

20, 1969

No. 1 of 1969

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

- 1. VELAYUTHAMPILLAI MANDIRAMPILLAI
- 2. MANDIRAMPILLAI VELAYUTHAMPILLAI

Carrying on business in partnership under the name etc. of "SANA MANA RAWANNA & CO."

(Plaintiffs) Appellants

- and -

THE ATTORNEY-GENERAL OF CEYLON

(Defendant) Respondent

UNIVERSITY OF LONDON
 INSTITUTE OF LEGAL STUDIES
 - C AR 1970
 25 RUSSELL SQUARE
 LONDON, W.C.1

C A S E FOR THE RESPONDENT

1. This is an appeal from a Decree of the Supreme Court of Ceylon, dated the 27th November, 1967, dismissing an appeal from a Judgment and Decree of the District Court of Jaffna, dated the 11th March, 1965, whereby an action instituted by the Appellants against the Respondent in respect of goods which had been consigned to the Appellants from India but which, on arrival in Ceylon, were forfeited by the Collector of Customs, Jaffna, under, inter alia, the Customs Ordinance (C.235), was dismissed with costs.

pp.98-99

pp.80-93

2. The main question for determination on this appeal is whether or not the forfeiture by the Collector of Customs, Jaffna, under the Customs Ordinance (C.235), of 20 bags of Fenugreek Seeds (also known as Mathe Seeds)

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which can be lawfully imported into Ceylon, on the ground that they were part of a shipment of 50 bags consigned to the Appellants' firm ("Sana Mana Rawanna & Co.") all of them bearing the same mark ("Mani") and purporting to contain only Fenugreek Seeds but 20 bags of which, on examination, were found to contain not Fenugreek Seeds but Poppy Seeds the import of which into Ceylon is prohibited, was, in the circumstances of this case and, on the evidence which both sides produced unlawful, as has been concurrently found by both Courts below. 10

3. Portions of the Customs Ordinance (C.235) and the Poisons, Opium and Dangerous Drugs Ordinance (C.218) relevant to the present Appeal, will be found in an Annexure hereto.

4. The facts, briefly stated, are as follows :-

pp.80-85

On the 1st June, 1961, the "Nooraniah" landed at the port of Kayts in Ceylon, inter alia, a consignment from Tuticorin, India, of 50 bags addressed to the Appellants' firm ("Sana Mana Rawanna & Co.") all of them purporting to contain Fenugreek Seeds - a lawful import. The consignor was a Tuticorin firm owned solely by the 2nd Appellant. A Customs examination at Kayts (after payment of duty and dues on the whole shipment by the Appellants' agent) revealed that 20 bags of the 50 bags did not contain (as was stated in the Invoice, Bill of Lading and Entry Form submitted by the Appellants) Fenugreek Seeds but Poppy Seeds, the import of which into Ceylon is prohibited. The Customs Authorities, being satisfied that a contravention of the Customs Ordinance (C.235) and the Poisons, Opium and Dangerous Ordinance (C.218) had taken place, forfeited the entire consignment of 50 bags and imposed on the Appellants' firm a penalty of Rs.45,000/- which, subsequently, was reduced to Rs.15,000/- The Appellants did not pay the penalty but instituted instead, 20 30 40

p.85

in the District Court of Jaffna, the present proceedings against the Respondent (as representing the Crown) for the recovery of the said 30 bags of Fenugreek Seeds which had been forfeited by the Customs. They disclaimed any responsibility for the 20 bags of the prohibited Poppy Seeds which had been unlawfully imported as part of the consignment addressed to them; and they could offer no explanation for the presence of the bags of Poppy Seeds in a consignment addressed to them which purposed to contain only Fenugreek Seeds.

5. By their Plaint, dated the 1st August, 1961, the Appellants (hereinafter also called "The Plaintiffs") said, inter alia, as follows :-

pp.13-15

"1. The Plaintiffs are partners carrying on business in partnership under the name, firm and style of 'Sana Mana Rawanna & Co.' at 212, Hospital Road, Jaffna.

pp.13-14

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"4. On or about the 1st day of June, 1961, the Plaintiffs entered to be cleared as per Entry No.1 of 1.6.61 fifty bags of Mathe Seeds (Fenugreek Seeds) as they lawfully might import in the ordinary course of trade from Tuticorin to Kayts ex boat 'Nooraniah' of Tuticorin.

