

1965

Present : Alles, J.

MERCANTILE CREDIT LTD., Petitioner, and B. L. W. FERNANDO
(Sub-Inspector of Police) and 2 others, Respondents

*S. C. 105/65—Application in Revision in M. C. Anuradhapura,
34953*

*Transport of illicit immigrants—Vehicle used for that purpose—Duty of Magistrate
to make order for its forfeiture—Immigrants and Emigrants (Amendment)
Act, No. 68 of 1961, s. 47B (4).*

Where a lorry has been proved to have been used for the purpose of transporting illicit immigrants into Ceylon or in Ceylon, it is the duty of the Magistrate under section 47B (4) of the Immigrants and Emigrants (Amendment) Act, No. 68 of 1961, to make order for the forfeiture of the lorry. In such a case, the true owner of the lorry is not entitled to ask for its restoration to him on the ground that he was completely unaware that the lorry was being used for an unlawful purpose.

¹(1957) 59 N. L. R. 254.

²(1959) 64 N. L. R. 180.

APPPLICATION to revise an order of the Magistrate's Court, Anuradhapura.

Izzadeen Mohamed, with *S. C. Crossette-Thambiah*, for the petitioner.

D. K. D. de S. Abhayanayaka, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

July 22, 1965. ALLES, J.—

The petitioner, a limited liability Company, having its registered office in Colombo, was the absolute owner of lorry bearing registered number 22 Sri 1237. By a hire-purchase agreement entered into with Mrs. Abdul Hameed Ummu Rasida of 237, Walahapitiya Road, Nattandiya, the petitioner hired this lorry to the above-named person on certain terms and conditions. On 24.5.63, the 1st respondent to this application filed proceedings in the Magistrate's Court of Anuradhapura charging the 2nd and 3rd respondents above named with having transported 40 persons in the lorry in question knowing that such persons had entered Ceylon or remained in Ceylon in contravention of the Immigrants and Emigrants Act. The 2nd and 3rd respondents were the driver and the cleaner of the lorry respectively at the time the offence was detected by the authorities. After trial, they were convicted by the Magistrate; in appeal the conviction of the driver was affirmed but the conviction of the cleaner was set aside and he was acquitted. It is not disputed that the lorry was used for the purpose of transporting illicit immigrants in Ceylon. After the conviction of the two respondents in the Magistrate's Court the prosecuting authorities made an application under section 47B (4) of the Immigrants and Emigrants (Amendment) Act, No. 68 of 1961, for an order of forfeiture of the lorry and the Magistrate made order accordingly on the ground that in view of the 'clear and unambiguous' language of the section, he had no option but to forfeit the lorry. The present application in revision is from the Magistrate's order. It was urged on behalf of the petitioner that the owners were completely unaware that their lorry was being used for an unlawful purpose and in the absence of guilty knowledge on their part, it could not have been the intention of the legislature to deprive the owners of the lorry of their ownership.

Section 47B (4) of the Immigrants and Emigrants (Amendment) Act, No. 68 of 1961, provides, inter alia, that 'where any vehicle, vessel or other means of transport or equipment or accessories, produced before or made available for inspection by a Magistrate's Court, is proved to have been used in, or in connection with, the commission of an offence' of bringing into Ceylon persons whose entry into the Island would be in contravention of any of the provisions of the Act or of any Order or any regulation made thereunder, 'Such Court shall make order

for the forfeiture to Her Majesty or for the destruction of such vehicle, vessel or other means of transport or equipment or accessories.' The section provides that whenever a conveyance has been proved to the satisfaction of a court to have been used for the purpose of transporting illicit immigrants into Ceylon or in Ceylon the Court shall order the forfeiture of such a conveyance. I agree with the Magistrate that in the plain terms of the section, as soon as the fact of transport is proved, *ipso facto*, the means of transport is forfeited.

Although the language of section 47B (4) of the Act has not been considered by this Court previously, the point raised by Counsel in the present application is not without precedent.

In the leading case of *De Keyser v. British Railway Traffic & Electric Co. Ltd.*¹, the Court had occasion to consider the language of section 202 of the Customs Consolidation Act of 1876 which was in the following terms :

“ All conveyances. . . made use of in the importation, landing, removal or conveyance of any goods liable to forfeiture, shall be forfeited. ”

A strong Bench, (Lord Hewart, C.J., Humphreys and Singleton, JJ.), was unanimously of the view that the words of the section left no option with the Court to forfeit the motor tank wagon which was used to convey goods liable to forfeiture under the Customs Act, even though the owners were completely ignorant of the purpose for which their vehicle was being used. Lord Hewart observed at p. 230 that—

“ . . . once it is established that the conveyance does come within that class, this undoubtedly rigorous statute gives the claimant no opportunity of asking the Court to take into consideration mitigating circumstances with the effect of removing the conveyance from that class, ”

and that the circumstance that the owners did not know of the wrongful use for which the lorry was being employed was wholly irrelevant, and did not affect the purpose for which the lorry was being used. Singleton, J. at p. 234 said that—

“ . . . knowledge on the part of the owner of the vehicle is irrelevant in such a proceeding as this and the mere use of the vehicle for the unlawful purpose indicated by s. 202 of the Act of 1876 infers a statutory forfeiture of the vehicle irrespective of the knowledge or consent of the owner thereof. ”

In *De Keyser's case*, it was argued by Counsel for the owners of the vehicle that the mandatory words found in section 202 were mitigated by the words used in the connected section 226 which dealt with the powers

¹ (1936) 1 K. B. 224.

of the justice at the stage of the condemnation of the forfeited goods. Section 226 provided, inter alia, that 'on proof that the goods are liable to forfeiture under the Customs Act, (the justice) may condemn the same.' It was suggested that a discretion was thereby vested in the Justices to deal with the forfeited goods—a submission which however did not find favour with the Court. Under the provisions of section 47B (4) of the present Act, no such argument is even possible because the section stands in isolation and is no way connected with any other section of the Act.

De Keyser's case has been cited with approval in *Arumugaperumal v. The Attorney-General*¹ and *The Attorney-General v. Nagamany*², where the Supreme Court had occasion to consider the provisions of section 128A of the Customs Ordinance which reads as follows :

“ Any ship not exceeding 250 tons tonnage knowingly used in the importation or exportation of any goods prohibited of import or export, or in the importation, exportation or conveyance or in the attempted importation, exportation or conveyance, of any goods with intent to defraud the revenue, shall be forfeited. ”

This section provided for the forfeiture of a vessel which had been knowingly used for the importation or exportation of prohibited goods under the Customs Ordinance. Howard, C.J. in the former case held that 'the forfeiture was valid irrespective of the guilty knowledge of the owner.' This decision was followed with approval by Gratiaen, J. in the latter case. Commenting on the provisions of section 128A of the Customs Ordinance, Gratiaen, J. in *The Attorney-General v. Nagamany* said:

“ The provisions of Section 128A of the Customs Ordinance are no doubt rigorous in their operation. This circumstance does not however justify a Court in refusing to give effect to the clear intention of the Legislature where it is proved that a vessel has been wilfully used by those in charge of her for the conveyance of contraband. As Lord Hewart said in *De Keyser v. Harris*, in dealing with a similar provision of law, there is 'no opportunity for mercy' in applying the section. . . . ”

These observations apply with equal force to the present case.

In view of the clear language of the section, supported as it is by the authority of this Court under analogous provisions of the law, I am of the view that the Magistrate was right in forfeiting the lorry. The application is dismissed.

Application dismissed.

¹ (1947) 48 N. L. R. 510 at 513.

² (1949) 51 N. L. R. 149 at 151.