

1963

Present: T. S. Fernando, J.

M. S. MOHAMED ALI, Appellant, *and* A. M. SENEVIRATNE
(Inspector of Police, C. I. D.), Respondent

S. C. 328 of 1963—J. M. C. Colombo, 23922

Exchange Control Act—Section 7 (a)—“ Payment to or for the credit of a person resident outside Ceylon ”.

A company in Japan owed a company in Ceylon a sum of £203.14s.2d. as agents' commission. Upon the instructions of the appellant, the company in Ceylon requested the company in Japan to pay this sum to the appellant's son in England. The Japanese company complied with the request. Thereafter the appellant paid to the Ceylon company a sum of Rs. 2,754, which was the equivalent in rupees of £203.14s.2d.

Held, that the appellant was not guilty of “ making any payment to or for the credit of a person outside Ceylon ” within the meaning of section 7 (a) of the Exchange Control Act.

APPPEAL from a judgment of the Joint Magistrate's Court, Colombo.

S. Nadesan, Q.C., with *G. D. Welcome*, for the accused-appellant.

W. K. Premaratne, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

August 26, 1963. T. S. FERNANDO, J.—

The appellant was convicted by the Magistrate on a charge framed as follows :—

“ That he did at Colombo on or about 20th July 1961, without the permission of the Central Bank of Ceylon, make a payment of Rs. 2,754 to M. K. Saldin & Co., Ltd. to or for the credit of one M. A. Abubacker, a person resident outside Ceylon, to wit, England, in contravention of the provisions of section 7(a) of the Exchange Control Act, and that he is thereby guilty of an offence under section 51 (1), punishable under section 54 (4) of the said Act. ”

The proved facts were that the appellant has a son Abubacker who is a student following a course of instruction in engineering in England. For his son's maintenance in England the appellant had to remit money to him. Failing to obtain the necessary permission from the Central Bank of Ceylon to so remit money, the appellant approached a friend who is a director of a company in Ceylon which had business connections with a company in Japan. The appellant sought his friend's assistance to ensure that his son may receive a sum of £203.14s.2d. The company in Ceylon had to receive as agents' commission this sum of £203.14s. 2d

from the company in Japan. The director of the company in Ceylon requested the company in Japan to pay this sum to the appellant's son in England. The Japanese company complied with the request, and it is not disputed that Abubacker received this money in England. Thereafter the appellant paid to the Ceylon company a sum of Rs. 2,754 which is said to be the equivalent in rupees of £203.14s 2d.

Counsel for the appellant argues that the contravention of section 7 (a) of the Exchange Control Act (Cap. 423) has not been established.

The material part of section 7 of the said Act reads as follows :—

“ Except with the permission of the bank no person shall in Ceylon—

- (a) make any payment to or for the credit of a person resident outside Ceylon, or
- (b) make any payment to or for the credit of a person resident in Ceylon by order or on behalf of a person resident outside Ceylon, or
- (c) place any sum to the credit of any person resident outside Ceylon.”

On these facts, it cannot be said that the appellant has in Ceylon made any payment to the credit of Abubacker. The prosecution contended in the Magistrate's Court that the appellant made a payment to the Ceylon company *for* the credit of Abubacker. The learned Magistrate accepted this latter contention. Mr. Nadesan argues that, if any payment was made for the credit of Abubacker, then Abubacker should have been in a position to enforce payment to him at law had the Ceylon company failed to pay. There being no contractual relationship between Abubacker and the Ceylon company, it is argued that Abubacker would have had no cause of action accruing to him against the Ceylon company. The person to have sued, in the event of failure to effect payment to Abubacker, should have been the appellant himself. I think this argument is sound.

The learned Magistrate considered that the expression “ for the credit of a person ” in section 7 is wide enough to be interpreted as “ for the benefit of a person ”. The point is not without difficulty, but, as I am here concerned with the construction of a penal statute, I am deterred in giving to the expression too general a meaning. Learned Crown Counsel says he is unable to support the conviction. As the appellant has only been charged with a contravention of section 7 (a) of the Act, I do not feel called upon to consider whether he has contravened any other provision thereof.

I set aside the conviction and the sentence which was a fine of Rs. 100.

Conviction set aside.