"5. The Master of the said boat inter alia only delivered 30 bags of Mathe Seeds at the Customs warehouse, Kayts, as shipped and consigned to the Plaintiffs. The Plaintiffs are the owners of the said 30 bags of Mathe Seeds which are merchandise imported into Ceylon in the ordinary course of trade.

"6. The Plaintiffs are entitled according to law to be given delivery of the 30 bags of Mathe Seeds that have been landed and available for delivery to them."

6. The said 30 bags of Fenugreek (or Mathe) Seeds having been confiscated by the Collector of Customs, the Plaintiffs, in their Plaint, complained as follows :-

p.14

"7. By letter, dated 5.6.61 the Assistant Collector of Customs, Northern Province, Jaffna, informed the 1st Plaintiff that the said 30 bags of Mathe Seeds are confiscated under Section 123 of the Customs Ordinance. The said Assistant Collector of Customs... illegally and wrongfully detained the said 30 bags of Mathe Seeds. 10

"8. The said Assistant Collector . . . has illegally and wrongfully refused to return the said 30 bags of Mathe Seeds . . the said 30 bags of Mathe Seeds are reasonably worth Rs.3,600/- 20

"9. The said confiscation and refusal to return the said 30 bags of Mathe Seeds is illegal and unwarranted by law.

"10. By reason of the facts set out above a cause of action has accrued to the Plaintiffs....." 30

7. As set out in their Plaint, the Plaintiffs' prayer was as follows :-

"12.

p.15

"(a) that the Plaintiffs be declared entitled to the said 30 bags of Mathe Seeds (Fenugreek Seeds);

"(b) that the Collector of Customs, Northern Province, Jaifna, be decreed and ordered to restore the goods to the Plaintiffs and the Plaintiffs be quieted in possession thereof;

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"(c) that in the alternative if the goods have deteriorated or if the goods are not restored to the Plaintiffs, for Judgment against the Defendant in a sum of Rs.3,600/-;

"(d) that the Defendant be ordered and decreed to refund the said security of Rs.5,000/- deposited with the Collector of Customs . . . ; and

"(e) for costs."

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8. By his Answer, dated the 31st January, 1962, the Defendant denied that any cause of action had accrued to the Plaintiffs to sue the Defendant, and, continuing, said :-

pp.17-18

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"4. Answering paragraph 4 of the Plaint the Defendant states that one V. Sabaratnam purporting to act as the representative of Messrs. "Sana Mana Rawanna & Co." (the Plaintiffs' firm) "submitted an Entry for 50 bags 'Fenugreek Seeds' marked 'MANI' to Mr. Manickavasagar, Landing Waiter, Kayts, for payment of duty and dues.

"Payment was accepted and the Entry was marked No.1 of 1st June, 1961, after which the Entry was passed on to the Sub-Collector of Customs, Kayts, for satisfaction."

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"9. By way of further answer, the Defendant states that

- "(a) On or about the 1st June, 1961, the Master of the boat 'Nooraniah' of Tuticorin landed fifty bags consigned to Messrs. Sana Mana Rawanna & Co., Jaffna, into the Customs Warehouse, Kayts, which according to the Entry No.1 of 1st June, 1961, of the said Company contained 'Mathe Seeds'. 10
- "(b) The said fifty bags, which were marked "Mani", and purported to contain 'Mathe Seeds' were examined by K.P.W.Fernando, Sub-Collector and Chief Assistant Preventive Officer, Northern Province, and on examination of the contents he found 30 bags of 'Mathe Seeds' and 20 bags of 'White Poppy Seeds' called 'Posthakai' 20
- "(c) The entire consignment of 50 bags was imported into the Island unlawfully and in contravention of the provisions, prohibitions and restrictions of the Customs Ordinance (C.235), Poisons, Opium and Dangerous Drugs Ordinance (c.218), and other laws, rules, regulations and orders applicable to the import of the said goods into the Island. 30
- "(d) In consequence of the above averments the entire consignment of 50 bags became forfeit by the Customs under the provisions of Sections 43 and 125 of the Customs Ordinance (C.235) read with Sections 28 and 33 of the Poisons, Opium and Dangerous Drugs Ordinance (C.218) and the provisions of other laws, rules, 40

regulations and orders applicable to the import of the said goods into the Island".

