

20, 1969

20

No. **1** OF 1969

SUPREME COURT OF CEYLON,
No. 165 (FINAL) OF 1965.

DISTRICT COURT OF JAFFNA,
CASE No. 1870/M

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

Between

- 1. Velayuthampillai Mandirampillai,
- 2. Mandirampillai Velayuthampillai,

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

(Plaintiffs-Appellants)
APPELLANTS.

And

The Attorney-General of Ceylon, Colombo.

(Defendant-Respondent)
RESPONDENT.

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

RECORD OF PROCEEDINGS

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RECORD OF PROCEEDINGS

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No. 1
Journal Entries
IN THE DISTRICT COURT OF JAFFNA

No. 1
Journal
Entries-
1. 8. 61
to
15. 6. 68

1. V. Mandirampillai
2. M. Velayuthampillai of Jaffna..... *Plaintiffs.*

No. M. 1870
Class: IV
Amount: Rs. 8600/-
Nature: Money
10 Procedure: Regular

Vs.

Attorney-General of Ceylon..... *Defendant.*

JOURNAL

The 1st day of August, 1961.

M/S. Ratnasingham & Subramaniam file appointment and plaint and move that summons be issued on the Defendant.

Plaint accepted and summons ordered for 5.10.61

Sgd. C. Thanabalasingham.
Additional District Judge

20 20.9.61

Summons to Defendant issued with Precept returnable the 3rd day of October 1961, through Fiscal Western Province.

Intd

30 9.61

Returns filed.

Intd

5.10.61

M/S Ratnasingham & Subramaniam for Plaintiffs.
Summons served on defendant.

30

Mr. Ratnasingham states that Attorney-General has sent proxy to him. but he is unable to appear. He will inform the Attorney-General

Call case on 16.11.61.

Sgd. C. Thanabalasingham.
Additional District Judge.

No. 1
Journal
Entries-
1. 8. 61.
to
15. 6. 68
—Continued

16. 11. 61
M/S Ratnasingham & Subramaniam for Plaintiffs. Vide Journal entry of 5.10.61. Proxy of Defendant filed by Mr. C. C. Somasegaram. Answer on 6.2.62.

Sgd. C. Thanabalasingham
Additional District Judge

2. 2. 62

Proctor for defendant files answer and moves that same be filed of record and mentioned on 6.2.62.

Mention on 6.2.62

10

Sgd. C. Thanabalasingham
Additional District Judge

6. 2. 62

M/s Ratnasingham & Subramaniam for Plaintiff.

Mr. C. C. Somasegaram for Defendant

Answer due - filed.

Vide Journal entry of 2.2.62

Trial on 13.4.62

Sgd. C. Thanabalasingham
Additional District Judge

20

15. 2. 62

As the trial in the above case is fixed for 13.4.62 and the date does not suit the Counsel for Plaintiff Proctor for plaintiff moves with the consent of the Proctor for defendant that the Court be pleased to postpone the case other than a Thursday or Friday.

The convenience of Counsel should have been mentioned at the time the case was called and fixed for trial -

The Proctor for plaintiff may retain another Counsel who can appear on that date.

Application for postponement refused.

30

Sgd. C. Thanabalasingham
Additional District Judge

4. 4. 62

1. Proctor for defendant files list of witnesses
2. Summons issued to Fiscal Marshal Kayts. Fiscal Northern Province and Fiscal Western Province.

Intd

7 4. 62

Proctor for plaintiff files list of witnesses and documents and cites 2. Summons issued to Fiscal Northern Province.

Intd

40

13. 4. 62

TRIAL -1

M/s. Ratnasingham & Subramaniam for Plaintiff.
Mr. C. C. Somasegaram for Defendant
Vide proceedings.
Trial refixed for 6.6.62.

No. 1
Journal
Entries-
1. 8. 61
to
15. 6. 68
---Continued

Sgd. C. Thanabalasingham
Additional District Judge.

16. 4. 62

Typed proceedings submitted for signature.

Intd

22. 5. 62

10 Proctor for Plaintiff files amended list of witnesses and documents
along with two sets of summons, and moves for service.

Cite.

Intd

Additional District Judge

23. 5. 62

Summons issued through Fiscal Northern Province

Intd..... .

26. 5. 62

20 Summons issued to Fiscal Northern Province and Fiscal
Marshal Kayts.

Intd... ..

6. 6. 62

TRIAL (2)

M/s. Ratnasingham & Subramaniam for Plaintiff.
Mr. C. C. Somasegaram for Defendant.
vide proceedings.

Trial refixed for 5.9.62.

Sgd. C. Thanabalasingham
Additional District Judge

30 12. 6. 62

Typed proceedings submitted for signature please.

Intd

20.8.62

Summons on plaintiffs' 2 witnesses issued through Fiscal
Northern Province and Fiscal Marshal Kayts.

Intd

20.8.62

Plaintiffs' additional list of witnesses and documents filed.

Intd

TRIAL (3)

No. 1
Journal
Entries-
1. 8. 61.
to
15. 6. 68
—Continued

5. 9. 62

M/S Ratnasingham & Subramaniam for plaintiff.

Mr. C. C. Somasegaram for Defendant.

Vide proceedings.

Take case off trial roll.

Amended Answer on 12.10.62

Sgd. C. Thanabalasingham.
Additional District Judge

12. 10. 62

M/S. Ratnasingham & Subramaniam for Plaintiff.

Mr. C. C. Somasegaram for Defendant.

Amended Answer due - filed.

Call on 19.11.62 to enable the Counsel for Plaintiff to raise
any objections to the amendment and to fix date of trial.

Sgd./C. Thanabalasingham.
Additional District Judge

19. 11. 62

M/S. Ratnasingham & Subramaniam for Plaintiff.

Mr. C. C. Somasegaram for Defendant.

Vide Journal Entry of 12.10.62

1. To fix date of trial.

Mr. Soorasangan (Advocate) instructed for Plaintiffs, objects to
the amended answer being accepted.

Inquiry 8.1.63

Sgd/C. Thanabalasingham.
Additional District Judge.

8. 1. 63

INQUIRY

M/s. Ratnasingham & Subramaniam for Plaintiff

Mr. C. C. Somasegaram for Defendant

Vide proceedings.

Inquiry refixed for 23. 1. 63

Sgd. C. Thanabalasingham
Additional District Judge.

10. 1. 63

Typed proceedings submitted for signature please.

Intd

.....

10

20

30

23. 1. 63

INQUIRY (2)

M/s. Ratnasingham & Subramaniam for Plaintiff
 Mr. C. C. Somasegaram for Defendant
 Vide proceedings.
 Order on 12. 3. 63.

No. 1
 Journal
 Entries-
 1. 8. 61
 to
 15. 6. 68
 —Continued

Sgd. C. Thanabalasingham
Additional District Judge.

24. 1. 63

10 Typed proceedings submitted for signature please.

Intd

30. 1. 63

Document P1. filed.

Intd

12. 3. 63

ORDER

M/s. Ratnasingham & Subramaniam for Plaintiff-present.
 Mr. C. C. Somasegaram for Defendant-present.

20 Order delivered in the presence of proctor for plaintiffs and
 proctor for defendant. Call case on 16. 4. 63. to fix date of trial.

Sgd. C. Thanabalasingham
Additional District Judge.

