Privy Council Appeal No. 1 of 1969

Velayuthampillai Mandirampillai and another – – *Appellants*

v.

The Attorney-General of Ceylon – – – – – *Respondent*

FROM

THE SUPREME COURT OF CEYLON

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 28TH JULY 1969

Present at the Hearing:
LORD MORRIS OF BORTH-Y-GEST
LORD HODSON
LORD UPJOHN
LORD WILBERFORCE
LORD DIPLOCK

[*Delivered by* LORD MORRIS OF BORTH-Y-GEST]

The appellants who are father and son carried on business at all relevant times in partnership at Jaffna under the business or firm name of Sana Mana Rawanna & Co. The business was that of wholesale and retail general merchants and importers and exporters. In May 1961 the father, on behalf of the firm, ordered 50 bags of Fenugreek seed from a firm in Tuticorin. The son was the sole proprietor of that firm. They were exporters and importers. The goods were to be shipped direct to Jaffna. The firm in Tuticorin shipped packages, 50 in number, described on the Bill of Lading as being " Bags Fenugreek ", and having the marks " Mani ", for carriage to Jaffna. The son as the sole proprietor of the firm in Tuticorin made an export application there in respect of a consignment of goods described as Fenugreek seed and consisting of 50 bags with the marks " Mani ".

When the vessel on which the 50 bags had been shipped (the *Nooraniah*) reached its destination at Jaffna, an agent of the appellants, as importers of the goods, signed a Bill of Entry in respect of the goods. They were described as 50 bags Fenugreek seeds (Mathe seeds): the goods were entered as having a value of Rs.5,644 Cts.65. The agent, at the request of the sub-collector of Customs, went to the Customs warehouse into which the 50 bags had been carried and looked at them and took a sample of Fenugreek seeds which he produced for inspection. Fenugreek seeds are free of duty on importation. What then happened was that the Assistant Collector of Customs sent his officers to take samples from the 50 bags. They found that some of the bags did not contain Fenugreek seeds. Thirty of the bags did but 20 of them contained poppy seeds. The importation of poppy seeds is prohibited. It was further found that though all 50 bags had the mark MANI there was a distinction between the 30 bags and the 20 bags in that on the 30 but not on the 20 there was the additional mark " 218X ".

As a result of what was discovered the Assistant Collector of Customs made certain orders. He ordered the confiscation of the 20 bags of poppy seed. He had full power to make that order. It has not been contended otherwise. Furthermore, under section 127 of the Customs Ordinance (Chapter 185) now s. 129 he imposed a penalty of Rs.45,000, which penalty however, he mitigated to Rs.15,000. No question arises in the present proceedings in regard to the imposition of that penalty. But furthermore he made an order stated to be under s. 123 of the Customs Ordinance now s. 125 of Chapter 235 for the confiscation of the 30 bags of Mathe seed. The appellants contest the validity of that order. They claimed that they were entitled to have delivery of those 30 bags and claimed that there was illegal and wrongful detention of them by the Assistant Collector of Customs. Having given notice to the Collector of Customs that they intended to commence proceedings for the restoration to them of the goods or to recover their value, which was stated to be Rs.3,600, the appellants gave security to the satisfaction of the Collector in the sum of Rs.5,000 (see s. 154 of the Customs Ordinance Chapter 235) and received the 30 bags. After due notice given, the appellants, by their Plaint dated 1st August 1961, commenced their proceedings. Claiming that they had been entitled to take delivery of the 30 bags, their claim was in substance for a refund of the security of Rs.5,000 which they had deposited with the Collector of Customs. The issue in the action was therefore whether the detention and confiscation of the 30 bags was lawful.

The action was tried in the District Court of Jaffna. The first appellant, the father, gave evidence: the second appellant, the son, did not give evidence. The learned judge dismissed the action with costs. In his judgment (in March 1965) his conclusions were definite. He considered that the facts clearly showed that the two appellants had planned to introduce into the consignment of what should have been 50 bags of Fenugreek seeds, 20 bags which, instead of containing such seeds, in fact contained poppy seeds. He held that that was what the second appellant (the son) had done. He rejected an explanation which had been suggested by the first appellant (the father) in a statement to the Assistant Collector to the effect that a mistake had been made by the exporter in India. "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 second plaintiff as sole proprietor of Velautham Pillai and Company."

The learned judge further held as follows: "The burden was on the Crown to prove beyond reasonable doubt that the plaintiffs and their agents had put together the 50 bags sent by Velautham Pillai and Company 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. I hold that sufficient evidence has been led to satisfy the Court beyond reasonable doubt that this is exactly what happened." There had been submissions made to the learned judge in regard to the onus of proof and as to whether s. 152 of the Customs Ordinance Chapter 235 was or was not applicable. In this appeal counsel for the respondent was prepared to make a submission that the onus of proof as to whether the forfeiture by the Crown of the 30 bags of Fenugreek (or Mathe) seeds was lawful was not upon the Crown but that it was for the plaintiffs in the action to prove that the forfeiture was unlawful and that they had not done so. Their Lordships did not find it necessary to hear submissions in regard to these matters and express no opinion in regard to them.