9. On the framing of the Issues for trial, Defendant's Counsel submitted that Issues Nos. 5 and 6 should be framed as follows :-

"5. Did 20 bags out of the said lot of 50 bags contain White Poppy Seeds? p.20 ll. 27-30

10 "6. If Issue 5 is answered in the affirmative, was the forfeiture or detention of the said 50 bags lawful?".

Plaintiff's Counsel objected to Issue No.5, framed as aforesaid, on the ground that by its terms, it was assumed that the 20 bags of Poppy Seeds were part of the said 50 bags of Mathe (Fenugreek)Seeds. Defendant's Counsel thereupon sought to amend Issue No.6 by substituting for the word "lawful" the following words :- p.20 ll. 31-33

"lawful under Section 43 and 47 and Section 125 of the Customs Ordinance C.235 read with Sections 26 28 and 33 of the Poisons, Opium and Dangerous Drugs Ordinance, C.218".

Plaintiffs' Counsel objected to the proposed amendment on the ground that the said Section 47 had not been pleaded and, further, submitted that the goods had not been

30 forfeited under that Section. He submitted that the 20 bags of Poppy Seeds were separate units and not part of the 50 bags of Mathe (Fenugreek) Seeds. The learned District Judge thereupon ordered the Defendant to amend his Answer and give notice of the amendment to the Plaintiffs.

p.21 ll. 12-14

10. The Defendant filed his Amended Answer on the 12th day of October, 1962. This was in terms identical with the original Answer pp.21-23

p.23 except that in paragraph 9 (d) thereof, the forfeiture by the Customs was stated to have occurred under, inter alia, Sections 43, 47 and 125 of the Customs Ordinance (C.235) and not, as was stated in the original Answer (see paragraph 8 hereof), under Sections 43 and 125 only.

pp.25-29 The learned District Judge, by his Order, dated the 12th March, 1963, rejected the Amended Answer. In his view it was not open to the Customs to state that in addition to the statutory provisions referred to in the original Answer, the forfeiture had taken place under the said Section 47 as well. Further, he was of opinion that the proposed amendment would, if permitted, extend and alter the nature and scope of the cause of action and/or enable the Defendant to set up an entirely new defence.

p.28 ll. 10
8-24

p.33 11. The framing of Issues then came up again before the Court. Six Issues were framed by Counsel on both sides but of these, upon objections taken by Plaintiffs' Counsel, the learned District Judge rejected, as irrelevant and not arising on the original Answer, the following Issues which, inter alia, had been framed by the Defendant's Counsel:- 20

p.36 ll. 6-25
p.87 ll. 22-27

p.34 ll. 11-21 "4. (a) Did the Plaintiff through his representative V. Sabaratnam, submit to Mr. Manicavasagar, the Landing Waiter, Kayts, the Entry marked No.1 of 1.6.61 for removing 50 bags said to contain Mathe Seeds (or Fenugreek Seeds)? 30

" (b) Did the said bags bear marks 'Mani' consigned to Plaintiffs to wit - Sana Mana Rawanna & Co.?

" (c) Did 20 bags out of the said 50 bags contain White Poppy Seeds?"

"5. If Issues 4(a) to (c) are answered in the affirmative was forfeiture and 40

detention of the said 50 bags lawful?"

12. Issues upon which the parties eventually went to trial were, after an examination of the oral and documentary evidence which both sides had produced, answered thus by the learned District Judge:-

10 "(1). Is the refusal to deliver 30 bags of Mathe Seeds (or Fenugreek Seeds) and/or their detention by the Customs referred to in the Answer of the Defendant lawful?". p.87

Answer: "Yes". p.92

"(2) If the above Issue is answered in the negative p.87

20 "(a) Is the Collector of Customs liable to be ordered to release the said 30 bags or pay their value as at that time of the said refusal or detention?