29. 4. 63

M/s. Ratnasingham & Subramaniam for Plaintiff
 Mr. C. C. Somasegaram for Defendant.
 Case called Vide Journal entry of 12. 3. 63 to fix date of trial.
 Trial on 26. 7. 63

Sgd. Illegibly
Additional District Judge
 29. 4. 63.

30

11. 7. 63

Summons to witnesses issued through Fiscal Western Province
 and Fiscal Marshal Kayts.

12. 7. 63

Summons on Plaintiffs' witness (1) issued through District Magist-
 rate, Tuticorin, South India.

Intd...

26 7. 63

Trial

40

M/s. Ratnasingham & Subramaniam for Plaintiff
 Mr. C. C. Somasegaram for Defendant,
 No time.

I have a part heard case P 333 for hearing today.
 Trial refixed for 16. 12. 63. specially fixed.

Sgd. Illegibly.
Additional District Judge.
 26. 7. 63.

No. 1
Journal
Entries-
1. 8. 61.
to
15. 6. 68
-Continued

1. 11. 63

Proctors for plaintiffs move that Summons on witness K. Chelliapillai of Tuticorin be reissued as it was not served on the last occasion.

They further move that the summons be reissued through District Magistrate, Tuticorin in South India.

Reissue summons on witness Chelliapillai in terms of motion filed on proper papers being supplied together with Money Order to cover expenses of service, if any.

Sgd. Illegibly
Additional District Judge. 10

27. 11. 63

Summons on plaintiffs' witness (1) issued through District Magistrate, Tuticorin. South India.

2. 12. 63

Defendant's witness cited.

Intd

2. 12. 63

Assistant High Commissioner requests by his of 27. 11. 63 to let him know whether the presence of witness K. Chelliah Pillai of Tuticorin is required as a witness in D. C. Jaffna Case No. 1870/M so as to enable him to issue him a visa. 20

Refer to Proctor for plaintiff for steps.

Sgd. Illegibly,
Additional District Judge.

6. 12. 63

Copy of letter sent to Proctor for Plaintiff.

Intd... ..

9/10. 12. 63

Proctors for the plaintiffs submit that the evidence of K. Chelliapillai of No. 6, Sivam Kovil Street, Tuticorin is very material and move that the Court be pleased to give direction by telegram at the expense of the plaintiff to the Ceylon High Commissioner in Madras to issue the visa for him. 30

They further submit that summons has already been issued on him through the District Magistrate, Tuticorin and that this case is fixed for trial on 16. 12. 63.

Support on 12. 12. 63.. ..

Sgd. Illegibly.
Additional District Judge. 40
10. 12. 63.

12. 12. 63

M/s. Ratnasingham & Subramaniam for plaintiffs.
 Application under Journal Entry of 9/10. 12. 63 to be supported.
 Mr. Advocate Soorasagaram for plaintiff states he is withdrawing
 application made on 9. 12. and will renew it later.

No. 1
 Journal
 Entries-
 1. 8. 61
 to
 15. 6. 68
 --Continued

Note.

Sgd. Illegibly
Additional District Judge.
 12. 12. 63.

10 16. 12. 63

(TRIAL)

M/s. Ratnasingham & Subramaniam for Plaintiff
 Mr. C. C. Somasegaram for Defendant. - No time A part heard
 case P333 is going on and will take the day.
 Trial refixed for 13. 3. 64. specially fixed.

Sgd. Illegibly
Additional District Judge.
 16. 12. 63.

21. 12. 63

20 Returns filed.

Intd ...

3. 1. 64

Proctors for Plaintiff file affidavit of the 1st Plaintiff and
 for reasons stated therein move that the Court be pleased to direct
 the Assistant High Commissioner for Ceylon in Madras to issue a
 visa to witness K. Chelliahpillai of 47, Beach Road, Tuticorin to
 attend Court on 13. 3. 64.

File proper affidavit and move.

Sgd. Illegibly.
Additional District Judge.
 6. 1. 64.

30

21. 2. 64

Proctors of Plaintiff file affidavit of the Attorney of the 1st
 Plaintiff together with certified copy of the Power of Attorney
 with notice to the Proctor for defendant and move that the Acting
 High Commissioner of Ceylon be directed to issue a visa for
 witness K. Chelliah Pillai of 47, Beach Road, Tuticorin to attend
 the trial of the case on 13. 3. 64.

Proctor for Defendant received notice.

40

No counter affidavit has been filed by Proctor for Defendant.

No. 1
Journal
Entries-
1. 8. 61.
to
15. 6. 68
-Continued

On a consideration of the affidavit it would appear that witness K. Chelliah Pillai is a material witness for Plaintiff.

Inform Acting High Commissioner for Ceylon that in the circumstances he may issue a visa to K. Chelliah Pillai as he appears to be a material witness on the affidavit filed by Plaintiff.

Sgd. Illegibly.
Additional District Judge

10. 3. 64

Returns filed.

Intd 10

11. 3. 64

Returns filed.

Intd

13. 3. 64

TRIAL

M/s. Ratnasingham & Subramaniam for Plaintiff

Mr. C. C. Somasegaram for Defendant.

Vide proceedings.

Further trial on 24. 4. 64

Sgd. Illegibly
Additional District Judge. 20
13. 3. 64.

14. 4. 64

Plaintiffs' witnesses cited through Fiscal Northern Province.
not filed.

20. 4. 64

Returns filed.

Intd

21. 4. 64

Requisition filed.

Intd... ..

22. 4. 64

Typed proceedings for signature.

Intd 30

24. 4. 64

Further trial.

M/s. Ratnasingham & Subramaniam for Plaintiff.

Mr. C. C. Somasegaram for Defendant.

Vide proceedings.

Further trial on 26. 6. 64.

Sgd. Illegibly
Additional District Judge. 40
24. 4. 64.

5. 5. 64

Typed proceedings for signature.

23. 6. 64

Proctors for Plaintiff file medical certificates to the effect that the 1st Plaintiff is ill and an inmate of a Colombo Private Hospital and move that the date of trial be postponed. They submit that the 1st plaintiff is the only plaintiff resident in Ceylon.

Mention on 26. 6. 64

10

Intd
Sgd. Illegibly
Additional District Judge.
25. 6. 64.

26. 6. 64

Further Trial

M/s. Ratnasingham and Subramaniam for Plaintiff.

Mr. C. C. Somasegaram for Defendant.

Journal entry of 23.6.64 mentioned. Proctors for plaintiffs move for postponement of trial - 1st plaintiff ill.

By consent on 6.7.64 to fix further date of trial.

20

Sgd. Illegibly
Additional District Judge.

27. 6. 64

Proceedings for signature.

Intd

6. 7. 64

M/s. Ratnasingham & Subramaniam for Plaintiff

Mr. C. C. Somasegaram for Defendant

Case called to fix date of trial.

By consent call on 9.7.64 to fix further date of trial.

30

Sgd. Illegibly
Additional District Judge.
6. 7. 64

9. 7. 64

Case called to fix date for further trial.

Call before Additional District Judge on 14. 7. 64

Intd

14. 7. 64

M/s. Ratnasingham & Subramaniam for Plaintiffs.

Mr. C. C. Somasegaram for Defendants

Case called to fix date of trial.

