

1965

Present : Sri Skanda Rajah, J.

WICKREMASINGHE (Food and Price Control Inspector), Appellant,
and CHANDRADASA, Respondent

S. G. 294/65—M. G. Kandy, 38,788

Charge—Omission to mention penal Section—Effect—Criminal Procedure Code, s.171.

Where, in a report made to Court under Section 148 (1) (b) of the Criminal Procedure Code, the penal provision was mentioned but, in the charge sheet from which the accused was charged, the penal provision was not mentioned—

Held, that the omission to mention in a charge the penal Section is not a fatal irregularity if the accused has not been misled by such omission. In such a case, Section 171 of the Criminal Procedure Code is applicable.

Control of Prices—Tamarind—Maximum retail price—Applicability to local tamarind—Control of Prices Act, ss. 3 (2), 4.

Not only imported tamarind but also local tamarind is price-controlled.

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

R. Abeysuriya, Crown Counsel, for complainant-appellant.

A. H. Moomin, with *S. Gunasekera*, for accused-respondent.

July 9, 1965. SRI SKANDA RAJAH, J.—

The accused in this case was charged with having sold $\frac{1}{2}$ pound tamarind for 30 cents, a price in excess of the maximum controlled price of 26 cents.

The accused appeared on summons. The summons is in the record but it states that the particulars of the offence were written on an annexed sheet, but that annexed sheet does not appear in the record.

In the report made to Court under Section 148 (1) (b) of the Criminal Procedure Code, the penal provisions are also mentioned. However, in the charge sheet from which the accused was charged, the penal provision is not mentioned. In the case of *Attorney-General v. Baskaran*¹ it was laid down that "the obligation of framing the charge or charges in a summary trial is one that rests on the Magistrate".

Section 171 of the Criminal Procedure Code reads: "No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or its particulars shall be regarded at any stage in the case as material, unless the accused was misled by such error or omission." All that need be said is that the charge sheet had omitted the last portion of the report made to Court under Section 148 (1) (b) of the Criminal Procedure Code. This, in my view, did not constitute an illegality because the accused was aware under what Act he was being charged, i.e., under the Control of Prices Act, and in the portion that is contained in the charge sheet which appears in the record reference is made to that Act and to Sections 4 and 3 (2) of the same Act (vide *Jayawardena v. Aluwihare*²).

Mr. Moomin has cited the case of *Seneviratne v. Deen*³ which states that "the failure to state in a charge the correct Penal Section is something more than an error referred to in Section 171 of the Criminal Procedure Code", but as stated in the Ceylon Law Weekly case (supra) "in deciding whether there has in fact been a failure of justice the appeal Court is entitled to take the whole case into consideration and determine for itself whether there has been a failure of justice in the sense that a guilty man has been acquitted or an innocent man has been convicted". The failure to mention the Penal Section in this case is, in my view, not a fatal irregularity.

The other point on which the Additional Magistrate acquitted the accused at the end of the case for the prosecution is that there was no evidence whether this was imported tamarind or local tamarind. He expresses the view that it was only imported tamarind that was price-controlled. Though the case of *Fernando v. Hameed*⁴ was cited to the learned Magistrate, he did not refer to it in his order. Apparently he did not consider it at all. Besides this last-mentioned case, the case of *Hewasiliyanage v. Police*⁵ is also in point.

¹ (1959) 62 N. L. R. 64.

² (1963) 64 C. L. W. 92.

³ (1957) 60 N. L. R. 392.

⁴ (1946) 48 N. L. R. 91.

⁵ (1946) 47 N. L. R. 501.

There are 4 columns in the Schedule to the Gazette. In the first column "article" is mentioned. In the second column reference is made to the "Importers' Maximum Wholesale price per cwt. gross"; column three makes reference to "Wholesale Dealers' Maximum wholesale price per cwt. gross" and column 4 refers to "Retail Dealers' Maximum retail price per pound nett". The argument on behalf of the defence is that because reference is made to the Importers' Maximum Wholesale price in column 2, the maximum retail price of a pound of tamarind refers to the price of imported tamarind. The two cases just referred to considered this question and held that column 2 does not control column 4 and that it is not merely the imported article but even the local article is price-controlled. Therefore, in this case I would hold, following these decisions, that what was price-controlled was not merely imported tamarind but also local tamarind and hence it was not obligatory on the prosecution to prove that the tamarind sold was imported tamarind.

For these reasons, I would set aside the order of acquittal and send the case back for a fresh trial before another Magistrate on a properly framed charge.

Acquittal set aside.



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