

1968

Present : Abeyesundere, J.

H. L. PIYADASA, Appellant, and L. H. P. YAPATILEKE (Food and Price Control Inspector), Respondent

S. C. 1132/67—M. C. Matale, 699

Control of Prices Act—Price control order relating to sale of Milk Maid Condensed Milk—Charge of selling a tin of 14 ozs. of such milk at excessive price—Burden of proof relating to quantity of milk.

In a prosecution for selling a tin of 14 ozs. of Milk Maid Condensed Milk in excess of the maximum retail price fixed by a price control order in force under the Control of Prices Act, it is incumbent on the complainant to lead evidence that the quantity of milk sold by the accused was 14 ozs. The statement on the label of the tin is hearsay and does not constitute evidence to prove the contents of the tin.

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

Nihal Jayawickrame, for the accused-appellant.

V. S. A. Pullenayegum, Senior Crown Counsel, with *Lalith Rodrigo*, Crown Counsel, for the Attorney-General.

March 31, 1968. ABEYESUNDERE, J.—

In this case the accused was charged with selling one tin of 14 ozs. of Milk Maid condensed milk above the maximum retail price fixed by a price control order in force under the Control of Prices Act. After trial he was convicted of the offence with which he was charged and sentenced to pay a fine of Rs. 1,500 and to 1 month's rigorous imprisonment and, in default of the payment of the fine, to a further 6 weeks' rigorous imprisonment. The accused has appealed from the conviction and sentence.

Counsel appearing for the appellant submits that the prosecution has failed to prove that the tin of condensed milk sold by the accused contained 14 ozs of condensed milk of the variety known as Milk Maid condensed milk. The evidence led for the prosecution has established that the tin sold contains embossed on its metal surface the figure of a milk maid and that such figure and the label appearing on the tin indicate that the tin of milk contains the Trade Mark of a milk maid. The evidence of the witness Mutukaruppan Ramiah is that when he asked from the accused for a tin of milk he was given the tin which has been produced in this case. That evidence was relied on by the prosecution to establish that the accused acknowledged that the tin contained condensed milk. But there is no evidence, apart from the label on the tin which the prosecution submitted as evidence of the contents of the tin, that the tin contained 14 ozs. of condensed milk. I agree with the submission of counsel for the appellant and it is also conceded by Crown Counsel appearing for the Attorney-General that the statements on the label constitute hearsay evidence which cannot be relied on to prove the quantity of condensed milk in the tin. It was submitted by Crown Counsel that the controlled article should not be determined by reference to the weight of the contents of the tin. But I note from a perusal of the price control order relevant to this case that the controlled article is a tin of 14 ozs of condensed milk of the kind known as Milk Maid condensed milk. I am of the view that in this case it was incumbent on the prosecution to prove that the quantity of Milk Maid condensed milk sold by the accused was 14 ozs. As the label does not constitute evidence to prove the contents of the tin, I hold that there is no evidence to prove that a tin of 14 ozs. of Milk Maid condensed milk was sold by the accused. I therefore set aside the conviction and sentence and acquit the accused.

Appeal allowed.
