

1943

Present : Wijeyewardene J.

WEERASEKERE, Appellant, and SUBRAMANIAM, Respondent.

541—*M. C. Matale, 771.*

Control of Prices—Control of Sulphapyridine tablets—Sale of single tablets and not a bottle—Control of Prices Ordinance, No. 39 of 1939, s. 3.

Where the accused was charged with the sale of 8 Sulphapyridine tablets at 50 cents a tablet, a price in excess of the maximum price, in breach of an order made under section 3 of the Control of Prices Ordinance,—

Held, that the accused had not offended against the provisions of the order as the article controlled was a bottle of tablets and not single tablets.

Held, further, that the obligation to issue a receipt arose only in respect of a controlled article.

Section 340 (2) of the Criminal Procedure Code is applicable only to cases in which a party has no right of appeal except on a point of law.

Solicitor-General v. Perera (17 N.L.R. 413) followed.

A PPEAL from a conviction by the Magistrate of Matale.

S. Nadesan, for petitioner.

E. H. T. Gunasekera, C.C., for the Attorney-General.

Cur. adv. vult.

October 8, 1943. WIJEYWARDENE J.—

The accused was charged on two counts :—

- (1) that, in breach of the order made under section 3 of the Control of Prices Ordinance, No. 39 of 1939, and published in *Gazette* No. 9,103 of March 26, 1943, he sold 8 Sulphapyridine tablets (M & B 693) each of .5 gramme in weight at 50 cents a tablet, a price in excess of the maximum price which was 21 cents per tablet.
- (2) that he failed to give a receipt to the purchaser as required by the Order (clause vi.) published in *Gazette* No. 9,096 of March 12, 1943.

The prosecution led evidence to show that one Weerakkody asked for and purchased eight tablets from the accused and that the accused charged Weerakkody fifty cents for each tablet and did not give him a receipt. The Magistrate convicted the accused on that evidence and fined him Rs. 300 on the first count and Rs. 50 on the second count. The accused has appealed against the conviction.

I see no reason for interfering with the Magistrate's findings on the facts. The appellant's Counsel argued that even on the facts as accepted by the Magistrate, the conviction was bad in law. He submitted that the

Order in *Gazette* No. 9,103 controlled the price of a bottle of 25 tablets and not the price of single tablets and that, therefore, in selling eight loose tablets as ordered by the purchaser the accused was not dealing in an article where maximum price had been fixed by the Order. The Crown Counsel contended on the other hand that the controlled article was a tablet and that the Order stated the price of a bottle of 25 tablets merely for the purpose of assisting a person to ascertain the price of any number of tablets. For a proper appreciation of the argument it is helpful to examine in some detail some of the provisions of the Control of Prices Ordinance, No. 39 of 1939, and the two Orders mentioned in the charge.

Section 3 of the Control of Prices Ordinance empowered the Controller to make an order (a) fixing the maximum price of an article and (b) prescribing the quantity and quality of the article to be sold. It was by virtue of the power vested in him by this Ordinance and certain Defence Regulations that the Controller made the two Orders.

The Order in *Gazette* No. 9,096 referred to in the second count contains, *inter alia*, the following clauses :—

Clause (ii.) “ The prices specified in column 2 of the schedule (shall) be the maximum price above which drugs of the description mentioned in the corresponding entries in column 1 of the schedule shall not be sold ”.

Clause (vii.) “ Every person who sells any drugs of the description mentioned in column 1 of the schedule shall give the purchaser of that drug a receipt in which there shall be set out—

- (a) the date of sale,
- (b) the description of the drugs sold,
- (c) the quantity of drugs sold, and
- (d) the price paid ”.

The schedule mentioned in the Order refers to about 50 kinds of drugs and reads—

Column 1. Description.	Column 2. Maximum Price. Rs. c.
Quinine Hydrochlor 2 grain tablets per bottle of 25	1 15
Quinine Hydrochlor 2 grain tablets per bottle of 100	3 75
.....
.....
Sulphapyridine Tablets 0.5 gram (M & B 693) per bottle of 25	4 0
Sulphapyridine Tablets 0.5 gram (M & B 693) per bottle of 100	15 0
.....
.....

