

1942

*Present : Howard C.J.*

SOMASUNDERAM *et al.*, Appellants, and ASSISTANT COLLECTOR OF CUSTOMS, TRINCOMALEE, Respondent.

260-262—*M. C. Anuradhapura, 7,117.*

*Customs Ordinance—Dealing with goods liable to Customs duty with intent to defraud the revenue—Customs Ordinance sections 127 and 139A as amended by Ordinance No. 3 of 1939.*

Where a person is charged under section 127 of the Customs Ordinance with being knowingly concerned in dealing with goods liable to duties of Customs with intent to defraud the revenue of such duties:—

*Held*, that the burden was on the Crown to prove the ingredients of the offence.

Section 144 of the Customs Ordinance has no application to a criminal charge.

**A** PPEAL from a conviction of the Magistrate of Anuradhapura.

*L. A. Rajapakse* (with him *A. S. Ponnambalam*), for accused appellants.

*H. A. Wijemanne, C.C.*, for complainant respondent.

May 21, 1942. HOWARD C.J.—

In this case the appellants were charged with a criminal offence under section 127 of the Customs Ordinance. That offence was that they were knowingly concerned in dealing with 17 bags of beedies, being goods liable to duties of Customs with intent to defraud the revenue of such duties and did thereby become liable under section 127 of the Customs Ordinance to forfeit either treble the value of the said goods or the penalty of one thousand rupees at the election of the Collector of Customs and that they thereby committed an offence punishable under section 139A of the Customs Ordinance as amended by Customs (Amendment) Ordinance, No. 3 of 1939. Being a criminal offence, the ordinary rules with regard to the proof of such an offence apply. The burden was on the Crown to prove the ingredients of the offence which it was alleged had been committed. The only evidence produced by the Crown was that of Inspector Van Rooyen, who stated that he stopped a car coming from Jaffna and that it contained these 17 bags of beedies. One of the accused was the driver of the car; the other two were passengers. There was some evidence given by Inspector Van Rooyen as to whether beedi leaves and beedi tobacco are grown in Ceylon. His evidence on this point was of a vague and unsatisfactory character. In these circumstances there was no proof adduced by the Crown that the goods which were seized were liable to Customs duties. Quite apart from that, the other ingredient of this offence was not established, namely, that the appellants were knowingly concerned in dealing with the bags with intent to defraud the revenue.

My attention has been directed to section 144 of the Customs Ordinance which states that "if any goods shall be seized for non-payment of duties or any other cause of forfeiture, and any dispute shall arise whether the duty has been paid for the same, or whether the same have been lawfully imported, or lawfully laden or exported, the proof thereof shall lie on the owner or the claimer of such goods and not on the Attorney-general or the officer who shall seize or stop the same". In my opinion that section does not impose on an accused person the burden of proving his innocence. It applies to a case where goods have been seized for non-payment of duties and not to a criminal case such as this.

For the reasons I have given the appeals are allowed and the convictions set aside.

*Convictions set aside.*