Further trial on 13. 10. 64

40

Sgd. Illegibly
Additional District Judge,
14. 7. 64

No. 1
Journal
Entries-
1. 8. 61
to
15. 6. 68
-- Continued

No. 1
Journal
Entries—
1. 8. 61.
to
15. 6. 68
—Continued

- 29 9. 64
Summons on defendant's witnesses issued through Fiscal Northern
Province, Fiscal Marshal Kayts, Fiscal Colombo.
Intd
13. 10. 64
Trial (further hearing)
M/s. Ratnasingham & Subramaniam for Plaintiffs.
Mr. C. C. Somasegaram for Defendants
Vide proceedings.
Addresses on 23. 11. 64.
Sgd. Illegibly
Additional District Judge.
13. 10. 64 10
19. 10. 64
Proceedings submitted for signature please
Intd
22. 10. 64
Return filed.
Intd
23. 11. 64
M/s. Ratnasingham & Subramaniam for plaintiffs.
Mr. C. C. Somasegaram for Defendant.
Addresses.
Additional District Judge is on leave.
Call case on 1. 12. 64
Intd
District Judge
23. 11. 64 20
1. 12. 64
M/s. Ratnasingham & Subramaniam for Plaintiffs.
Mr. C. C. Somasegaram for Defendant
Addresses on 15. 12. 64.
Sgd. Illegibly
Additional District Judge. 30
15. 12. 64
M/s. Ratnasingham & Subramaniam for Plaintiffs.
Mr. C. C. Somasegaram for Defendants.
Addresses.
Vide proceedings.
C. A. V.
Judgment on 26. 2. 64
Sgd. Illegibly
Additional District Judge
15. 12. 64 40

No. 1
Journal
Entries-
1. 8. 61
to
15. 6. 68
-- Continued

29. 12. 64
Documents D1 - D7 filed

Intd

5. 1. 65
Proceedings submitted for signature.

Intd

25. 1 65
Documents P1 - P9 filed

Intd

10 26. 2. 65
Judgment due-not ready.
Judgment on 11. 3. 65

Sgd. Illegibly
Additional District Judge.
26. 2. 65

11. 3. 65
Judgment due-delivered in open Court in the presence of
M/s. Ratnasingham & Subramaniam for Plaintiffs absent-Mr. Nava-
ratnarajah takes notice for Proctor for plaintiff

20 Mr.C. C. Somasegaram for defenciant (Honourable Attorney General)
present.

Plaintiffs are absent. Enter Decree accordingly.

Sgd. Illegibly.
Additional District Judge.

19. 3. 65
20. 3. 65

Proctors for plaintiffs file petition of appeal of the Plaintiffs-
Appellants duly stamped, certificate in appeal and tender stamps to
the value of Rs. 28/-for Supreme Court Decree and notice of tendering
security and move.

30 (1) that the petition of appeal be accepted.
(2) that the stamps be affixed to respective documents.
(3) that notice of tendering of security be issued on the defendant
and his proctor Mr. C. C. Somasegaram, returnable 1st April, 1965.

- (1) File Petition of appeal
- (2) Issue notices tendering security returnable 1. 4. 65
- (3) Enter in Appeal Register
- (4) Open sub - file for appeal steps and thereafter original
record to be kept in safe.

Sgd. Illegibly
Additional District Judge.
20. 3. 65

No. 1
Journal
Entries-
1. 8. 61.
to
15. 6. 68
—Continued

20. 3. 65	Notices issued.	Intd	
1. 4. 65	M/s. Ratnasingham & Subramaniam for Plaintiffs-Appellants. M/s. C. C. & S. Somasegaram for Defendant-Respondent. Notice of tendering security served on Defendant-Respondent and his Proctors. The Honourable Attorney-General, Defendant-Respondent, M/s. C. C. & S. Somasegaram, Proctors			10
	(1) Security fixed at Rs. 200/- (cash) (2) Perfect Bond. (3) Issue Paying in Voucher (4) Issue notice of appeal returnable 5. 5. 65.			
		Sgd. Illegibly Additional District Judge.	1 4. 65	
2. 4. 65				
8. 4. 65	Proctors for Plaintiffs-Appellants file Bond to prosecute appeal duly perfected together with Treasury Receipt for Rs 200/-, application for typewritten copy together with Treasury Receipt for Rs. 15/- being fees for typewritten copy of the appeal brief and notice of appeal. Filed.			20
		Intd	
8. 4. 65	Notices issued returnable 2. 5. 65.			
		Intd		
26. 4. 65	Return filed.			
		Intd	30
5. 4. 65	M/s. Ratnasingham & Subramaniam for Plaintiffs - Appellants M/s. C. C. & S. Somasegaram for Defendant-Respondent Notice of appeal served on the Defendant-Respondent, the Honourable Attorney - General. Forward record to the Supreme Court.			
		Sgd. Illegibly Additional District Judge.	5. 4. 65.	
27. 5. 65	Decree checked and submitted			40
		Intd...	

5. 12. 67
 11. 12. 67

Record received from Registrar, Supreme Court together with Supreme Court Decree and 2 Volumes.

1. Appeal is dismissed with costs.
2. Enter in Appeal register.
3. Proctors for both parties to note.

No. 1
 Journal
 Entries-
 1. 8. 61
 to
 15. 6. 68
 —Continued

Sgd. Illegibly.
Additional District Judge.
 12. 12. 67

10

15. 6. 68

Registrar, Supreme Court, Colombo requests that original record of proceedings be sent to him.

Forward record and the connected papers to Supreme Court forthwith.

Sgd. Illegibly.
Additional District Judge.

No. 2
Plaint of the Plaintiffs

No. 2
 Plaintiff of the
 Plaintiffs-
 1. 8. 61

20

IN THE DISTRICT COURT OF JAFFNA.

Nature: Decla- 1. Velayuthampillai Mandirampillai
 ration in respect 2. Mandirampillai Velayuthampillai carrying on
 of 30 bags of business in partnership under the name, style
 Fenugreek seeds. and firm of "Sana Mana Rawanna & Company"
 Claim: Rs. 8,600/- at 212, Hospital Road, Jaffna... *...Plaintiffs*
Vs.

No. M/1870

The Attorney General of Ceylon, Colombo.

Defendant.

30 On this 1st day of August, 1961.

The plaint of the plaintiffs abovenamed appearing by their Proctors Messrs. K. Ratnasingham and G. V. Subramaniam carrying on business in partnership under the name, firm and style of "Ratnasingham & Subramaniam" states as follows:-

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.

No. 2
 Plaintiffs-
 1. 8. 61
 —Continued

2. The defendant is the Attorney-General of Ceylon and is sued in this action as representing the Crown.

3. The cause of action hereinafter set out arose at Kayts within the local limits of the Jurisdiction of this Court.

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. 10

6. The plaintiffs are entitled according to law to be given delivery of the 30 bags of Mathe seeds that has been landed and available for delivery to them.

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, Northern Province, Jaffna, illegally and wrongfully detained the said 30 bags of Mathe seeds. 20

8. The said Assistant Collector of Customs, Jaffna, has illegally and wrongfully refused to return the said 30 bags of Mathe seeds although thereto often demanded. The said 30 bags of Mathe seeds are reasonably worth Rs. 3,600/-.

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 to sue the defendant as representing the Government of Ceylon for a declaration that the plaintiffs are entitled in law to the said 30 bags of Mathe seeds or in the alternative for the recovery of their value to wit Rs. 3,600/- from the defendant. 30

11. On the 3rd day of July, 1961 the plaintiffs gave due notice in writing as owners of the said Mathe seeds to the Collector of Customs, Northern Province, Jaffna, that the plaintiffs intended to enter a claim in this Court for the restoration of the said goods or to recover their value. The plaintiffs further duly gave security to

the satisfaction of the said Collector of Customs in a sum of Rs. 5000/- as required by Section 146 of the Customs' Ordinance Chapter 186 of the Legislative Enactments of Ceylon to prosecute and otherwise to satisfy the judgment of this Court.

