

1943

*Present: Wijeyewardene J.*

VELUPILLAI, Appellant, and THE COLLECTOR OF CUSTOMS,  
N. P., Respondent.

570—*M. C. Point Pedro, 2,053.*

*Customs Ordinance (Cap. 185), section 139A—Charge against accused under the section—Acquittal of accused—Goods found in possession of accused—Forfeiture—Criminal Procedure Code, s. 413.*

Where an accused person is acquitted of an offence under section 139A of the Customs Ordinance, goods found in his possession should be returned to him in the absence of evidence that the goods were forfeited under the Customs Ordinance.

**A** PPEAL from an order of the Magistrate of Point Pedro.

*H. W. Thambiah*, for appellant.

*E. H. T. Gunasekera, C.C.*, for the Attorney-General.

*Cur. adv. vult.*

October 5, 1943. WIJEYWARDENE J.—

This is an appeal by the accused against an order made by the Magistrate regarding the disposal of certain goods produced before him in this case. The accused has also filed papers in revision against that order.

The Sub-Collector of Customs, Point Pedro, found the accused conveying the goods in question in a car along Point Pedro-Valvettiturai road on September 24, 1942. He took the goods and the accused to the Customs House, Point Pedro. He produced the accused next morning at the Police Station. The Inspector of Police made his report to the Magistrate under sections 22 and 38 of the Criminal Procedure Code and produced the accused who was admitted to bail by the Magistrate.

On November 25 the Collector of Customs, Northern Province, filed the plaint alleging that—

- (a) The accused was knowingly concerned in conveying the goods in question;
- (b) All the goods were liable to duty and no duties had been paid;
- (c) The accused became liable to forfeit either treble the value of the goods or the penalty of Rs. 1,000 under section 127 of the Customs Ordinance (Chapter 185); and
- (d) The accused has, thereby, committed an offence punishable under section 139A of the Customs Ordinance.

The plaint was accompanied by a written statement of the Principal Collector of Customs dated November 23, stating, as required by section 139A, that he was of opinion that the penalty imposed by him on the accused was not likely to be recovered. That statement showed that a penalty of Rs. 250 had been imposed "under the provisions of sections 127 and 155" of the Customs Ordinance.

When the case came up for trial on April 10, 1943, the Sub-Collector of Customs, Point Pedro, gave evidence referring to the goods which were then before the Court, and the hearing was adjourned for May 22. On that day the Magistrate intimated to the prosecution that he did not

“ think any useful purpose would be served in proceeding with the case ” and acquitted the accused. Thereupon the Counsel for the prosecution asked the Magistrate to record the following statement:—

“ At the Departmental inquiry held by the Collector of Customs the accused claimed the goods seized as owner and these goods have been forfeited by the Customs authorities.”

On May 24, the Magistrate delivered his judgment giving his reasons for acquitting the accused. In the course of his judgment he said that there was “ not even *prima facie* evidence that the goods in question were dutiable or whether they were imported or whether duty on them was paid or not ”. Proceeding to deal with the question of the disposal of the goods he said:

“ The Collector of Customs has forfeited these articles by virtue of his admitted and undoubted powers under the Customs Ordinance. If the Collector has acted wrongly the accused is not without his remedy, but as far as I am concerned I am not going in these proceedings to interfere with the order made by the Collector of Customs. Under the circumstances I think that the fair and—to use the words of section 413 of the Criminal Procedure Code—the ‘ fit ’ order to make is to order that articles . . . be returned to the Customs authorities from where custody these articles were produced before Court.

The judgment of the Magistrate shows that in his opinion the goods were not property regarding which any offence appears to have been committed or which had been used for the commission of any offence. The Magistrate therefore had no jurisdiction to make an order as he thought “ fit ” under section 413 of the Criminal Procedure Code. Under these circumstances the only proper course to adopt is to return the goods to the person in whose possession it was. The evidence as indicated by me, shows clearly that the Customs authorities seized the goods in the possession of the accused. By seizing the goods the Customs authorities cannot claim to be regarded as a person from whose possession the goods were produced before the Court. If such a contention is maintainable then every Police Constable who arrests a man, say, on a charge of stealing a watch and produces the accused in Court with the watch can claim the watch be restored to him even though the accused is acquitted and the Court finds that no offence has been committed in respect of that watch. There is some reference in the judgment to an order of forfeiture by the Customs authorities. It is sufficient to say that there is no evidence of such an order, as of course, the statement of Counsel after the acquittal of the accused cannot be considered as evidence. Moreover neither the plaint nor the written sanction of the Principle Collector of Customs refers to a section of the Customs Ordinance under which these goods could have been forfeited. It is not, therefore, necessary to consider in this case what the effect of such an order of forfeiture would have been.

I set aside the order of the Magistrate and direct that the goods be restored to the accused appellant.

*Order set aside.*