fresh trial before another Magistrate. But having regard to the nature of the offence charged and the allegation that it was committed as far back as the 6th of March, 1954, and the principle of law sought to be established in filing this appeal having now been fully vindicated, the complainant will, no doubt, consider whether the charge should be proceeded with or whether this is not a proper case for an application under S. 195 of the Criminal Procedure Code for its withdrawal.

The respondent will pay the Crown Rs. 105 as costs of this appeal.

*Acquittal set aside.*

<sup>1</sup> (1911) 43 N. L. R. 34.

<sup>2</sup> (1913) 26 C. L. W. 5.