No. 2
Plaint of the
Plaintiffs-
1. 8. 61
—Continued

12. The plaintiffs have duly given notice in writing dated 28th day of June, 1961 as required by Section 461 of the Civil Procedure Code stating the cause of action set out herein, the name, place and address of the plaintiffs and the relief claimed herein.

Wherefore the plaintiffs pray:-

- 10 (a) that the plaintiffs be declared entitled to the said 30 bags of Mathe seeds.
- (b) that the Collector of Customs, Northern Province, Jaffna, be decreed and ordered to restore the goods to the plaintiffs and the plaintiffs be quieted in possession thereof.
- (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, Northern Province, Jaffna, and
- 20 (e) for costs
and for such other and further relief as to this Court shall seem meet.

Sgd: Ratnasingham & Subramaniam
Proctors for Plaintiffs.

No. 3

Affidavit of V. Mandirampillai (1st Plaintiff)

IN THE DISTRICT COURT OF JAFFNA

No. 3
Affidavit of
V. Mandirampillai,
(1st Plaintiff)-
1. 8. 61

30 1. Velayuthampillai Mandirampillai
2. Mandirampillai Velayuthampillai carrying on business in partnership under the name, firm & style of Sana Mana Rawanna & Co., at 212 Hospital Road, Jaffna..... *Plaintiffs*

Vs.

No. M-1870

The Attorney-General of Ceylon, Colombo. ...
..... *Defendant*

No. 3
Affidavit of
V. Mandirampillai,
(1st Plaintiff)-
1. 8. 61
—Continued

I, Velayuthampillai Mandirampillai the 1st plaintiff abovenamed of the Firm of Messrs. Sana Mana Rawanna & Co. of 212 Hospital Road, Jaffna do hereby solemnly, sincerely and truly declare and affirm as follows:-

1. I am the 1st plaintiff abovenamed.

2. I am the partner of Messrs. Sana Mana Rawanna & Co. of 212, Hospital Road, Jaffna, carrying on business in partnership who are General Merchants and Agents.

3. I and Mandirampillai Velayuthampillai carrying on business in partnership under the name, firm and style of Messrs. Sana Mana Rawanna & Co. of 212 Hospital Road, Jaffna are the owners of the thirty bags of Mathe seeds detained at the Customs Warehouse, Kayts and of the value of Rs. 3,600/-. 10

4. By letter dated the 3rd day of July, 1961 the said Firm has given notice in writing to the Collector of Customs, Northern Province, Jaffna in terms of section 146 of the Customs' Ordinance of my intention to enter a claim in this Court to the said thirty bags of Mathe seeds.

5. The said Firm has given security in a sum of Rs. 5,000 in cash in terms of Section 146 of the Customs' Ordinance and the Collector of Customs, Northern Province, Jaffna has accepted the same. 20

Signed and affirmed to the)
truth and correctness thereof) Sgd. Illegibly
at Jaffna on this 1st day of) Before me.
August, 1961.)

Sgd. Illegibly
Justice of the Peace.

Drawn by,
Sgd. Ratnasingham & Subramaniam
Proctors for Plaintiffs.

No. 4

Answer of the Defendant

IN THE DISTRICT COURT OF JAFFNA

No. 4
Answer of the
Defendant-
31. 1. 62

1. Velayuthampillai Mandirampillai
2. Mandirampillai Velayuthampillai carrying on
business in partnership under the name, style and
firm of "Sana Mana Rawanna & Co.," at 212,
Hospital Road, Jaffna *Plaintiffs.*

No. 1870/M.

Vs.

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The Attorney-General of Ceylon, Colombo.
..... *Defendant.*

On this 31st day of January 1962.

The Answer of the defendant abovenamed appearing by Canthavanam Chelliah Somasegaram, his Proctor, states as follows:-

1. The Defendant is unaware of the averments in paragraph 1 of the plaint.

2. The defendant admits the averment in paragraph 2 of the plaint.

3. Answering paragraph 3 of the plaint the defendant admits
20 the jurisdiction of this Court but denies that any cause of action
has accrued to the plaintiffs to sue the defendant.

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., submitted an entry for 50 bags
"Fennu Greek Seed" 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.

30 5. The defendant is unaware of the averments in paragraphs
5 and 6 of the plaint.

6. Answering paragraph 7 of the plaint the defendant admits
that by letter dated 5th June, 1961 the Assistant Collector of Customs,
Northern Province, Jaffna, informed the first plaintiff that thirty
bags of Mathe Seeds were confiscated under section 125 of the Customs
Ordinance but specifically denies that the said Assistant Collector
illegally and wrongfully detained the said thirty bags of Mathe Seeds.

7. The defendant denies the averments in paragraphs 8, 9 and
10 of the plaint.

No. 4
 Answer of the
 Defendant-
 31. 1. 62
 —Continued

8. The defendant admits the averments in paragraphs 11 and 12 of the plaint.

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." 10
- (c) The entire consignment of 50 bags were imported into the Island unlawfully and in contravention of the provisions, prohibitions and restrictions of the Customs Ordinance (Chapter 235) Poisons, Opium & Dangerous Drugs Ordinance (Chapter 218), and other laws, rules, regulations and orders applicable to the import of the said goods into the Island. 20
- (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 (Chapter 285) read with Sections 28 and 33 of the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218), and the provisions of other laws, rules, regulations and orders applicable to the import of the said goods into the Island.

Wherefore the Defendant prays:-

- (a) that the plaintiffs' action be dismissed; 30
- (b) for costs; and
- (c) for such other and further relief as to the Court shall seem meet.

Sgd: C. C. Somasegaram
Proctor for Defendant

Settled by. P. Colin Thome, Crown Counsel.

No. 5
Proceedings before the District Court

No. 5
Proceedings
before the
District Court—
13. 4. 62
and
6. 6. 62

13. 4. 62

Mr. Ratnasingham for plaintiff.

Mr. Advocate Muttusamypillai instructed for defendant.

Mr. Ratnasingham moves for a date on the ground that his Counsel, Mr. Kulasingham, is ill.

As Mr. Kulasingham is ill, I am allowing a date. In any event plaintiff will not be entitled to costs of today.

10 Trial postponed for 6. 6. 62.

Witnesses of the Crown Mr. K. P. W. Fernando, Sub-collector, Customs, Jaffna, Mr. Amirthalingam, Assistant Preventive Officer, Mr. A. Manickavasagar, Landing Tide Waiter and Mr. F. X. Christopher, Entry Clerk, are warned to appear on the next date. If they are entitled, batta will be paid by the Crown.

Sabaratnam also warned to appear on the next date. Plaintiff will pay plaintiff's witnesses batta, if payable.

Intd
Additional District Judge

20

6. 6. 62

1st plaintiff present.

Mr. Advocate Soorasangan instructed for plaintiff.

Mr. Somasegaram for Attorney-General states that the Crown Advocate, Mr. T. Muttusamypillai, is acting for the District Judge today, and moves for a date.

Of consent trial refixed for 5. 9. 62.

Sgd. C. Thanbalasingham
Additional District Judge.

Issues Framed and Order of the District Court

5. 9. 62

Plaintiff present.

Mr. Advocate Kulasingham with Mr. Advocate Soorasangan instructed for plaintiffs.

