

[*Criminal Justice Commission (Foreign Exchange Offences)*]

1976 Present : Samerawickrame, J. (Chairman), Udalagama, J.,  
and Walpita, J.

IN RE

(1) A. Y. VINCENT, (2) S. BENJAMIN, Suspects

Case No. 8/75

*Criminal Justice Commission—Sale of foreign currency—Contravention of S. 5 (1) (a) of the Exchange Control Act. S. 5(1) (a) of the Exchange Control Act reads—*

“Except with the permission of the Bank no person, other than an authorized dealer shall in Ceylon buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, or exchange any foreign currency with, any person other than an authorized dealer”.

Where the suspects reached an agreement for the sale at a particular rate of foreign currency and the exchange was delivered to a third party in pursuance of that agreement in London.

*Held*: That having regard to the ordinary connotation of the word “sell”, a person who disposes of something in exchange for money sells that thing. This involves the exchange of merchandise or the subject of the sale for the payment of money. Where sterling is handed over and payment for it is received in London the sale is of course made out of Ceylon. Though the payment of sterling took place in London, yet the payment in rupees took place in Ceylon and this was the second suspect's object in entering into the transaction. What the provision in S. 5 (1) (a) strikes at is “selling” in Ceylon. It does not require the presence of the seller in Ceylon. Therefore having regard to the facts and circumstances of the case the selling took place on the payment of rupees to the second suspect's representative in Ceylon. Hence the second suspect has contravened S. 5 (1) (a).

*Shiva Pasupati*, Director of Public Prosecutions with *E. D. Wikramanayake*, Deputy Solicitor-General, *Sunil de Silva*, Senior State Counsel and *Lal Wimalaratne*, State Counsel for the State.

Later *R. Abeysuriya*, Deputy Director of Public Prosecutions with *Lal Wimalaratne*, State Counsel for the State.

*R. Shanmugalingam* with *V. Dharmalingam* for 1st Suspect.

ORDER OF THE COMMISSION

June 26, 1976—

CHARGES in these proceedings relate to five sums aggregating to £ 1637. 13.0 sent by the 2nd suspect who was in England to his brother-in-law, the 1st suspect, who was in Colombo through Jackson and Thaha. The first charge alleges that the two suspects,

Jackson and Thaha, entered into a transaction for the buying and selling of foreign currency to the value of £ 1637 which involved conversion of foreign currency into Ceylon currency and the conversion of Ceylon currency into foreign currency at unauthorised rates. The second charge alleges that the 2nd suspect not being an authorized dealer sold foreign currency to the value of £ 1637 to Thaha and Jackson. The third charge alleges that the first suspect abetted the 2nd suspect to commit the offence set out in the second charge, namely, that of selling foreign currency to Jackson and Thaha.

In a statement made by him to a British police officer, the 2nd suspect has set out five sums of sterling aggregating to £ 1637, 13.0 which he sent to the 1st suspect. The fact that such sums were sent by the 2nd suspect through Jackson and Thaha and the rupee equivalent paid was paid to the first suspect is borne out by entries in Thaha's diary marked P7, and in the statement made by Thaha, the relevant part of which has been produced marked P 6. The 1st suspect in his statement to the police has admitted that he received monies from Thaha. The handing over of sterling by the 2nd suspect to Jackson and payment by Thaha in respect of such sterling to the 1st suspect are therefore not in dispute. There is also evidence that the conversion of the said sum of £ 1637 was done at unauthorised rates. In his statement, Thaha says that he paid Vincent, the first suspect, the Ceylon equivalent of the sterling at the prevailing blackmarket rates. The 2nd suspect states that he handed over in May, 1971, the sum of £ 10 to Jackson and the 1st suspect admitted that in May, 1971, he received Rs. 300 from Thaha. Rs. 30 for a pound sterling is in excess of the authorised rate. In letter dated 9th October, 1971, marked P1F, the 2nd suspect writes to the 1st suspect that he has to pay £ 600 as freight charges which would amount to Rs. 20,000. This calculation of the rupee equivalent of £ 600 has been made at the blackmarket rate. He had also arranged for money to be sent from England from Police Sergeant Meerwald's mother in England to Police Sergeant Meerwald through the intervention of the 2nd suspect. Again in his statement to the British police officer, the 2nd suspect referring to some money sent at an earlier period states, "I must have sent about Rs. 20,000. This was about £ 700 in sterling". This too is a conversion at black market rates.

Learned counsel submitted, however, on behalf of the 1st suspect that he could not be considered to have been a party to a transaction within the meaning of Section 5(2) of the Exchange Control Act, as he was unaware of the amount of sterling that had been paid by 2nd suspect to Jackson in England in respect

of which he received rupees and was therefore not aware that conversion was being made at unauthorised rates. He also submitted that the 1st suspect had no part in fixing of the unauthorised rate and arranging the conversion of the money at that rate and that the only part played by him was the receipt of the money from Thaha and the handing over of the money to the 2nd suspect's mother and other persons to whom he was directed by the 2nd suspect to pay the money. We consider first the submission that the 1st suspect was not aware that conversion was made at an unauthorised rate. As we have earlier said, the evidence shows that the conversion was in fact made at an unauthorised rate. The 1st suspect was aware that the 2nd suspect was paying pounds in England and that he was receiving in return for them rupees in Ceylon. It is common knowledge that when money is sent, not through the Bank but through other unauthorised sources, a rate higher than the legal or authorised rate is paid. In his statement the 1st suspect says that up to about 1966 the 2nd suspect had sent money through various persons resident in England whose relatives reside in Jaffna. From 1966 he sent money through Thaha. Between 1966 and 1970 he owns to having received about Rs. 10,000. The 2nd suspect estimates the sum at Rs. 20,000. The sums of money in respect of which the charges are made were sent between January, 1970 and 31st May, 1971. The 1st suspect is not an ignorant yokel but an experienced police officer to whom must be imputed a reasonable knowledge of how affairs in the world are conducted. These circumstances point strongly and almost decisively to the conclusion that the 1st suspect was aware that the conversion was made at unauthorised rates. No evidence to the contrary has been placed before us.

