

1967

Present : Samerawickrame, J.

E. A. DON EDIRISINGHE, Appellant, and W. S. C. DE ALWIS (Food Control Inspector), Respondent

S. C. 163/67, with Application 186/67—M. C. Matugama 6149

Control of Prices Act—Offence thereunder—Mitigatory circumstances—Applicability of section 325 of Criminal Procedure Code.

The Regulation made on 27th November 1967 providing that "section 325 of the Criminal Procedure Code shall not apply in the case of any person who is charged before a Magistrate with an offence under the Control of Prices Act as last amended by Act No. 16 of 1966" is not applicable to a conviction in respect of which an appeal was preferred and order was reserved by the Supreme Court prior to the date when the Regulation came into force.

APPPEAL from a judgment of the Magistrate's Court, Matugama.

George Perera, for accused-appellant/petitioner.

Aloy Ratnayake, Crown Counsel, for Attorney-General.

Cur. adv. vult.

December 6, 1967. SAMERAWICKRAME, J.—

There is an appeal as well as an application in revision in respect of the conviction and sentence in this case. On his own plea, the appellant has been convicted of selling one-eighth pound of dry chillies at a price in excess of the maximum controlled retail price and has been sentenced to serve a period of rigorous imprisonment for one month and to pay a fine of Rs. 50.

The appellant is a young man who was studying for the University Entrance Examination. He has committed this offence while he was in temporary charge of his brother's boutique. He has passed the Senior School Certificate Examination with a distinction in Arithmetic and a credit pass in Buddhism. The Rev. Principal of the Amara Vidyalaya, where he is studying, has certified that he "has a high sense of respect for tutors, is clever in studies and well behaved and obedient". He is President of the Students' Association and teaches at the Dhamma School attached to the Sri Gangarama Viharaya. The appellant appears to be a young man of promise and the conviction and sentence of imprisonment will have the effect of blasting his future prospects. He has no previous convictions.

I think that this is a fit case for the application of Section 325 of the Criminal Procedure Code. A regulation made on 27th November, 1967, by the Governor-General under Section 5 of the Public Security Ordinance provides as follows :—

"The provisions of Section 325 of the Criminal Procedure Code shall not apply in the case of any person who is charged before a Magistrate with an offence under the Control of Prices Act as last amended by Act No. 16 of 1966."

It is unnecessary, for the purposes of this case, to consider whether the Regulation will apply to a person charged in proceedings commenced before its enactment. It is sufficient that on the date the appeal and application were argued and order was reserved, Section 325 was applicable and that a party is not to be prejudiced by delay by reason of the Court reserving its order. I think Section 325 of the Criminal Procedure Code may be applied in this case.

Acting in revision, I set aside the conviction and sentence passed on the accused and without proceeding to conviction, I warn and discharge him. I also order him, under Section 325 (3) of the Criminal Procedure Code, to pay a sum of Rs. 400 as costs of the proceedings. The appeal is formally dismissed.

Accused warned and discharged.