Mr. Advocate Muttusamypillai, Crown Advocate instructed for defendant.

Counsel heard.

Mr. Kulasingham frames the following issues:-

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1. Is the refusal to deliver the 30 bags of Mathe Seeds or Fennu Greek Seeds and/or their detention by the Customs referred to in the answer of the defendant, lawful?

2. If the above issue is answered in the negative

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

(b) Is the collector of customs liable to be ordered to return the Rs. 5,000/- given as security.

3. What is the value of the 30 bags of Mathe Seeds at the time of the refusal to deliver or at the time of detention?

20

Mr. Muttusamypillai frames the following issues:-

4. Did the plaintiff through his representative V. Sabaratnam submit entry marked No. 1 of 1 6. 61 for removing 50 bags said to contain Mathe Seeds or Fennu Greek Seeds, marked 'Mani' to Mr. Manickavasagar, Landing Waiter, Kayts?

5. Did 20 bags out of the said lot of 50 bags contain White Poppy Seeds?

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

30

Mr. Kulasingham objects to issue 5, on the ground that the 20 bags of White Poppy Seeds were assumed to be part of the 50 bags of Mathe Seeds which the plaintiff has ordered.

In view of this Mr. Muttusamypillai moves to amend issue No. 6 with the addition of the following words:-

"lawfull under Section 43 and 47 and Section 125 of the Customs Ordinance, Chapter 285 read with Section 26, 28 and 33 of the Poisons, Opium & Dangerous Drugs Ordinance, Chapter 218."

Mr. Kulasingham objects to issue No. 6 even as amended on the ground that Section 47 of the Customs Ordinance, Cap. 285, has not been pleaded. Mr. Kulasingham also submits that the Customs had not forfeited under Section 47 of the Customs Ordinance, nor had the Customs in their answer stated that they had forfeited under Section 47 of the Customs Ordinance. Apart from this, with regard to issue No. 5, it assumes that 20 bags of White Poppy Seeds are part of the unit of 50 bags.

No. 6
Issues Framed
and Order of
the District
Court—
5. 9. 62
—Continued

10 Mr. Kulasingham submits that the 20 bags are not part of the 50 bags, but they are separate units.

In view of this, I order the defendant to amend the answer with notice of the amendment to the plaintiffs. Plaintiffs will be given an opportunity to object to any amendments.

Defendant will pay the taxed costs of today to the plaintiff. Take case off trial roll. Amended Answer on 12. 10. 62.

Sgd. C. Thanabalasingham
Additional District Judge.

No. 7
Amended Answer of the Defendant
IN THE DISTRICT COURT OF JAFFNA

No. 7
Amended
Answer of the
Defendant—
12. 10. 62

20

1. Velayuthampillai Mandirampillai
 2. Mandirampillai Velayuthampillai, carrying on business in partnership under the name style and firm of "Sana Mana Rawanna & Co." at 212 Hospital Road, Jaffna
- Plaintiffs.

No. M/1870

Vs.

The Attorney-General of Ceylon, Colombo ...
..... Defendant.

30 On this 12th day of October, 1962.

The amended answer of the defendant abovenamed appearing by C. C. Somasegaram his Proctor states as follows:-

1. The defendant is unaware of the averments in paragraph 1 of the plaint and puts the plaintiff to the proof thereof.

2. The defendant admits the averment in paragraph 2 of the plaint.

No. 7
Amended
Answer of the
Defendant-
12. 10. 62
-Continued

3. Answering paragraph 3 of the plaint the defendant admits the jurisdiction of this court but denies that any cause of action has accrued to the plaintiffs to sue the defendant.

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. submitted an entry for 50 bags of "Fenu Greek Seed" marked "Mani" to Mr. Manikavasagar, 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. 10

5. The defendant is unaware of the averments in paragraphs 5 and 6 of the plaint.

6. Answering to paragraph 7 of the plaint the defendant admits that by letter dated 5th June 1931 the Assistant Collector of Customs, Northern Province, Jaffna, informed the first plaintiff that thirty bags of Mathe Seeds were confiscated under section 123 of the Customs Ordinance but specifically denies that the said Assistant Collector illegally and wrongfully detained the said thirty bags of Mathe Seeds. 20

7. The defendant denies the averments in paragraphs 8, 9 and 10 of the plaint.

8. The defendant admits the averments in paragraphs 11 and 12 of the plaint.

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." 30

(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."

(c) The entire consignment of 50 bags were imported into the Island unlawfully and in contravention of the provisions, prohibition and restrictions of the Customs 40

Ordinance (Chapter 235) Poison, Opium and Dangerous Drugs Ordinance (Chapter 218) and other laws, rules, regulations and orders applicable to the import of the said goods into the Island.

No. 7
Amended
Answer of the
Defendant-
12. 10. 62
—Continued

(d) In consequence of the above averments the entire consignment of 50 bags became forfeit by the Customs under the provisions of sections 43, 47 and 125 of the Customs Ordinance (Chapter 235) read with Sections 28 and 33 of the Poisons, Opium and Dangerous Drugs Ordinance (Chapter 218) and the provisions of other laws, rules, regulations and orders applicable to the import of the said goods into the Island.

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Wherefore the defendant prays:

- (a) that the plaintiffs' action be dismissed:
- (b) for costs, and
- (c) for such other and further relief as to this Court shall seem meet.

Sgd. C. C. Somasegaram
Proctor for Defendant.

No. 8

Proceedings before the District Court

20

8.1.63

No. 8
Proceedings
before the
District Court-
8. 1. 63
and
23. 1. 63

Mr. Adv. Soorasangaran instructed for plaintiff.

Mr. Somasegaram for defendant state that Mr. Muttusamypillai, Crown Advocate, is appearing in a District Court Criminal Case, and therefore moves for another date of inquiry.

Inquiry on 23.1.63.

Intd
Additonal District Judge
8. 1. 63

30 23. 1. 63

Mr. Adv. Soorasangaran instructed for plaintiff.

Mr. Adv. Muthusamypillai, Crown Advocate, instructed for defendant.

Mr. Soorasangaran submits that the defendant has filed an amended answer. Para 9 (d) read. Section 47 is not found in the original answer. The goods were forfeited by letter dated 5.6.1961

No. 8
 Proceedings
 before the
 District Court-
 23. 1. 63
 --Continued

(P1) addressed to plaintiff. The goods were seized under section 45 and 123 of the Customs Ordinance these are old numbers. These sections are identical with sections 43 and 125 of the Revised Edition. He says that forfeiture under Section 125 flows from section 43. For that forfeiture notice has to be given under section 146 within one month-now it is section 154. In pursuance of the seizure notice the plaintiffs had to give security and notice of action under section 146-new section 154 of the revised edition, for obtaining a declaration that the forfeiture under these sections is invalid. He submits that the present claim of the Crown for the forfeited goods under section 47 of the Revised Edition cannot be maintained as they did not in fact forfeit the goods under section 47. He therefore submits that by the introduction of section 47 of the Revised edition the defendant has altered the scope of the original seizure and the forfeiture-this would amount to altering the nature and scope of the present action. The court is presently concerned only with regard to the question whether the forfeiture of the goods was correct or lawful under these sections 43 and 125. If not plaintiffs ought to succeed. It is not the duty of court to find out whether there would be other sections under which the forfeiture can be held valid.

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He cites 63 N. L. R. p. 188.

