

1970

Present: Tennekoon, J.

N. JINADASA, Appellant, and FORESHORE POLICE, Respondent

S. C. 996/69—J. M. C. Colombo, 40930

*Charge of handling goods found concealed or unclaimed in Customs premises—Burden of proof as to "customs premises"—Customs Ordinance (Cap. 235), ss. 101 (1), 101 (2), 111, 148—Regulation 26 A (3).*

Regulation 26 A (3) made by the Minister under section 101 (1) of the Customs Ordinance reads as follows :—

"No person shall handle any goods found concealed or unclaimed in the Customs premises or found adrift or washed ashore within the water area forming part of the customs premises without first informing a customs or police officer on duty."

*Held*, that where a person is charged under section 101(1) of the Customs Ordinance for a breach of regulation 26 A (3), one of the most important ingredients that the prosecution must establish is that the act of handling was done in relation to certain goods in the Customs premises. Section 148 of the Customs Ordinance cannot be called in aid by the prosecution in order to discharge its burden of proving that the place where the incident in question occurred was within the Customs premises as defined by the Principal Collector of Customs.

*Joseph v. Inspector of Police (72 N. L. R. 357) not followed.*

**A**PPEAL from a judgment of the Joint Magistrate's Court, Colombo.

*E. A. G. de Silva*, with *Miss S. Senaratne*, for the accused-appellant.

*Tiranka Wickremasinghe*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

March 25, 1970. TENNEKOON, J.—

Subsection (1) of section 101 of the Customs Ordinance empowers the Minister to make regulations for the purpose (*inter alia*) of regulating the conduct of persons within the customs premises; the section goes on to provide—

"Any person who shall disobey the same shall be guilty of an offence and shall be liable . . . on summary trial and conviction by a Magistrate to a fine not exceeding Rs. 50 or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment."



In subsection (2) of section 101 the following provision is made—

“In this section and in any regulation thereunder ‘customs premises’ means the customs premises as defined from time to time by the Principal Collector of Customs by notification in the Gazette.”

Among the regulations made by the Minister under section 101 (1) is regulation 26A (3) which reads as follows :—

“No person shall handle any goods found concealed or unclaimed in the customs premises or found adrift or washed ashore within the water area forming part of the customs premises without first informing a customs or police officer on duty.”

It is quite plain that this regulation creates one of those statutory offences which are sometimes also referred to as “regulatory offences”; it prohibits certain conduct in a specified area irrespective of the intention or knowledge accompanying the act. It brings into existence an offence in which there is an *actus reus* but no *mens rea*. While the act itself must be voluntarily done, it is unnecessary that it be accompanied by any dishonest intention, or guilty knowledge. Thus even the innocent activity of handling goods which have been concealed (even by another) or are unclaimed or are adrift or washed ashore is made punishable only if such goods are so found concealed, unclaimed, adrift or washed ashore *in the customs premises*. Accordingly in a prosecution under section 101 (1) of the Customs Ordinance for a breach of regulation 26A (3), one of the most important ingredients that the prosecution must establish is that the act of handling was done in relation to certain goods *in the customs premises*.

In the exercise of powers under section 101(2), the Principal Collector has defined “customs premises”; this definition is reproduced at page 979 in Volume IV of Subsidiary Legislation of Ceylon 1956.

In the present case the accused is charged as follows :—

“That he did within the jurisdiction of this Court, at Dry Dock Area, Port of Colombo on the 6th November 1968 handle textile 12½ yards of tetron found concealed or unclaimed in the customs premises without first informing Customs Officers or Police Officers on duty in breach of regulation 26A (3) ”.