"(b) Is the Collector of Customs liable to be ordered to refund to the Plaintiff a sum of Rs.5,000/- deposited as security by the Plaintiff?"

Answer: "Does not arise". p.92

30 "(3) What was the value of the 30 bags of Mathe Seeds at the time of the refusal to deliver or at the time of detention?" p.87

Answer: "Does not arise". p.92

"(4) & (5) - Ruled out (See, paragraph 11 hereof) p.87 11. 22-27

"(6) Was the forfeiture of (a) 20 bags of Poppy Seeds and (b) 30 bags of Mathe Seeds out of the Consignment p.87

of 50 bags lawful as set out in paragraph 9 (d) of the original Answer?"

p.92

Answer: Yes

13. In answering Issue No.6 in the affirmative, i.e. in the Defendant's favour, the learned District Judge (who as stated in paragraph 10 hereof, had rejected the Defendant's Amended Answer mainly because it introduced for the first time Section 47 of the Customs Ordinance) said :- 10

p.92 11.
30-39

Annexure

"I might state that under Section 47 of the Customs Ordinance the Principal Collector or the Assistant Collector was entitled to forfeit the 30 bags of Fenugreek (or Mathe) Seeds as the goods which the Plaintiffs claimed and which were lying in the warehouse did not agree with the particulars in the Bill of Entry D1, in that Sabaratnam (the Plaintiffs' representative) claimed after examination the 50 bags lying in the warehouse. Sabaratnam claimed that the bags contained Fenugreek Seeds when 30 bags only contained Fenugreek Seeds and 20 bags contained Poppy Seeds. 20

p.92
1.39
to
p.93 1.7

Annexure

"I hold that although in his Order D4 the Assistant Collector did not expressly refer to Section 47, it is open to the Crown now to take up the position that the forfeiture was lawful because in any event Section 47 had been contravened. I therefore answer Issue 6 in the affirmative and I hold that the forfeiture of the 20 bags of Poppy Seeds was made under Section 45 (now Section 43); and the forfeiture of 30 bags of Fenugreek Seeds was made under Sections 123 (now Section 125) and 47 of the Customs Ordinance and that these forfeitures were lawful." 40

14. By his Judgment, dated the 11th March, 1965, incorporating the said Answers to Issues, the learned District Judge dismissed the action with costs.

15. The learned District Judge referred to the following facts which, he said, were not in dispute :-

pp.80-85

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(A) "The 1st Plaintiff, as partner of the Plaintiffs' firm, on 2.5.1961 sent an indent to Messrs. Velauthampillai, 47 Beach Road, Tuticorin (P6)

p.80 ll.
10-14

(B) "The sole proprietor of Messrs. V.M. Velauthampillai is the 2nd Plaintiff and therefore the indent P6 was sent by 1st Plaintiff acting on behalf of the Plaintiffs' firm to his son who was acting as sole proprietor of V.M. Velauthampillai & Co.

p.80 ll.
15-43

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"It would be convenient at this stage to reproduce P6 (the indent) from Sana Mana Rawanna & Co., 58, Fourth Cross Street, Colombo 11 which is in the following terms :-

"M/s. V.M. Velautham Pillai 2nd May 1961
47, Beach Road,
Tuticorin.

Dear Sirs,

P.6, p.109

INDENT.

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We do hereby authorise you to export to us the undermentioned goods at the prices and in accordance with the terms hereof.

Article: Fenugreek Seeds

Quantity: 50 (fifty) bags

Price: Rs.58/0 per Gross Cwt., C.I.F,
Jaffna

Shipment: Earliest: per boat direct to Jaffna

Terms: (1) Payment will be made in Colombo against bills drawn for collection, through any bank.
(2) Other particulars as usual to this market.

Yours faithfully,
SANA MANA RAWANNA & CO.

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Sigd. Illegibly

Partner."

Confirmed

V.M. Velauthampillai

Sigd.

