

1947

Present: Wijewardene J.

HENDRICK APPUHAMY, Appellant, and THE FOOD
AND PRICE CONTROL INSPECTOR,
TALAWAKELLE, Respondent.

S. C. 1,038—M. C. Hatton, 10,114.

Defence Regulations—Control of prices—Charge of selling above maximum price—No proof that Price Control Inspector was authorised officer—Legality of conviction.

A conviction under the Defence (Control of Prices) Regulations for selling a commodity above the maximum price is not bad merely because there is no evidence that the Price Control Officer who detected the offence is an authorised officer within the meaning of Regulation 1 (2) in the Schedule.

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

A PPEAL from a judgment of the Magistrate, Hatton.

N. E. Weerasooria, K.C. (with him S. P. Wijewickreme), for the accused, appellant.

B. C. F. Jayaratne, C.C., for the Crown.

Cur. adv. vult.

October 20, 1947. WIJEYWARDENE J.—

The accused-appellant was charged with selling a pound of Mussoor dhal for 75 cents when the maximum price per pound was 20 cents. He was convicted on the charge and sentenced to 2 months' rigorous imprisonment.

It was contended in appeal that the conviction was bad as there was no evidence to show that the Price Control Inspector who detected the offence was an "authorized officer" within the meaning of Regulation 1 (2) in the Schedule to the Defence (Control of Prices) (Supplementary Provisions) Regulations. This contention was based on the fact that there was no reference in the proceedings to *Gazette* No. 9,063 of January

8, 1943, which provided that, "All persons appointed in writing by the Controller and holding office for the time being as Price Control Inspector" should be regarded as "authorised officers" within the meaning of the regulation cited above. I fail to see how any omission to prove that the Price Control Inspector was an "authorised officer" could affect the question whether the accused sold an article in excess of the control price. It may be that the accused could have resisted any person, other than an authorised officer, trying to enter his premises to find whether there was a sale in excess of the control price (*vide Perera v. Alwis*). It does not follow that, because such a person could be resisted, the evidence given by that person regarding a sale detected by him is not admissible.

It was then argued that the Price Control Inspector who instituted the proceedings could not be regarded as a Public Servant within the meaning of section 148 (1) (b) of the Criminal Procedure Code. Though it was not specifically raised in the petition of appeal I heard argument on this point. The complainant who gave evidence said:

"I am a Food and Price Control Inspector. I am also a Public Servant under section 19 of the Penal Code. I am an officer on the service and pay of the Government and my duties are to prevent food and price control offences and to bring such offenders to Court."

The complainant was not cross-examined on this evidence and no evidence was led to contradict him. I may add that the accused could not have been taken by surprise by the complainant's evidence, as the plaint itself stated that the complainant was a Public Servant as defined in section 19 (10) of the Penal Code. I hold, therefore, that the proceedings have been properly instituted.

The Counsel for the appellant submitted that the imposition of a large fine would be an adequate punishment. I find that the Magistrate has given this question his careful consideration and I see no reason to alter the sentence passed by him.

I dismiss the appeal.

Appeal dismissed.