Following his conclusions as summarised above the learned judge answered the first of the issues on which the case went to trial by saying that the refusal by the Customs to deliver the 30 bags and the detention of the 30 bags were lawful. The contention which the appellants submit in this appeal has relevance to that answer. In answering another of the issues the learned judge stated that under s. 47 of the Customs Ordinance (Chapter 235) there was entitlement to forfeit the 30 bags for the reason

that the goods which the plaintiffs had claimed (*i.e.*, the 50 bags lying in the warehouse) did not agree with the particulars in the Bill of Entry: those particulars referred to 50 bags Fenugreek seeds whereas actually only 30 contained such seeds while 20 contained poppy seeds.

The concluding words of s. 47 are as follows: " 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." The learned judge held that though in his order the Assistant Collector had not expressly referred to s. 47 it was open to the Crown to justify the forfeiture because in any event s. 47 had been contravened. The answer which the defendant had filed in the action had made no mention of s. 47 and by an Order made in March 1963 the District Court rejected an Amended Answer in which it was sought to introduce s. 47. The trial proceeded on the original answer and no issue had been based on s. 47. The appellants submitted that the learned judge was wrong in holding that the 30 bags could be forfeited under s. 47 inasmuch as they were not in fact forfeited under that section and they submitted that matters had proceeded on the basis that the forfeiture of those bags was under section 125 and not under section 47 and furthermore they submitted that section 47 was not contravened. The respondent was prepared to make a submission to the effect that the District Court had been in error in rejecting the Amended Answer and in rejecting certain issues which had been framed by defendant's counsel. Their Lordships did not find it necessary to hear the respondent's submission and accordingly express no opinion on any of these matters. Nor does any occasion arise to consider any of the contentions referable to s. 47 if on the findings of fact of the learned judge the confiscation of the 30 bags was lawful under the provisions of s. 125.

From the judgment of the learned judge the plaintiffs appealed to the Supreme Court of Ceylon. On 27th November 1967 the appeal was dismissed with costs. No oral or written judgments were delivered.

The central contention of the appellants was that the forfeiture and continued detention of the 30 bags was not lawful. In his order the Assistant Collector of Customs stated that the forfeiture was made under s. 123. That is now s. 125 of the Customs Ordinance Chapter 235. It is in the following terms:

> " 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."

The finding of the learned judge having been that the appellants had " planned to conceal poppy seeds in the consignment and that the 30 bags were used to conceal 20 bags of poppy seeds ", it was submitted on behalf of the appellants that the learned judge had misconceived the meaning in the section of the word " concealment " and that the facts of the case did not warrant a finding that there had been " concealment ". It was submitted that the word concealment, in its context, involved that there should be something in the nature of a secret disposition having the result that goods were hidden or were in some way removed from observation or were placed somewhere so as to avoid detection. Reference was made in support of this submission to the wording in certain sections of the Customs Ordinance Chapter 235 (such as sections 30, 75, 107, 129, 132 and 150). Accordingly it was argued that on the facts of this case there was no concealment of the 20 bags: that they were fully exposed to view: that they were in no way hidden or

placed in any such way that they would not be seen or observed: that accordingly even if the appellants had planned in the way that the learned judge thought that they had planned even so the 30 bags were not used in the concealment of the goods which were liable to forfeiture.

While the word concealment in its context may fully embrace the conceptions above noted their Lordships cannot accept that it does not cover the situation that existed in the present case. On the findings of the learned judge the appellants planned to import prohibited goods which were liable to forfeiture. The prohibited goods consisted of the poppy seed which would be contained in some of the bags of a group of bags which were described as all containing duty free permitted imports. In the normal course of events there would be every chance that the plan would succeed. Provided that a sample was taken from a bag described as containing Fenugreek seeds and in fact containing them there would be every likelihood that the Customs would readily accept that all the bags contained what they were said to contain. On the facts as found the Customs were induced to believe that the unseen contents of the 50 bags were all the same and were all permissible imports. The whole scheme as found by the learned judge involved that there should be an intentional suppression of the true facts.

The means employed in the scheme to smuggle in the poppy seed which was in the 20 bags involved that there should be 50 bags all having the one mark and all purporting to contain the same kind of goods and therefore goods of the same value and involved that the 30 bags should truly contain what they were said to contain. The use in that way of the 30 bags was an essential part of the plan. It was made to appear that the contents of the 20 bags were the same as those of the 30 so that all 50 would seem to be the same with the result that the prohibited goods could pass through with the others and under the cloak or protection of apparent legality. The addition of a special mark (218X) to the 30 bags, would enable samples to be taken from these bags and so avoid detection of the illegal contents of the remaining 20 bags. If then the question is posed whether the 30 bags and their contents were " made use of in any way in the concealment " of poppy seeds liable to forfeiture their Lordships consider that the answer must be in the affirmative. For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellants must pay the costs of the respondent.

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