

1971

*Present : Samerawickrame, J.*

A. M. A. PIYASENA, Appellant, and INSPECTOR OF POLICE,  
FORESHORE POLICE, Respondent

*S. C. 970/70—J. M. C. Colombo, 39721*

*Customs Ordinance (Cap. 235)—Section 101—Regulation 26 A (3) made thereunder—  
Charge of handling goods in contravention of it—Burden of proof.*

Where a person is charged with handling goods in contravention of regulation 26 A (3) of the regulations made under section 101 (1) of the Customs Ordinance, one of the most important ingredients that the prosecution must prove is that the act of handling was done in relation to certain goods in the customs premises.

*Jinadasa v. Foreshore Police* (73 N. L. R. 45) followed.

<sup>1</sup> (1955) 57 N. L. R. 255.

**A**PPEAL from a judgment of the Joint Magistrate's Court, Colombo.

*D. W. Abeyakoon*, for the accused-appellant.

*N. J. Vilcassin*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

October 28, 1971. SAMERAWICKRAME, J.—

The charge against the appellant was that he had committed an offence by contravening regulation 26A (3) of the regulations made by the Minister under s. 101 (1) of the Customs Ordinance. The regulation prohibits any person from handling any goods found concealed or unclaimed in the customs premises without first informing a customs or police officer on duty. In the exercise of the powers under s. 101 (2) the Principal Collector of Customs has defined customs premises. The definition is found at page 979 in Volume IV (Cap. 235) of the Subsidiary Legislation 1956.

Learned counsel for the appellant submitted that there was no proof that any handling of the goods, namely, a roll of khaki cloth (37 yards in length) had taken place within the customs premises. He relied on the case of *Jinadasa v. Foreshore Police*<sup>1</sup>—73 N.L.R. 45. In that case *Tennekoon, J.*, held that one of the most important ingredients that the prosecution must establish is that the act of handling was done in relation to certain goods *in the customs premises*. In this case the charge alleged that the offence was committed at Guide Pier (Port of Colombo). There was no evidence at all that this Guide Pier fell within the customs premises as defined in the regulation referred to above. As a material ingredient of the offence has not been proved the conviction cannot stand. I allow the appeal and set aside the conviction and sentence passed on the appellant.

*Appeal allowed.*

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