Sole Proprietor."

16. Continuing his narration of facts which were common ground, the learned District Judge said :-

p.81 11.
1-9

(C) "By invoice, dated the 9th May, 1961, the 2nd Plaintiff as sole proprietor of V.M.Velauthampillai & Co. invoiced 50 bags of Fenugreek (or Mathe) Seeds and shipped this consignment by boat 'Nooraniah' from Tuticorin to Jaffna on account of and at the risk of M/s Sana Mana Rawanna & Co., Jaffna. 20

P2, p.111

"According to P2, each of the 50 bags had the mark 'Mani' and the net weight of the packages was 95 tons, 2 cwt. 4 lbs and the price was Rs. 5,644/65 in Indian currency." 30

(D) The bill of lading P3, dated 10th May, 1961, also shows that 50 bags of Fenugreek (or Mathe) Seeds bearing the mark 'Mani' were shipped by V.M. Velautham Pillai in the boat 'Nooraniah' of Tuticorin and the Master for the 'present' voyage was Rosario Fernando and the ship was bound for Jaffna. In the body of P3 it is stated that the 50 bags of Fenugreek bearing the mark 'Mani' were marked and numbered as stated in P3 but that the weight, quantity, brand, contents, condition, quality and value were as declared by the shipper but was unknown to the carrier."

p.81 ll.
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P3, p.115

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17. Further facts which were common ground were referred to by the learned District Judge thus :-

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(E) "V.M.Velautham Pillai (2nd Plaintiff) also made an Export Application on 9.5.1961 to the Secretary, Port Commission, Tuticorin, P7, in which he asked that the goods mentioned in P7 be passed to be shipped to Jaffna, Ceylon (Port and country of destination respectively). In P7 the following information (inter alia) is given . . .

p.81,1.39
to
p.82,1.14
P7,p.110

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- "1. Name of Shipper or Agent:
V.M. Velautham Pillai.
- "2. Serial Number of Consignment: 1
- "3. Number of packages: 50 bags.
- "4. Marks and Number of the Consignment: 'Mani'
- "5. Description and name of the commodities: Fenugreek Seed.
- "6. [Schedule No.] . . .

"7. Gross weight of the consignment:
4 tons, 17 cwt., 36 lbs.
(Dead weight tons)

"In P7 the name of the vessel taking the goods is given as 'Nooraniah' and the name of the Charterer (Sic. Commander or Master) as R.Fernando."

18. Concluding his narration of the admitted facts, the learned District Judge said :-

p.82 11.
15-19

(F) "It is also not in dispute that when the goods reached the Port of Kayts in Jaffna, Sabaratnam the agent of the Plaintiff - Company on 1.6.1961 went to the Kayts Port and signed and presented Entry Form D1 to the Assistant Collector of Customs. 10

D1, p.121

p.82 11.
20-36

"In D1 the name of the vessel is given as 'Nooraniah' and the following information is given inter alia in the respective cases: 20

"Mark: 'MANI'

"Description of goods: 50 bags of Fenugreek Seeds (Mathe Seeds).

"At the bottom of D1 the following declaration has been signed by Sabaratnam, the agent of the Plaintiff-Company:-

"I/We hereby declare that I am/we are the IMPORTERS of the goods contained in this Entry and that I/We enter the same at the respective sums of value mentioned opposite to the said articles and amounting to the sum of Rupees five thousand six hundred and forty four and cents sixty five only. 30

"I/We claim that the goods against

which preferential rates of duty have been entered be admitted at those rates. In support of this claim I/We submit the annexed documents.

