

1969

Present : Pandita-Gunawardene, J.

B. JOSEPH, Appellant, and INSPECTOR OF POLICE (Foreshore Police, Colombo), Respondent

S. C. 972/68—J. M. C. Colombo, 38244

Charge of possessing unclaimed goods in the Customs premises—Burden of proof as to place of offence—Customs Ordinance (Cap. 235), ss. 101 (1) (b) [Regulation 26 (a) (3) thereunder], 101 (2) [Notification thereunder], 148.

In a prosecution for handling goods found concealed or unclaimed in the Customs premises at Colombo in breach of regulation 26 (a) (3) made under section 101 (1) (b) of the Customs Ordinance, the averment by the complainant that the offence was committed at the Dry Dock Gate, Port of Colombo, is sufficient *prima facie* evidence under section 148 of the Customs Ordinance, read with Notification made under section 101 (2), that the offence was committed within the Customs premises.

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

K. Jeganathan, for the accused-appellant.

Tyrone Fernando, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

June 17, 1969. PANDITA-GUNAWARDENE, J.—

The appellant was convicted in the Joint Magistrate's Court of Colombo of the following charge to wit : that he did on the 12th day of November, 1967 at Dry Dock Gate, Port of Colombo within the jurisdiction of this Court, was handling four boxes containing 20 "Maxwell Blue Dry Battery" found concealed or unclaimed in the Customs premises, without first informing the Customs officers or the Police officers on duty in breach of regulation 26 (a) (3) made under Section 101 (1) (b) of Chapter 235 L.E.C. The learned Magistrate imposed a fine of Rs. 50 in default three weeks' rigorous imprisonment. The appeal is from the conviction and sentence.

The relevant facts are that the appellant came from inside the Harbour and at the Dry Dock Gate he was challenged by Liyanage who was on duty. The appellant attempted to move on without stopping. He was then arrested a little distance beyond the gate by Liyanage, with the help of Constable Somasiri. On searching the appellant, 4 boxes containing Maxwell Batteries described in the charge, were found concealed in his waist. The appellant was produced before Moorthy, designated A. P. O. Customs. The letters A. P. O., I presume, stand for Assistant Preventive Officer. It was found that the Maxwell Batteries were unclaimed goods.

The appellant denied that these batteries were in his possession and asserted that he had been falsely implicated.

The learned Magistrate has accepted the evidence for the prosecution and disbelieved the defence. Learned counsel for the appellant did not seek to canvass the finding of fact.

It was however contended that there is no proof that the offence was committed within the Customs premises, consequently it was said that the charge must fail. In support of this contention, I was referred to the unreported judgment of my brother de Kretser (S. C. 934/68—J. M. C. 37659, S. C. Minutes of 5.3.1969). In that case too the charge was laid for breach of the same regulation, made under Section 101 (1) (b) of the Customs Ordinance, Chapter 235. The regulation is in these terms : "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". There too it was alleged that the offence was committed at the Dry Dock Gate, Port of Colombo and the contention was that there was no evidence that the offence was committed in the Customs premises.

It was held that the limits of any Port or of any territorial waters is not the same as its Customs premises; that the presumption created by Section 148 of the Customs Ordinance which provides "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" does not apply; and the Magistrate was wrong in concluding that it was for the accused to prove that the incident happened outside the Customs premises. I find myself, with great respect, unable to agree with my brother de Kretser.

It is apparent from the evidence that the appellant had on this day worked in the cargo boat named President Haig. He had come along the pier and turned right and reached Dry Dock Gate which he endeavoured to pass when he was challenged and arrested and the articles found on him. The whole of the area, as the evidence shows, belongs to the Port. The question that arises is whether that area could be said to be within the Customs premises.—Section 101 (2) enacts "in this section and in any regulation made thereunder, 'Customs premises' means the Customs premises as defined from time to time by the Principal Collector of Customs by notification in the *Gazette*." The notification provided for in this section appears in Vol. IV Subsidiary Legislation of Ceylon—page 979. The notification proclaims "By virtue of the powers vested in me by Section 101 (2) of the Customs Ordinance (Chapter 235), I, Harry James Leigh Leighclare, Principal Collector of Customs, do by this notification:—

(a) define the Customs premises at Colombo, and

(b)

Schedule

Colombo

(1) The Customs premises at Colombo shall be as follows:

(i) The water area enclosed by the Harbour breakwaters, including the Harbour Canal leading to the Beira Lake;

(ii) The following areas together with all the breakwaters, piers, jetties, landing-places and quays appertaining thereto—

(a) the area bounded on the—

north by a line drawn from the root of the south-west breakwater along the quay and round all the jetties to the corner of the quay on the western side of the canal basin;

west by a line drawn from the root of the south-west breakwater along the sea wall to the northern limit of the Battenburg Battery to Battenburg

Gate, and thence along the northern and eastern walls of the Government Stores to the Customs main gate; south by Church Street and thence through the barrier opposite the Passenger Jetty and thence along Leydon Bastion road; and

east by the western side of the canal basin.

(b)-(g) needs no mention.

It is sufficient to say that in accordance with this schedule, the Customs premises includes the Port of Colombo and covers a very wide area, clearly inclusive of the area where this offence has been committed.

In the result I am satisfied that the appellant has been rightly convicted. The appeal is dismissed.

Appeal dismissed.
