

1952

Present : **Rose C.J.**

KRISHNAN, Appellant, and SITTAMPALAM (Authorised Officer),
Respondent

S. C. 401—M. C. Colombo Jt., 42,043

Immigrants and Emigrants Act, No. 20 of 1948—Making false return—Offence under section 45 (1) (c)—Sentence—Mitigating circumstances—Applicability of Criminal Procedure Code, s. 325.

Appellant was charged with a breach of section 45 (1) (c) of the Immigrants and Emigrants Act. In applying for a temporary residence permit he forwarded to the authority certain forged documents to prove that he was in residence in Ceylon during a certain period. There was, however, other evidence showing that he was in fact in residence in Ceylon during the relevant time.

Held, that in the circumstances justice would be done if the appellant was bound over under section 325 of the Criminal Procedure Code.

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

G. E. Chitty, for the accused appellant.

S. S. Wijesinha, Crown Counsel, for the Attorney-General.

August 7, 1952. ROSE C.J.—

In this matter the appellant was charged with a breach of section 45 (1) (c) of the Immigrants and Emigrants Act, No. 20 of 1948. It appears that in applying for a temporary residence permit the appellant forwarded to the authority three receipts from the Municipal Treasurer's Department in regard to certain stalls of which he was the licence holder. The learned Magistrate has found, and I am not disposed to interfere with his finding, that those receipts were forged in that the relevant dates were altered. It appears, however, from the evidence that the appellant was in fact a licence holder during the years in question and that he was in fact in residence in Ceylon during the relevant time. Had he taken the trouble he could therefore have presumably acquired the necessary documents to support his position. Instead of doing that, very foolishly he decided to take the swifter course of forging the documents. That as I say is extremely foolish and from his own point of view even dangerous as a conviction under this Ordinance has very serious consequences as far as Indians are concerned. Having regard to the fact, however, that his position was in fact as stated or as purported to be proved by the forged documents, I feel that his offence was one more of folly than of fraud. In the circumstances I think the penalties consequent upon a conviction are too serious for the facts of this case. I think justice will be done if the appellant is bound over under section 325 of the Criminal Procedure Code for a period of six months in his own recognizance in a sum of Rs. 100.

Learned Crown Counsel very rightly brings to my attention an authority which would seem to indicate that this Court has no power to utilize section 325—*Alwis v. Fernando*¹. While attaching all weight to this authority, I feel that I should follow the consistent practice of this Court over a number of years which has been in suitable cases to utilize this section.

The conviction is set aside and the fine remitted.

Conviction set aside.