10 "A certified copy of the original of D1 has been produced marked P8 and it shows that the Entry Clerk working at the Customs, namely, F.K.Christopher, has drawn up P8 before it was signed by Sabaratnam, the agent of the Plaintiff-Company. P8, p.120

20 (G) "It can also be taken as not being in dispute that the agent Sabaratnam submitted Entry D1. He paid Rs.4.03 as rent to the Shrof and thereafter submitted his Entry to the Sub-Collector of Customs, and that, at the request of the Sub-Collector, Sabaratnam went to the warehouse and looked at the 50 bags - the consignment that had been brought by the 'Nooraniah' for the Plaintiff-Company - and took a sample and produced it for inspection to the Sub-Collector". p.82,1.37 to p.83, 1.5 D1,p.121

30 19. The learned District Judge next examined the oral and documentary evidence relating to the circumstances in which the Assistant Collector of Customs had purported to confiscate the said 20 bags of Poppy Seeds and the 30 bags of Fenugreek (or Mathe) Seeds and to impose penalties on the Plaintiffs' firm. Continuing, he said that the question before the Court was - p.83,1.6 to p.85,1.35

"whether the forfeiture of 30 bags of Fenugreek Seeds was lawful". p.87,11.34-35

40 He set out Section 125 of the Customs Ordinance (corresponding to Section 123 under which the Assistant Collector had acted) and referred to the submission of Plaintiffs' p.88,1.1 to p.89,1.2 Annexure

D4, p.128
Annexure
pp.89-92
p.91,1.37
to
p.92,1.4
p.90 ll.
10-19

Counsel "that there was no evidence placed before the Assistant Collector before he made order D4 which entitled him to come to the finding that the 30 bags of Fenugreek Seeds which he ordered to be forfeited was made use of in any way in the concealment or removal of the 20 bags of Poppy Seeds which were liable to forfeiture and which were forfeited under Section 45 (now Section 43) of the Customs Ordinance." The learned District Judge rejected the said submission. He said that he had "carefully considered all the evidence in this case" and referred to portions thereof which supported his finding that the introduction of the prohibited 20 bags of Poppy Seeds in the consignment to the Plaintiffs' firm of 50 bags, all purporting to contain only Fenugreek Seeds, had been deliberately planned by the Plaintiffs. He pointed out that the Plaintiffs could have called their agent in India who had shipped the goods (i.e. the 2nd Plaintiff) but he had not been called at the trial and no explanation was given for his absence, which led to the inference that if he had been called his evidence would not have helped the Plaintiffs' case.

20. Continuing, the learned District Judge said :-

p.90 ll.
32-37

"The Court has come to a finding as to whether the 30 bags of Fenugreek Seeds which the Assistant Collector of Customs purported to forfeit was made use of in any way in the concealment or removal of the 20 bags of Poppy Seeds which admittedly are liable to forfeiture under Section 45 of the Customs Ordinance.

p.90,1.37
to
p.91,1.2

"Having considered all the evidence I hold that the facts in this case clearly show that the two Plaintiffs who are father and son had planned to introduce into the consignment of 50 bags of Fenugreek Seeds referred to in the bill

of lading, 20 bags of Poppy Seeds in place of 20 bags of Fenugreek Seeds which were removed, and this was done by the 2nd Plaintiff.

10 "The fact that the Plaintiffs' agent went to the Customs and having examined the consignment of 50 bags and having taken a sample had asked for delivery of the 50 bags that were lying in the warehouse supports the case of the Crown that an attempt was made to smuggle into the Island 20 bags of Poppy Seeds which were prohibited under Section 45 and also that an attempt had been made to conceal in the consignment of 50 bags purported to contain Fenugreek Seeds 20 bags of Poppy Seeds. I regret I am unable to accept the explanation of the 1st Plaintiff which is contained in his statement to the Assistant Collector that a mistake had been made by Velautham Pillai and Co. and that the exporter in India had made a mistake in shipping '20 bags white Kasa Kasa' (Poppy Seeds) 'along with the Mathe (or Fenugreek) Seeds' - Vide D3
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p.91,11.
2-15

D3, p.126

30 "The evidence in this case points to only one conclusion, namely, that the Plaintiffs had planned to conceal Poppy Seeds in the consignment that was sent by the 2nd Plaintiff as sole proprietor of Velautham Pillai & Co. The Customs Officers at Kayts by their vigilance have foiled this well-planned attempt to smuggle Poppy Seeds into the Island and they deserve the commendation of the Principal Collector of Customs".