In the words of Abbott, J, in *Rex v. Burdett* (1820) 4 B & Ald 95 at 120 :—

“ No person is to be required to explain or contradict until enough has been proved to warrant a reasonable and just conclusion against him, in the absence of explanation or contradiction ; but when such proof has been given, and the nature of the case is such as to admit of explanation or contradiction, can human reason do otherwise than adopt the conclusion to which proof tends. ”

We, therefore, hold that the 1st suspect was aware that conversion of money was being effected at an unauthorised rate. It is true that the negotiation of the conversion and of the rate at which the money was to be converted was probably made between the 2nd suspect and Jackson but the conversion itself

was actually effected only when the 1st suspect received the rupees from Thaha. The 1st suspect was the person authorised by the seller to receive the money on his behalf. The role played by him was therefore not insignificant but substantial. A transaction may take place over a period of time and comprise the taking of several steps or acts. All those who participate at the different stages of the transaction knowing that it is one that involved the conversion of currency at an unauthorised rate contravene, in our opinion, the provision in Section 5(2). We find accordingly that both suspects have contravened Section 5(2).

The second charge alleges a contravention by the 2nd suspect of Section 5 (1) (a) of the Exchange Control Act. That provision reads :—

“ 5. (1). Except with the permission of the bank—

(a) no person, other than an authorized dealer, shall in Ceylon buy or borrow any gold or foreign currency from, or sell or lend any gold or foreign currency to, or exchange any foreign currency with, any person other than an authorised dealer, and ”

In his statement the 2nd suspect has set out how he came to send the money through Thaha. He said, “ Around about 1965 I met a man called Kingsley Jackson at the Ceylon Students Centre at Marble Arch. During the course of conversation, he told me that he was in a position to forward money to Ceylon. He said that it was legal and that he was an agent for Mr. A. M. Thaha of Colombo who was in the racing business. Jackson said he was also a bookmaker in London and that he had a telex link with Thaha in Ceylon. He used to forward the racing results from England by this method. He told me that if I ever wanted to send money to Ceylon he would do it for me and that Thaha would pay the equivalent amount in rupees to the intended recipients. ”

He also said later, “ On each occasion that I sent the money I went to my bank, Barclays, South Ealing Road and drew out money. I then went personally to Jackson's house and handed over the money to him with instructions as to whom the money was to be sent. Jackson never gave me a receipt. I always knew that the money had reached Vincent because he wrote from Ceylon to tell me. He also told me in one of the letters that I had better be careful as the way I was sending the money was illegal.”

Mr. Shanmugalingam, who appeared for the suspects, submitted that, once agreement was reached for the sale at a particular rate and the exchange was delivered to Jackson in

pursuance of the agreement, the sale was complete. This took place in London. There was no contravention of Section 5(1) (a) unless the sale was made in Ceylon and therefore the charge was not made out. Learned State Counsel Mr. Wimalaratne referred us to section 59 of the Sale of Goods Ordinance which states, *inter alia*, that "goods" include all movables except moneys, and submitted that that statute had no application; and that as payment was made in Colombo, there was a sale in Colombo. We do not think that the word 'sell' in Section 5(1) (a) imports a sale under the Sale of Goods Ordinance or a sale in terms of any other law. The word must be given its ordinary meaning. Having regard to the ordinary connotation of the word 'sell' a person who disposes of something in exchange for money sells that thing. This involves the exchange of merchandise or the subject of the sale for the payment of money. Where sterling is both handed over and payment for it is received in London the sale is of course made out of Ceylon. In this case not merely was the payment made in Ceylon, but payment in rupees in Ceylon was the 2nd suspect's object in entering into the transaction. In his statement he states that it was when he wanted to send money to Ceylon that he contacted Jackson who had told him that he was in a position to forward money to Ceylon. Whether he received the money in Ceylon personally or through an agent he equally received the money. What the provision strikes at is "selling" in Ceylon. It does not require the presence of the seller in Ceylon.

Having regard to the facts and circumstances we hold that the selling took place on the payment of rupees to the 2nd suspect's representative in Ceylon and that the 2nd suspect has contravened Section 5(1) (a).

We reserve for consideration in an appropriate case in which it arises the question whether there can be a sale made partly in Ceylon and partly in London and whether such a transaction falls under both sub-sections (a) and (b) of Section 5(1), if the other ingredients of those provisions are present.

The 3rd charge alleged abetting by the 1st suspect of the commission of the offence of selling sterling in Ceylon by the 2nd suspect. The only point made was that if the 2nd suspect was not guilty of the charge of selling sterling the 1st suspect would not be guilty of abetting it.

The only matter that remains for consideration is whether the 2nd respondent was resident in Ceylon at the relevant time within the meaning of Section 51(1) of the Exchange Control Act. During the period in which the contraventions of the Act

were committed, that is, January 1970 to May 1971, the 2nd suspect's wife was resident in Ceylon. He had been sending money to her. He was buying a house in Ceylon. On a visit to Ceylon in December 1970 he had seen the house which suited him. Most of the monies which form the subject of the charges were sent to buy the house. He was also on the lookout for a garage which he could purchase. We hold, therefore, that for the purposes of the Exchange Control Act he was resident in Ceylon.

Accordingly, we find the 1st suspect guilty of the offences set out in charges 1 and 3 and the 2nd suspect guilty of offences set out in charges 1 and 2.

