

1953

Present : Swan J.

A. HUTCHINSON, Appellant, and D. D. WIJESINGHE
(S. I. Harbour Police), Respondent

S. C. 688—J. M. C. Colombo, 45,849

Customs Ordinance—Section 158—Prosecution thereunder—Burden of proof.

In a prosecution under section 158 of the Customs Ordinance for possessing an article suspected to have been stolen from any ship, boat, quay, &c., a duty is cast upon the Court to satisfy itself that there were reasonable grounds for suspecting that the article was stolen from any ship, &c. It is only after the Court is so satisfied that it would become incumbent on the accused to give an account as to how he came by the article.

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

D. S. Jayawickreme, with E. A. G. de Silva, for the accused appellant.

Ananda Pereira, Crown Counsel, for the Attorney-General. .

Cur. adv. vult.

December 2, 1953. SWAN J.—

I do not think I can allow this conviction to stand. The accused was charged under Section 158 of the Customs Ordinance which makes the possession of certain articles suspected to have been stolen from any ship, boat, quay, warehouse or wharf of any port of this island an offence. The accused was found in possession of a brass valve valued at Rs. 25. There is nothing in the evidence from which the learned Magistrate could have been satisfied that, having regard to all the circumstances of the case, there were reasonable grounds for suspecting this article to have been stolen from any ship, boat, quay, warehouse or wharf in the port of Colombo. It was only after the learned Magistrate was so satisfied that it would have become incumbent on the accused to give an account to the satisfaction of the Magistrate as to how he came by this article. In the case of *Sammie v. Nagoda Police*¹ Nagalingam J. considered Section 16 (1) of the Rubber Thefts Ordinance where a similar duty is cast upon the Magistrate to satisfy himself that there were reasonable grounds for suspecting the rubber to have been stolen, having regard to all the circumstances. In that case the accused actually pleaded guilty, but the learned Judge took the view that the Magistrate was not thereby relieved of the duty cast upon him by the section.

I set aside the conviction and acquit the accused.

Appeal allowed.

¹ (1951) 53 N. L. R. 255.