If this Order fixed the maximum price of one Sulphapyridine tablet, as argued by Crown Counsel, is the price so fixed 1/25th of Rs. 4 or

1/100th of Rs. 15? Could a purchaser ask to be supplied with 4 bottles of 25 Sulphapyridine tablets for Rs. 15 which is the price fixed for 100 tablets? These are some of the problems that have to be faced if that Order is considered as fixing the price of each tablet. Again, what should be the receipt given to a purchaser of 2 bottles of 100 tablets each? If the controlled article is a tablet, it would be quite in order if the particulars required to be given by clause (vii.) under the heads (b), (c), and (d) were stated as follows in the receipt:—

- (b) Description of the Drug sold: Sulphapyridine Tablet 0.5 grm (M & B 693).
- (c) Quantity of drugs sold: 200 tablets.
- (d) Price paid: Rs. 32.

This would enable the druggist to sell 2 bottles of 100 each for Rs. 32 though according to the schedule he should have sold them for Rs. 30 only. The same questions would arise under this Order with regard to Quinine Hydrochlor 2 grain tablets.

The Order in *Gazette* No. 9,103 revoked the maximum prices of some 13 drugs including Sulphapyridine tablets and gave a new schedule of prices. It also provided that clauses (iii.) to (vii.) of the old Order should be considered as a part of the new Order. The schedule to the Order in *Gazette* No. 9,103, so far as it is relevant, reads—

Column I.	Column 2.
Description.	Maximum Price.
	Rs. c.
Sulphapyridine tablets 0.5 grm. (M & B 693) per bottle of 25	5 75

As this schedule does not make any reference to bottles of 100 Sulphapyridine tablets, the difficulties that arise under the previous Order would not appear to arise under this Order if only the case of Sulphapyridine tablets is considered. But when the Order is considered with respect to Quinine Hydrochlor tablets the same difficulties have to be faced under this Order as under the old Order if the article controlled is regarded as a single Quinine Hydrochlor tablet. If, therefore, these difficulties compel one to regard the new schedule also as controlling the prices of a bottle of 25 Quinine Hydrochlor tablets and a bottle of 100 Quinine Hydrochlor tablets and not of single tablets, it is not possible to say that in the case of Sulphapyridine tablets the article controlled is a single tablet and not a bottle of 25 tablets.

Moreover the Order read with the schedule shows that the article whose price is controlled is the article described in Column 1 of the schedule and that Column 1 does not claim to give anything more than the description of the article. The words "Sulphapyridine Tablets 0.5 grm (M & B 693) per bottle of 25" are used to describe the article whose price is controlled and the words "bottle of 25" are a part of that

description and are not intended merely to afford a basis for the calculation of the price of a single tablet. The position is made clearer by a study of some other Orders made under the Control of Prices Ordinance. For instance, the Order published in *Gazette* No. 9,061 of January 4, 1943, fixed "the price specified in Column 2 of the Schedule hereto to be the maximum retail price per pound above which coconut poonac of the description and grade mentioned in Column 1 of the Schedule shall not be sold" and the Schedule reads—

Column 1.	Column 2.
Description and Grade.	Maximum Retail Price. Per Pound.
	Rs. c.
Coconut Mill Poonac	0 5

Here clearly the article controlled is coconut mill poonac and not a pound of coconut mill poonac and it should not be sold by retail at more than five cents per pound.

Then there is another Order published in *Gazette* No. 9,103 of March 26, 1942, fixing the price in Column 3 of the Schedule to that Order as the maximum retail price per pound above which dried chillies should not be sold. The schedule does not contain a column giving a description of the controlled chillies, as obviously the Order controls the price of all dried chillies; but even then care has been taken to provide by clause 3 (g) of the Order that the maximum retail price for any quantity of dried chillies less than one pound "shall be reckoned from the price per pound", thus making it clear that the Order controlled the price of any quantity of chillies.

For the reasons given above I conclude that the article controlled by the Order referred to in the first count is a bottle of 25 Sulphapyridine tablets and not single tablets. I hold therefore that the accused cannot be convicted on the first count. As the obligation to issue a receipt arises under the Order in *Gazette* No. 8,096 only in respect of a controlled article, the conviction on the second count too cannot be sustained.

I permitted Counsel to argue this point of law, though it was not raised in the petition of appeal, as this argument dealt merely with the construction of the Orders. Moreover, I think that section 340 (2) of the Criminal Procedure Code is applicable only to cases in which a party has no right of appeal except on a point of law (vide *The Solicitor-General v. Perera*¹.)

I allow the appeal and acquit the accused.

Set aside.

¹ 17 N. L. R. 413.