On the evidence as accepted by the Magistrate it would appear that an unknown person was seen riding on the pillion of a push cycle with a parcel in his hands. The accused who was near a hut in the “Dry Dock Area” was handed this parcel by the pillion rider; thereafter the bicycle and its riders disappeared out of sight. The accused himself had then gone towards the hut and out of sight of the witnesses who testified to this incident. The witnesses then hurried up towards the accused



traversing a distance of about 75 yards. When they got up to the hut the accused was about 25 yards away from the hut walking fast towards "Guide Pier". The accused was called up to the hut. He denied receiving any parcel. He was then asked who had the key to the padlock with which the door of the hut was locked. He denied having it himself. Thereupon he was searched and a key was found at the back of his waist. The hut was opened with this key and a parcel was found inside covered by a raincoat. Inside the parcel was a piece of textile of the description contained in the charge. Some people, probably port labourers attracted by this incident gathered at this place; upon inquiry whether any one claimed the parcel no one came forward to claim it.

No evidence was produced to show that the place where this incident took place was in the customs premises at Colombo. The learned Magistrate following a judgment of this Court reported in 72 N. L. R. 357, took the view that the reference to the Port of Colombo in the charge made it unnecessary for the prosecution to lead evidence that the Dry Dock Area was a part of the customs premises at Colombo. Section 111 enables the Minister to declare the limits of any port and the limits of the Port of Colombo have been defined by an order made under that section. Vide page 1011 of Volume IV Subsidiary Legislation of Ceylon, 1956. Section 148 of the Customs Ordinance provides as follows:—

"In any information or other proceeding for any offence against this Ordinance the averment that such offence was committed within the limits of any port or the territorial waters of Ceylon shall be sufficient, without proof of such limits, unless the contrary be proved."

It is obvious that this provision of law is intended to be utilised only in cases where the nature of the charges against the accused would make it incumbent on the prosecution to prove that the offence was committed within the limits of a given Port or within the territorial waters of Ceylon.

The learned Magistrate after referring to the definition of "customs premises at Colombo" and "limits of the Port of Colombo" goes on to say—

"These definitions illustrate that the Port (which is the greater) includes (except for one) seven separate areas consisting of 'Customs premises' (which is the less). But, if I may say with respect, His Lordship de Kretser, J. looked at the matter differently in S.C. 934/68 J. M. C. 37659. The view of this Court was upheld in a later case S.C. 972/68—J.M.C. 38244 (72 N. L. R. 357) where His Lordship Pandita-Gunawardene, J. disagreed with the view of de Kretser, J. specifically, permitting this Court thereby to maintain its view unchanged."

I have looked at the two judgments referred to by the learned Magistrate; with all respect to my brother Pandita-Gunawardene, J., I am not persuaded that my brother de Kretser, J., was wrong when he said



that section 148 of the Customs Ordinance cannot be called in aid by the prosecution in order to discharge its burden of proving that the conduct of the accused complained of took place in the "customs premises". While it *may* be true (and I am myself not prepared to subscribe to that proposition in the absence of evidence) that "the Port of Colombo" includes the "customs premises" as defined, there is no warrant (again in the absence of evidence) for the further assumption that the Dry Dock Area even if it falls within the Port also falls within the Customs premises; I also find it difficult to subscribe to the statement made by my brother Pandita-Gunawardene, J. to the effect that the "customs premises" includes the "Port of Colombo". The latter consists (roughly) of the whole of the Municipal limits of the City of Colombo together with the adjacent sea to a distance of three geographical miles Westwards. It is hardly necessary to say that the regulations made under section 101 were not and could not have been intended to regulate activities and conduct of persons in this vast area; they are limited to an area different both in concept and definition and statutorily named "the customs premises".

In the absence of proof of the most important ingredient of the offence *viz.*, that the place where the incident took place was within the customs premises at Colombo as defined by the Principal Collector, this conviction cannot stand; the presence of certain suspicious features in the conduct of the accused on this occasion, while it may have had some relevance if the accused had been charged with a different kind of offence, does not help to supply the want of evidence to prove that the Dry Dock Area is within the Customs premises. In this view of the matter it becomes unnecessary to consider the further submissions made by Mr. de Silva to the effect that the evidence does not establish that the parcel was "found concealed or unclaimed" with the meaning of the rule at the time the accused was supposed to have handled it.

I accordingly set aside the conviction and sentence. The accused is acquitted.

*Appeal allowed.*