Mr. Muthusamypillai addresses the Court. He reads para 9 (d) of the original answer. We had pleaded that there are other provisions of other laws, rules, regulations and orders applicable to the import of the said goods into the Island. When the time came for the framing of the issues I wanted section 47 to be included. The court said "No" - such general descriptions of the laws are not sufficient, you must specify. Now we have specified them. He submits that the real cause of action was the question arising out of forfeiture, whereas earlier the Crown had indicated that forfeiture was one under section 43 and 125. Now we are further indicating that the forfeiture was also under section 47. The main matter is the forfeiture. He submits that in para 9 (d) of the original answer the Crown has specified that the forfeiture was also under section 43 and 125 of the revised edition and other rules, laws, regulations and orders. It was only on orders of court that the other laws must be specified that the amended answer has been filed. He also refers to section 93 of the Civil Procedure Code. He cites 20 N. L. R. p. 60, 21 N. L. R. p. 205. 37 N. L. R. p. 1. He refers to section 146 of the Customs Ordinance. Mr. Soorasegaram cites 53 N. L. R. p. 271. He submits that the Customs Ordinance is a Penal Act.

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Order on 12. 3. 63.

Intd
Additional District Judge.

Order of the District Court

No. 9
Order of the
District Court-
12. 3. 63

12. 3. 63

The plaintiffs are carrying on business under the name, style and firm of "Sana Mana Rawanna & Co." at No. 212, Hospital Road, Jaffna. The defendant is the Attorney-General of Ceylon.

On or about the 1st day of June, 1961, the plaintiffs entered to be cleared as per entry No. 1 of 1. 6. 1961 fifty bags of Mathe seeds (Fenugreek seeds) on boat "Nooraniah" of Tuticorin. The Master of the
 10 Vessel delivered fifty bags, which on examination by Customs Officers were found to contain 30 bags of Mathe seeds, and 20 bags of White Poppy seeds called "Posthakai." By letter dated 5. 6. 1961 (P 1) the Assistant Controller of Customs informed the 1st plaintiff as follows:-

"Entry No. 1 of 1. 6. 61 for 50 bags of Mathe seeds.

With reference to the consignment of 50 bags Mathe seeds, I have the honour to inform you that 20 bags poppy seeds are confiscated under Section 45 of the Customs Ordinance Chapter 185 read with 27 of the Poisons, Opium & Dangerous Drugs Ordinance.

The 30 bags of Mathe seeds are confiscated under Section 123 of
 20 *the Customs Ordinance.*

I have also imposed a penalty of Rs. 45,000/- on you under Section 127 of the Customs Ordinance. However, acting under Section 155, I am prepared to mitigate the penalty of Rs. 45,000/- to Rs. 15,000/- which amount please remit to this office within one week from this date."

The plaintiffs contended that the confiscation of the 30 bags of Mathe seeds is illegal and unwarranted by law and therefore on the 3rd day of July, 1961, the plaintiffs gave due notice in writing as owners of the Mathe seeds to the Collector of Customs, Jaffna
 30 about their intention to enter a claim in Court for the restoration of the said goods or, their value. The plaintiffs further gave security to the satisfaction of the Collector of Customs in a sum of Rs. 5,000/- as required by Section 146 of the Customs Ordinance Chapter 185. The plaintiffs also have given notice in writing dated 28th June, 1961 as required by Section 461 of the Civil Procedure Code.

The defendant filed answer dated 31st January, 1962 and inter alia pleaded (vide paragraphs 9 (c) & 9 (d)

No. 9
Order of the
District Court-
12. 3. 63
-Continued

9(c) "The entire consignment of 50 bags were imported into the Island unlawfully and in contravention of the provisions, prohibitions and restrictions of the Customs Ordinance (Chapter 235), Poisons, Opium & Dangerous Drugs Ordinance (Chapter 218) and other laws, rules regulations and orders applicable to the import of the said goods into the Island."

9(d) "In consequence of the above averments the entire consignment of 50 bags became forfeit by the Customs under the provisions of Section 43 and 125 of the Customs Ordinance (Chapter 235) read with Sections 28 and 33 of the Poisons, Opium & Dangerous Drugs Ordinance (Chapter 218) and the provisions of other laws, rules, regulations and orders applicable to the import of the said goods into the Island."

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When the case came up for trial on 5. 9. 62, issues were suggested. As a result of certain objections being raised to some of the issues raised by the learned Counsel for the Defendant, the court ordered the defendant "to amend the answer with notice of the amendment to the plaintiffs. Plaintiffs will be given an opportunity to object to any amendments." The defendant therefore filed amended answer dated 12. 10. 1962.

20

The plaintiffs objected to the acceptance of the amended answer. The amended answer is practically the same as the original answer filed on 31. 1. 1962, except for a slight alteration in para 9(d). In the clause ".....under the provisions of Sections 43, 47 & 125 of the Customs Ordinance (chapter 235)....." there is the introduction of Section 47. If the amended answer is accepted, then it would mean that forfeiture took place under the provisions of Section 47 of the Customs Ordinance as well.

The plaintiffs contend that if the amended answer is accepted it will extend and alter the nature and scope of the cause of action. According to the plaintiffs the Customs purported to forfeit the 30 bags of Mathe seeds under Sections 45 & 123 of the Customs Ordinance (Chapter 185) identical as Sections 43 & 125 of the Revised Edition (Chapter 235); read with Section 27 of the Poisons, Opium and Dangerous Drugs Ordinance (identical as Section 28 of the Revised Edition Chapter 218). The forfeiture under Section 125 flows from Section 43. In respect of such forfeiture notice has to be given under Section 154 of Chapter 235 (old Section 146 Chapter 185) and security furnished to the satisfaction of the Collector. If there was any omission, or any flaw in the commission, in the steps taken to institute this action,

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this action would fail. The Customs did not contend or purport to confiscate under Section 47 of the Customs Ordinance. The mere fact that in para 9(c) & 9(d) of the original answer, there is the omnibus clause "and the provisions of other laws, rules, regulations and orders applicable to the import of the said goods into the Island," cannot enable the defendant to amend his answer by introducing Section 47 in para 9(d) of the amended answer.

No. 9
Order of the
District Court-
12. 3. 63
—Continued

10 On the other hand the learned Counsel for the Defendant submitted that the real cause of action is the forfeiture of the 30 bags of Mathe seeds. The sections under which they were confiscated are indetical. In the original answer besides Sections 43 & 125 of the Customs Ordinance, the Defendant has pleaded that the forfeiture took place "*under the provisions of the other laws, rules... ..* of the said goods into the Island." It was because the Court ordered that the Sections must be specifically pleaded the defendant sought to amend the answer on payment of costs to the plaintiffs.

I have carefully examined all the submissions made by both parties and the Authorities cited.

20 It is an admitted principle of the Law that no amendment of the plaint shall be allowed which will alter the whole nature and scope of the action (vide 53 N. L. R. page 271) nor would the Courts allow the use of the machinery of amendment of pleadings for the conversion of an action of one character to that of another." (Vide 63 N. L. R. page 188). But in the case reported in 20 N. L. R. at page 60 it was held that however negligent, or, careless may have been the first omission and however late the proposed amendment, the amendment should be allowed, if it can be made *without injustice to the other side* (Vide also case reported in 21 N. L. R. at page 205). This is subject to the principles enunciated in the cases in 63 N. L. R. 188 and 53 N.L.R. 30 271 cited above. In the case reported in 37 N. L. R. at page I, the Court held on facts that the proposed amendment did not set up a new cause of action, and that it should be allowed. But in the recent case of *Lebbe Vs. Sandanam* (Divisional Bench) reported in 63 C. L. W. at page 15, it was held:

(1) that the power given to Court under Section 93 of the Civil Procedure Code is limited to amendment of Pleadings. An amendment is the correction of an error, and therefore the power of the Court is limited to correction of errors in pleadings, not the alteration thereof.