p.91,1.37
to
p.92,1.4

40 21. As to onus of proof, the learned District Judge expressed his view (contrary, it is respectfully submitted, to law) that "the burden was on the Crown to prove beyond reasonable doubt that the Plaintiffs and their agents had put together the 50 bags sent

p.92 11.
5-11

by Velautham Pillai & Co. on the 'Nooraniah' to the Plaintiff in such a way that 30 bags of Fenugreek Seeds were used to conceal 20 bags of Poppy Seeds". In expressing this view the learned District Judge appears to have ignored or overlooked the provisions of Section 152 of the Customs Ordinance (C.235). He held however, that sufficient evidence had been led by the Crown to discharge beyond reasonable doubt the burden which, he thought, was upon it. 10

It is respectfully submitted that in the circumstances of this case the onus was plainly on the Plaintiffs to show that the forfeiture of the 30 bags of Fenugreek Seeds was unlawful.

22. As to whether or not the Defendant could rely on the provisions of Section 47 of the Customs Ordinance (C.235) to reinforce his plea that the forfeiture was lawful, the learned District Judge, who had previously refused to permit the Defendant to file an Amended Answer on the ground that the amendment introduced Section 47 which had not been referred to in the original Answer (see paragraph 10 hereof) now said :- 20

p.92.1.39
to
p.93,1.7

Annexure

"I hold that although in his order D4 the Assistant Collector did not expressly refer to Section 47 it is open to the Crown not to take up the position that the forfeiture was lawful because in any event Section 47 had been contravened ... I hold that the forfeiture of the 20 bags of Poppy Seeds was made under Section 45 (now Section 43); and the forfeiture of 30 bags of Fenugreek Seeds was made under Section 123 (now Section 125) and 47 of the Customs Ordinance and that these forfeitures were lawful". 30

p.93

23. A Decree in accordance with the Judgment of the learned District Judge was drawn up on the 11th March, 1965, and against the said 40

Judgment and Decree the Plaintiffs appealed to the Supreme Court of Ceylon on the several grounds stated in their Petition of Appeal, dated the 19th March, 1965.

pp.94-97

10 24. The Appeal came up for hearing before a Bench consisting of A.W.H.Abeysundera and V.Manicavasagar JJ. who, on the 27th November, 1967, dismissed it with costs. The learned Judges of the Supreme Court did not, in the circumstances of this case, consider it necessary to deliver any Judgment.

p.98

25. A Decree in accordance with the decision of the learned Judges of the Supreme Court was drawn up on the 27th November, 1967, and against the said Decree this Appeal is now preferred to Her Majesty in Council the Appellants having obtained Leave to Appeal by Orders of the Supreme Court, dated the 1st February, 1968, and the 21st May, 1968

p.98

pp.100,
102

20 In the Respondent's respectful submission this Appeal should be dismissed, with costs throughout, for the following among other

R E A S O N S

30 (1) BECAUSE in the circumstances of this case and on the evidence before the Courts below it is clear that the said forfeiture of the 30 bags of Fenugreek (or Mathe) Seeds by the Customs Authorities was in accordance with the law of Ceylon.

(2) BECAUSE the learned District Judge was in error in rejecting the Amended Answer filed by the Defendant and the re-numbered Issues Nos. 4(a)(b) and (c) and 5 framed by Defendant's Counsel.

40 (3) BECAUSE the onus of proof as to whether or not the forfeiture by the Crown of the said 30 bags of Fenugreek (or Mathe) Seeds was unlawful was not upon the Crown but upon the Plaintiffs who did not discharge it.

(4) BECAUSE the concurrent findings of both Courts below are correct and ought not to be disturbed.

E.F.N. GRATIAEN

R.K. HANDOO

A N N E X U R E

THE CUSTOMS ORDINANCE

(C.235 Revised (1956) Edn.
Legislative Enactments of
Ceylon. Vol.8)

10 43. If any goods enumerated in the table of prohibitions and restrictions in Schedule B shall be imported or brought into Ceylon contrary to the prohibitions and restrictions contained in such table in respect thereof, such goods shall be forfeited, and shall be destroyed or disposed of as the Principal Collector of Customs may direct:

20 Provided that if any dangerous substance be imported or brought into Ceylon without the licence of the Minister, or contrary to any of the regulations which may be made from time to time by the Minister, for the safe landing and deposit of such substance, the person importing or bringing the same to Ceylon, and any person concerned in such importation or bringing of the same, shall, in addition to the forfeiture above provided, be guilty of an offence and be liable to a fine not exceeding one thousand rupees.

