

1946

Present : Dias J.

HEWASILYANAGE, Appellant, and POLICE, Respondent.

874—*M. C. Hatton, 8,346.*

Control of Prices—Sale of potatoes—Food Price Order No. C, 25 of 1944 is applicable to Ceylon-grown potatoes—Control of Prices Ordinance, No. 39 of 1939, s. 5.

The prices of not only imported but also locally grown potatoes are controlled by Food Price Order, No. C. 25 of 1944.

A PPEAL against a conviction from the Magistrate's Court, Hatton.

H. V. Perera, K.C. (with him *G. P. J. Kurukulasuriya* and *Conrad Dias*), for the accused, appellant.

J. G. T. Weeraratne, C.C., for the complainant, respondent.

Cur. adv. vult.

October 23, 1946. DIAS J.—

The accused was charged with having on March 23, 1946, at Norton in the Hatton District sold one pound of potatoes to Mrs. Drury for Re. 1.00 which was a price in excess of the controlled price which was 29 cents per pound. This charge was laid under section 5 of Ordinance No. 39 of 1939. The controlled prices are to be found in the order made under section 3 of the Ordinance and published in *Gazette* No. 9,267 dated May 5, 1944. It is not in dispute that the controlled price for potatoes is 29 cents per pound.

Mr. Perera for the appellant is unable to question the findings of fact of the Magistrate. He has however submitted that in law the conviction of the appellant cannot stand.

The *Gazette* contains five columns. The first column specifies the name of the controlled commodity. Column 2 specifies the *Importer's* maximum price per cwt. gross to a wholesaler. Column 3 sets out the maximum wholesale price per cwt. gross. Column 4 states the maximum wholesale price per pound nett. Column 5 specifies the maximum retail price per pound nett.

Mr. Perera argues that because Column 2 refers to the "importer's maximum price", therefore that column can only refer to imported commodities and not to locally grown produce. He says that therefore Columns 3, 4, and 5 must also necessarily refer to imported articles. In other words, the order in question only applies to imported potatoes and not to locally grown potatoes. Therefore, according to this argument, a man can sell retail locally grown potatoes at any price, even though it exceeds the controlled prices specified in this order. It is submitted that there being no proof that what the accused sold Mrs. Drury were not locally grown potatoes, there is a reasonable doubt, and that the accused must therefore be acquitted.

I am unable to accede to this argument. The fallacy lies in assuming that Columns 2, 3, 4, and 5 are interdependent, and that what is controlled in Columns 3 to 5 must necessarily mean imported commodities. There is no warrant for such an assumption. I hold that each Column is independent and that while Column 2 refers to imported things, the other columns refer to goods whether imported or locally grown. In my opinion, the point of law fails.

The accused was sentenced to three months' rigorous imprisonment. The reasons given by the Magistrate for imposing such a sentence are that the accused not only charged an exorbitant price for an article of food but has also taken up a defiant attitude and that his conduct calls for severe punishment. Mr. Perera has asked me to consider the question of sentence, especially as it is the small dealer who is detected and punished, whereas the important profiteers in the black market appear to escape with impunity. I have carefully considered the matter, but I do not feel disposed to interfere. Persons like the accused, whether they trade in a big way or otherwise, are a pest to society. Offences like this one are difficult to detect, and when some person is public-spirited enough

to come forward and expose a case of profiteering, it is the duty of the Courts in the name of society to see that the punishment fits the crime. I think the sentence is richly deserved.

The appeal is dismissed.

Appeal dismissed.