No. 9
Order of the
District Court-
12. 3. 63
-Continued

(2) that the suggested amendment was not the correction of an error in the pleadings, but the setting up of a new case, which the plaintiff himself has repudiated in his evidence, and it should therefore not have been allowed.

I have considered the *ratio decidendi* of all the above cases cited carefully and I am satisfied that the Court cannot allow the proposed amendment for the following reasons:

(1) Sections 43, 47, 125 of the Customs Ordinance (Chapter 285 of the revised edition) and Sections 28 & 33 of the Poisons, Opium & Dangerous Drugs Ordinance (Chapter 218 of the revised edition) are penal laws, and therefore should be strictly complied with. The Customs did not forfeit the said 30 bags of Mathe Seeds under Section 47. Therefore it is not open to them to state now that the forfeiture took place under Section 47 as well. 10

(2) Letter P. 1 of 5. 6. 1961 shows that the Customs had forfeited the said 30 bags of Mathe Seeds under Section 45 and 123 of the Customs Ordinance (Chapter 185), (identical as Sections 43 and 125 of the Customs Ordinance, Chapter 285 of the revised edition). The Customs did not forfeit under Section 47 of the Customs Ordinance

(Chapter 285 of the revised edition), *nor did they purport to state so, in the original answer filed.* If therefore the amendment is allowed to bring the forfeiture under Section 47 as well, it would certainly extend, and alter the nature and scope of the cause of action, and, or, enable the defendant to set up an entirely *new defence.* 20

(3) As a result of the forfeiture, under Sections 43 and 125, the plaintiffs had complied with all the procedure laid down under Section 154 of Chapter 235 (Revised Edition), given the necessary notices and security, etc. If the forfeiture had also taken place under Section 47 of Chapter 235, the plaintiffs may not have gone through all the procedure, given notices, security etc., to enable them to file this action. It would prejudice the plaintiffs' case, and it would be an injustice to the plaintiffs, if the proposed amendment is allowed. 30

(4) The presence of the Ominibus clause in para 9(c) and 9(d) of the original answer viz. "and the provisions of the other laws, rules, regulations and orders applicable to the import of the said goods into the Island," cannot justify the *Defendant to raise an issue, or, now to amend the answer* by pleading forfeiture under Section 47

as well. Provisions of Law under which a party claims certain rights, *and in particular*, penal provisions of the law, by which the other party loses certain rights, must be *clearly and specifically* pleaded. The defendant having failed to clearly and specifically mention Section 47 in the letter P. 1, and to plead Section 47 in the original answer, cannot now be allowed to amend the answer to include the forfeiture under Section 47 as well.

No. 9
Order of the
District Court-
12. 3. 63
—Continued

10 (5) The proposed amendment to include the forfeiture under Section 47 as well is not an "error" in the original answer, as even as per letter P. 1, the forfeiture did not take place under Section 47. The proposed inclusion of the forfeiture under Section 47 as well sets up a *new case* and a *new defence* for the Defendant and should not therefore be allowed.

In the result, I reject the amended answer. The trial will proceed on the original answer filed. The defendant will pay the plaintiffs Rs. 73/50 as costs of this inquiry.

Call case on 16. 4. 1963 to fix date of trial.

Sgd. C. Thanabalasingham
Additional District Judge.

20

No. 10

**Affidavit of S. Arumugampillai
(with Power of Attorney)**

IN THE DISTRICT COURT OF JAFFNA

1. Velayuthampillai Manthirampillai
2. Mandirampillai Velayuthampillai carrying on business in partnership under the name firm and style of "Sana Mana Rawanna & Co." at 212 Hospital Road, Jaffna. *Plaintiffs.*

No. M/1870

Vs.

The Attorney-General of Ceylon, Colombo.

Defendant.

I, Subbiahpillai Arumugampillai the Attorney of Velavuthampillai Mandirampillai of 212 Hospital Road, Jaffna do hereby solemnly sincerely and truly declare and affirm as follows:-

1. I am the Attorney of the 1st plaintiff in the above case.
2. The witness K. Chelliahpillai of 47 Beach Road, Tuticorin is a material witness for the purpose of the plaintiffs case.

No. 10
Affidavit of
S. Arumugam-
pillai
21. 2. 64

No. 10
Affidavit of
S. Arumugam-
pillai
21. 2. 64
—Continued

3. The said Chelliahpillai supervised the exportation of the 50 bags of Mathe seeds at the Tuticorin Customs.

4. It is very necessary that he should come to Ceylon to give evidence in the above case on 13. 3. 64.

The contents of the foregoing) Sgd. S. Arumugampillai
were read over and explained) V. Mandirampillai
by me to the affirmant in Tamil) *Attorney.*

his own language who appeared)
to understand the same and set)
his signature and affirmed to)
the truth and correctness there)
of at Jaffna on this 21st day)
of February, 1964.

10

Before me,
Sgd. Illegibly
J. P.

Secretary District Court Jaffna.

Drawn by
Sgd. Ratnasingham & Subramaniam
Proctors for Plaintiffs.

K. Nadarajah
Proctor & Notary,
Jaffna.

Power of Attorney

20

No. 10
Affidavit of
S. Arumugam-
pillai
21. 2. 64
Power of
Attorney

No. 386

To all to whom these presents shall come I Velautham Pillai Mandirampillai of No. 212, Hospital Road, Jaffna Send Greetings:-

Whereas I am carrying on business in Ceylon in partnership with Mandirampillai Velauthampillai of Tuticorin in South India under the firm name and style of "Sana Mana Rawanna & Co.," at No. 58, 4th Cross Street, Colombo and at No. 212, Hospital Road, Jaffna.

30

And whereas the said Mandirampillai Velauthampillai the other partner of the said firm of "Sana Mana Rawanna & Co." by his power of Attorney dated 25th June 1959 has granted me authority to appoint one or more substitute if and when necessary to carry on the said business.

And whereas I am now desirous of appointing a fit and proper person on my behalf and on behalf of the said Mandirampillai Velauthampillai as our attorney to manage and transact the business of the said firm of "Sana Mana Rawanna & Co.," in Ceylon.

Now Know ye these presents witness that I the said Velautham Pillai Mandirampillai do hereby nominate and appoint Subbiahpillai Arumugampillai of 58, 4th Cross Street, Colombo to be our true and lawful attorney in Ceylon during our absence to act for us and on our behalf and in our name or otherwise for all and each and every or any of the following purposes:-

No. 10
Affidavit of
S. Arumugam-
pillai
21. 2. 64
—
Power of
Attorney
—Continued

1. Generally to carry on the aforesaid business for us and on our behalf in Ceylon during our absence and for that purpose to order for goods to pay for them to sell them and receive their
10 sale proceeds in cash or otherwise.

2. To draw accept endorse negotiate bills of exchange cheques Promissory notes operate accounts either at credit or overdrawn with banks signs guarantees trust receipts and such other unders-
tandings etc. to any bank in connection with the Export and Import Trade for and on behalf of the aforesaid firm in Ceylon.