30 47. The person entering any goods inwards, whether for payment of duty or to be warehoused, or for payment of duty upon the taking out of the warehouse, or whether such goods be free of duty, shall deliver to the Collector a bill of entry of such goods, on a form of such size and colour as may be specified in that behalf by the Collector by notification published in the Gazette, and fairly written in words at length, expressing the name of the ship, and of the master of the ship in which the goods were imported, and of the place from which they were brought, and the description and situation of the

warehouse, if they are to be warehoused, and the name of the person in whose name the goods are entered, and the quantity, value, and description of the goods, and the number, dimensions, and denomination or description of the respective packages containing the goods, and such other particulars as the Collector by that or a subsequent notification may require him to furnish, and in the margin of such bill shall delineate the respective marks and numbers of such packages. If such person fails to deliver a bill of entry prepared as aforesaid, he shall be liable to a penalty of fifty rupees. Such person shall pay any duties and dues which may be payable upon the goods mentioned in such entry; and such person shall also deliver at the same time two or more duplicates of such bill, in which bill all sums and numbers may be expressed in figures, and the particulars to be contained in such bill shall be legibly written and arranged in such form and manner, and the number of such duplicates shall be such as the Collector shall require, and such bill of entry when signed by the Collector, or person authorised by him, and transmitted to the proper officer, shall be the warrant to him for the examination and delivery of such goods; but if such goods shall not agree with the particulars in the bill of entry the same shall be forfeited, and such forfeiture shall include all other goods which shall be entered or packed with them as well as the packages in which they are contained.

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123. It shall be lawful for the Collector to authorize the Officers of Customs to take samples of goods for the purpose of ascertaining the duties payable on such goods or for any other purpose relative to the Customs, and such samples shall be accounted for in such manner as the Collector may direct.

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SMUGGLING, SEIZURES, AND PROSECUTIONS
GENERALLY

10 125. All goods and all ships and boats which by this Ordinance are declared to be forfeited shall and may be seized by any Officer of the Customs; and such forfeiture of any ship or boat shall include the guns, tackle, apparel, and furniture of the same, and such forfeiture of any goods shall include all other goods which shall be packed with them as well as the packages in which they are contained; and all carriages or other means of conveyance, together with all horses and all other animals, and all other things made use of in any way in the concealment or removal of any goods liable to forfeiture under this Ordinance, shall be forfeited.

20 152. If any goods shall be seized for non-payment of duties or any other cause of forfeiture, and any dispute shall arise whether the duties have been paid for the same, or whether the same have been lawfully imported, or lawfully laden or exported, the proof thereof shall lie on the owner or claimer of such goods, and not on the Attorney-General or the Officer who shall seize or stop the same.

THE POISONS, OPIUM, AND DANGEROUS DRUGS
ORDINANCE

(C. 218)

28. No poppy plant, coca plant, or hemp plant, or seeds, pods, leaves, flowers, or any part of any such plant shall be imported or brought into or exported from Ceylon.

33. No person shall prepare, treat, or have in his possession any raw or prepared opium except as allowed by this Ordinance or by regulation or otherwise then in accordance with the terms of any licence for its use for scientific purposes granted by the Director.

No.1 of 1909

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

1. VELAYUTHAMPILLAI MANDIRAMPILLAI
2. MANDIRAMPILLAI VELAYUTHAMPILLAI

Carrying on business in
partnership under the name etc.
of "SAHA MANA RAWANNA & CO."

(Plaintiffs) Appellants

- and -

THE ATTORNEY-GENERAL OF CEYLON
(Defendant) Respondent

C A S E FOR THE RESPONDENT

MESSRS. HATCHETT JONES & CO.,
90 Fenchurch Street,
LONDON, E.C.3.