

1944

Present: **Wijewardene J.**

HASSAN, Appellant, and BADULLA POLICE, Respondent.

1,098—M. C. Badulla, 9,881.

*Price control—Sale of goods in excess of maximum price—Power of Magistrate to order sale of goods—Defence (Control of Prices) Regulation 16 (1) and (2).*

In a charge of selling goods in excess of the maximum price fixed, the power given to a Magistrate to order the sale of goods under regulation 16 (2) applies only to goods seized as articles in respect of which a person is suspected of having contravened the provisions of the Order or the regulation.

**A** PPEAL from a conviction by the Magistrate of Badulla.

N. Nadarajah, K.C. (with him Ponnambalam and Vanderkoon), for the accused, appellant.

Walter Jayawardene, C.C., for the Crown, respondent.

<sup>1</sup> 43 N. L. R. 97.

June 9, 1944. WIJEYWARDENE J.—

The accused was charged with selling two bags of dried chillies, weighing 1 cwt., at a price in excess of the maximum price and failing to give, on demand, a receipt to the purchaser. The Magistrate convicted the accused and imposed fines of Rs. 2,000 and Rs. 250 on the two counts.

The Inspector of Police, who instituted the criminal proceedings on a written report, produced in Court on September 4, 1943, seven bags of chillies, in addition to the two bags of chillies which were the subject matter of the charge. Those bags which have been marked P 9 to P 15 were found in the boutique of the accused, when the Price Control Inspector searched the boutique shortly after the sale of the two bags.

After the examination of some of the material witnesses for the prosecution, the Magistrate charged the accused as stated above and adjourned the trial for September 20. The Price Control Inspector then "moved for an order regarding the chillies". The Proctor for the accused submitted that "the bags of chillies P 9 to P 15 should be returned to the accused as there was no charge in respect of them". The Magistrate, thereupon, made the following order:—

"I refuse the application as they are liable to confiscation if the charge is proved. As the chillies are liable to speedy decay send them to the D. F. C., Badulla, to sell them at the controlled price and deposit the money in Court."

On October 13, the Deputy Food Controller forwarded to the Magistrate a cheque for Rs. 283.25 being amount realized by sale of the chillies. The order made by the Magistrate on receipt of this cheque is, "Deposit".

After hearing the evidence, the Magistrate convicted the accused and did not make any order directing the sum of Rs. 283.25 to be remitted to the owner of the seven bags.

In the petition of appeal filed by the accused against his conviction, it was pleaded that—

"The Magistrate was wrong in ordering the confiscation and sale of the other bags of chillies, which were not the subject of any charge against the accused-appellant."

At the argument before me, the Counsel for the accused-appellant questioned the correctness of the order and I directed the Registrar of this Court to return the record to the Magistrate and ascertain from him the provision of law under which he acted in making that order; the explanation of the Magistrate is—

"The seven bags of chillies P 9 to P 15 which were productions in the case were not confiscated but were sold under section 16 (2) of the Defence (Control of Prices) (Supplementary Provisions) Regulations of October 4, 1942, as they were liable to speedy decay and the proceeds are in deposit in this Court."

I am unable to understand how the Magistrate submitted that explanation especially when he had the record before him. His order shows clearly that he thought that the seven bags of chillies could be and should be confiscated on the conviction of the accused on the present charge.

If he did not have in view such a confiscation, no reason has been disclosed by him for not returning those bags to their owner. Those bags could not have been required for any purposes of identification, as in that case he would not have ordered the bags to be sold. It is difficult to think of any reason reconcilable with the explanation given by the Magistrate for his providing in the order that the money should be kept in Court. The Magistrate did not direct, either in the course of the proceedings or at the close of the trial, that the sum of Rs. 283.25 should be given to the owner of the bags. I do not think it necessary to make any further comments either on the order or the explanation. It is equally impossible to entertain the explanation or sustain the order.

I may add that Regulation 16 (2) referred to by the Magistrate applies only to articles which have been seized under Regulation 16 (1) as articles in respect of which "any person is suspected to have contravened the provisions of any Order or any of these Regulations". There was no such suspicion in respect of the seven bags P 9 to P 15 and therefore the Magistrate could not have acted under Regulation 16 (2).

While upholding the conviction and sentence I direct that the sum of Rs. 283.25 should be remitted to the person who owned the seven bags of chillies.

*Varied.*

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