

1947

Present : Howard C.J.

ABDULLA, Appellant, and MARIKAR, Respondent.

S. C. 610—M. C. Galle, 4,453 D. R.

Defence (Control of Prices) (Supplementary Provisions) Regulations—Price Control Inspector—Proof that he was authorised officer—Right to prosecute—Criminal Procedure Code, section 148 (1) (b).

The accused was charged with the sale of mutton in excess of the maximum price. The main evidence for the prosecution was that of the complainant who stated that he was the Price Control Inspector at Galle on the day the offence was committed, that he watched the transaction of sale and that the accused charged more than the control price. The Magistrate discharged the accused on the ground that there was no proof that the complainant was an authorised officer within the meaning of the Defence (Control of Prices) (Supplementary Provisions) Regulations.

Held, that proof that the complainant was an authorised officer was not necessary when the only question in issue was whether the accused had committed an offence against the Regulations.

Held, further, that a Court should take judicial notice of the fact that Price Control officers are public servants within the meaning of section 148 (1) (b) of the Criminal Procedure Code.

Perera v. Alwis (1944) 45 N. L. R. 136, distinguished.

Hameed v. Thuraisamy Nadar (1946) 48 N. L. R. 119, not followed.

A PPEAL against an acquittal from the Magistrate's Court, Galle.

T. S. Fernando, C.C., for the complainant, appellant.

Cyril E. S. Perera (with him Vernon Wijetunge), for the accused, respondent.

Cur. adv. vult.

October 8, 1947. HOWARD C.J.—

In this case the complainant, with the sanction of the Attorney-General, appeals from an order of the Magistrate's Court at Galle, who, after hearing the evidence for the prosecution, acquitted the accused-respondent on the ground that there was no proof that the complainant-appellant was an authorised officer within the meaning of the Defence (Control of Prices) (Supplementary Provisions) Regulations. The respondent was charged with selling on January 7, 1947, to one A. Jayawardene 17 ozs. of mutton in excess of the maximum price of Re. 1.06 in breach of the order made by the Controller of Prices published in *Government Gazette* No. 9,573 of July 1, 1946, and thereby committing an offence punishable under section 5 of the Control of Prices Ordinance, No. 39 of 1939, as amended by the Defence (Control of Prices) (Supplementary Provisions) Regulations 2 (2) now appearing in the Consolidated Reprint of the Defence (Miscellaneous) Regulations of May 1, 1944. The evidence submitted by the prosecution in support of this charge consisted of A. W. M. Razik Marikar who stated that he was the Price Control Inspector at Galle on the day the offence was committed, that he watched the transaction of sale between peon Jayawardene and the respondent, and that the respondent charged more than the control price. The only

other witnesses were peon Jayawardene who spoke as to the transaction with the respondent and also A. B. Abayewickrema, an Examiner of Weights and Measures, who weighed the mutton sold to Jayawardene. The Magistrate without calling on the defence acquitted the respondent on the ground already stated. In doing so the Magistrate considered he was bound by the decision in *Hameed v. Thuraisamy Nadar*¹.

The Defence (Control of Prices) (Supplementary Provisions) Regulations, regulation 1 (3) of the schedule defines "authorised officer" as any other officer or person (other than a Controller or any Deputy or Assistant Controller) appointed by the Controller by a notification published in the *Gazette* to be an "authorised officer". Under Regulation 1 (3) of the Control of Prices Regulations, 1942, an "authorised officer" is defined as follows:—

"The expression 'authorised officer' when used in any of these Regulations—

- (a) means the Controller or any Deputy or Assistant Controller ;
and
- (b) includes any other officer or person appointed by the Controller by notification published in the *Gazette* to be an authorised officer for the purposes of the Regulation in which the expression occurs."

Regulation 16 (1) is worded as follows:—

"Where any person is suspected to have contravened the provisions of any Order or of any of these Regulations, it shall be lawful for the Controller or any authorised officer to enter the premises in which, and to seize any article in respect of which, that contravention is suspected to have occurred."

Now the question in issue in this case is not whether the complainant was justified in law in taking the mutton and balance from the respondent's stall, but whether the respondent had committed an offence against the Regulations. His evidence on this question was for acceptance or not by the Magistrate irrespective of the question as to whether he was an "authorised" officer. The proof that the complainant was an authorised officer was not one of the ingredients of the charge. In the case of *Perera v. Alwis*² the accused was charged under section 183 of the Penal Code with obstructing the complainant in the discharge of his duty and preventing him from searching the premises of the Welcome Stores. Unless the complainant was an authorised officer he was not obstructed in the discharge of his duties. It was not proved that the complainant was an authorised officer. Hence one of the ingredients of the charge was not established. In the circumstances I do not consider that the decision in *Perera v. Alwis* was so wide in its scope as the Court considered it was in *Hameed v. Thuraisamy Nadar*.

The further point has been raised that there was no proof that the complainant who claimed to be a Price Control Inspector was a public servant within the meaning of section 148 (1) (b) of the Criminal Procedure

¹ (1946) 48 N. L. R. 119.

² (1944) 45 N. L. R. 136.

Code entitling him to file the plaint. The complainant in his evidence has stated that he was Price Control Inspector, Galle, on January 7, 1947. This evidence was not challenged and is proof that the complainant was a Price Control Inspector. I think the Court should without formal proof take judicial notice of the fact that Price Control Inspectors are public servants. In this connection the maxim "*omnia praesumuntur rite acta*" applies, *vide R. v. Cresswell*¹ and *R. v. Morris Rogers*². In the latter case Coleridge L.C.J. at p. 103 stated as follows:—

"One of the best recognised principles of law, *omnia praesumuntur esse rite et solemniter acta donec probetur in contrarium* is applicable to public officers acting in discharge of public duties. The mere acting in a public capacity is sufficient *prima facie* proof of their proper appointment; but it is only a *prima facie* presumption, and it is capable of being rebutted."

For the reasons I have given the order of acquittal is set aside and the case is remitted to the Magistrate so that he should call upon the defence.

Acquittal set aside.
