

1946

Present: Wijeyewardene J.

MAZAHIM, Appellant, and THE CONTROLLER OF
PRICES, Respondent.

1,302—*M. C. Colombo, 19,887.*

Control of Prices Ordinance, No. 39 of 1939—Order passed under s. 3 fixing maximum price of article—Effect of its revocation on offence committed while the Order was in force—Interpretation Ordinance (Cap. 2), s. 6 (3).

The revocation of an Order made under section 3 of the Control of Prices Ordinance, No. 39 of 1939, fixing the maximum price of an article for an indefinite period, is not a bar to the trial of an offence committed in breach of the Order while the Order was in force.

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

M. M. Kumarakulasingham, for the accused, appellant.

J. G. T. Weeraratne, C.C., for the Attorney-General.

Cur. adv. vult.

December 6, 1946. WIJEYWARDENE J.—

The accused was charged on July 30, 1946, with having sold 500 cream laid envelopes for Rs. 10.50 on July 24, 1946, when according to the Order published in the *Government Gazette* No. 9,239 of November 10, 1944, the maximum retail price was Rs. 9. The Magistrate convicted the accused on September 6, 1946, and sentenced him to pay a fine of Rs. 400.

Mr. Kumarakulasingham contended that the conviction was wrong as the Order mentioned above was revoked on August 1, 1946 (*vide Gazette* No. 9,589 of August 9, 1946), and cited *Perera v. Johren*² in support of his contention. I have examined the record in that case and I find that the facts there are clearly distinguishable from the facts in this case. The accused in *Perera v. Johren* (*supra*) was charged for committing an offence on December 8, 1944, under a regulation published in *Gazette* No. 9,166 of September 3, 1943. That regulation was repealed on May 26, 1944. This Court held that the conviction under the repealed regulation was illegal. In the present case, however, the accused sold the envelopes while the Order mentioned in the charge was in force.

¹ (1926) 28 N. L. R. 156.

² (1945) 46 N. L. E. 333.

My attention was drawn also to the following passage from the judgment of Tindal C.J. in *Kay v. Goodwin*¹

“ I take the effect of repealing a statute to be, to obliterate it as completely from the records of the Parliament as if it had never passed ; and, it must be considered as a law that never existed, except for the purpose of those actions which were commenced, prosecuted, and concluded whilst it was an existing law.”

The law as stated in the above passage has been modified in England by section 38 (2) of the Interpretation Act, 1889 (*vide* Maxwell on Interpretation of Statutes, Eighth Edition, page 349). We have a corresponding provision in Ceylon in section 6 (3) of the Interpretation Ordinance which enacts :—

“ Whenever any written law repeals either in whole or in part a former written law, such repeal shall not, in the absence of any express provision to that effect, affect or be deemed to have affected

(a)

(b) any offence committed, any right, liberty or penalty acquired or incurred under the repealed written law.”

Now the Order fixing the maximum price of envelopes and the Order in *Gazette* No. 9,589 revoking that Order were made by the Deputy Controller of Prices by virtue of the powers vested in him by section 3 of the Control of Prices Ordinance, No. 39 of 1939, and would, therefore, be, “ written law ” (*vide* Interpretation Ordinance section 2 (v)). Moreover, there is no “ express provision ” in the Order in *Gazette* No. 9,589 as mentioned in 6 (3) (b) of the Interpretation Ordinance.

I may add also that the Order does not contain a proviso that it is to continue in force only for a certain specified time.

For the reasons given by me I hold against the accused on the point of law argued before me.

I affirm the conviction but reduce the fine from Rs. 400 to Rs. 100. In default of payment of the fine the accused will undergo rigorous imprisonment for six weeks.

*Conviction affirmed.
Sentence reduced.*