3. To make applications to the Customs Port Office, Railways and Steamer Companies Landing Agents Post and Telegraph and Telephone offices, Export and Import Controller Exchange Controllers etc., for and on behalf of the aforesaid Firm and to sign all
20 necessary applications for the purpose of Export and Import etc., such as bills of Entry, Shipping Bills Export Applications, Manifests, Refund Orders, Draw Bank Bills etc., for and on behalf of the aforesaid Firm.

4. To make applications, Petitions, etc. to any Government Municipality or other authorities in the name of the aforesaid Firm and to sign them on behalf of the said firm.

5. To ask demand sue for recover receive from a/ persons liable to pay and deliver the same respectively all sums of money debts goods affects and things now owing and payable and belonging
30 to the aforesaid firm or which shall or may at any time hereafter be owing or payable or belonging to the said firm and on payment or delivery thereof or any part thereof in full discharge or pro tanto satisfaction to give sign and execute receipt releases and other discharges for the same and on non payment or non delivery thereof or any part thereof to commence institute carry on and prosecute any action suit or other proceedings civil or criminal or otherwise already instituted or hereafter to be instituted for recovery and compelling payment or delivery of the same.

No. 10
Affidavit of
S. Arumugam-
pillai
21. 2. 64
Power of
Attorney
—Continued

6. To state and finally settle and adjust all accounts reckonings and demands whatsoever belonging to the aforesaid firm with any person or persons whatsoever and to receive money or other property in full or partial discharge of all or any of the claims arising and belonging to the said firm howsoever.

7. To compromise or adjust disputes and differences and to refer matters to arbitration and to sign and execute all necessary bonds submissions and references therefore and enforce any award on behalf of the said firm.

8. To appear for and on behalf of the aforesaid firm before any court or courts of Justice in Ceylon either as plaintiff, defendant appellant, respondent, petitioner, or otherwise and to sign on behalf of the aforesaid firm all necessary Proxies, Plaints, Petitions, Appeals and to appoint Proctors or advocates on behalf of the aforesaid firm, to let in evidence to prosecute or defend any suit or suits or other proceedings brought by or on behalf of or against the aforesaid firm, and to proceed to judgment thereon and against any judgment or order of or decree of any of the Courts, to appeal or prosecute such appeal and to give all necessary securities bonds documents etc, in such appeals and to sign and execute the necessary Plaints, Petitions affidavits etc, on behalf of the afforesaid firm. 10 20

9. To deposit and withdraw any sum or sums of money in and from any bank or banks in Ceylon, the Customs Department Port Trust, Landing Companies, Steamer Companies, Railways or any other department or departments or any company or companies incorporated or otherwise for and on behalf of the aforesaid firm and to sign and execute all necessary documents in the name of the said firm and do all other necessary acts as may be required by the said Banks, Customs Port Trust Landing Companies Steamer Companies Railways or any other Department or Departments authorities or companies etc. 30

10. Generally to manage and carry on the business of the aforesaid firm execute and perform all such further acts, deeds matters and things whatsoever which the said Attorney shall or may think necessary or proper to be done in or about or concerning the business of the said firm.

In witness whereof I do hereunto set my hand to this and to two others of the same tenor and date as these presents at Jaffna on this Seventh day of November One thousand Nine Hundred and Fifty Nine. 40

Sgd. V. Mandiram
K. Nada Rajah
Notary Public

Witnesses:
V. Somasundaram Sgd.
S. Nagalingam Sgd.

I, Kanapathipillai Nadarajah of Jaffna in the Island of Ceylon Notary Public do hereby certify and attest that the foregoing Power of Attorney was duly read over and explained by me to the within named Velauthampillai Mandirampillai who is known to me and has signed his name in English as "V. Mandiram in the presence of Velupillai Somasundaram of Jaffna Town and Seeniar Nagalingam of Thavady the subscribing witnesses hereto both of whom are known to me the same was signed by the said Velauthampillai Mandirampillai and also by the said witnesses and by me the said Notary in my presence and in the presence of one another all being present together at the same time at Jaffna this seventh day of November one thousand nine hundred and fifty nine.

I further certify and attest that before the foregoing power of attorney was duly read over and explained as aforesaid in the duplicate page 3 line 1 the word "proceeds" was scored off and the word proceedings was interpolated and that the original of this instrument bears one stamp of Re. 1/- and the duplicate stamp of the value of Rs. 10/-.

Date of Attestation

7th November, 1959.

Sgd. K. Nadarajah
Notary Public.

(Seal)

" True Copy "

Sgd. Illegibly
Notary Public.

No. 11
Issues Framed

No. 11
Issues Framed.
12. 3. 64

12. 3. 64

Present 1st plaintiff. Hon'ble the Attorney-General is represented by Mr. Thirunavukarasu, Assistant Collector of Customs, Jaffna.

Mr. Adv. Kulasingham with Mr. Adv. Soorasangan instructed for plaintiff.

Mr. Adv. Muthusamypillai instructed for defendant.

Learned Counsel for plaintiff opens his case and suggests the following issues:-

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?

2. If the above issue is answered in the negative-

- (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. 5000/- deposited as security by the plaintiff?

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.

Learned Counsel for defendant says that he has no objections to the above issues. He suggests- 10

- 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?
- (b) Did the said bags bear marks "Mani" consigned to plaintiff 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 detention of the said 50 bags lawful? 20

Learned Counsel for plaintiff objects to issues 4(b) and 4(c) on the ground that nowhere in the plaint has plaintiff admitted that he imported anything other than Mathe Seeds and that plaintiff never imported Poppy seeds.

Issues 4(b) and 4(c) assume that 20 bags contained white poppy seeds and formed part of the consignment of 50 bags sent to plaintiff. The plaintiff's position right through out was that these 20 bags of white poppy seeds never formed part of the consignment imported by him. 30

Learned Counsel for plaintiff states that Sabaratnam was their Representative and that entry No. 1 was a genuine application made in accordance with plaintiff's indent. The merchandise brought in this ship had to be cleared and 50 bags along with other articles imported had been put in the warehouse

He also objects to issue 4(c) and says that if this issue is admitted in the present form the case of the plaintiff will be prejudiced. He objects to issues 4(a), (b) and (c) and says that the forfeiture did not take place under section 47 of the Old Customs Ordinance and new section 49. The representative of the plaintiff submitted entry No. 1 for 40

50 bags of Mathe seeds or Fenu Greek Seeds which bore the marks "Mani". He submitted this entry form to Mr. Manicavasagar, the Landing Waiter. When the officer of the Customs went and examined these bags he found 30 bags of Mathe seeds and he also found in the warehouse 20 bags containing white poppy seeds bearing the marks "Mani". This was reported to the sub-collector and he purported to act under section 43 and 125 of the Revised Ordinance (1956 Edition). This is borne out by the letter P1 dated 5.6.61 from the Assistant Collector of Customs (Read). According to this letter the forfeiture was

10 made under Section 45 of the Customs Ordinance chapter 185 read with section 27 of the Poisons, Opium, and Dangerous Drugs Ordinance and section 123 of the Customs Ordinance. Section 45 of the Old Ordinance is now section 43 of the New Ordinance Chapter 235, 1956 Edition and Section 123 of the Old Ordinance is now 125 of the new Ordinance Chap. 235. He submits that if issue 4(a) to (c) is allowed to remain the defendant will be allowed to get behind the order of Your Honour's predecessor. Learned Counsel for plaintiff reads the order made by my predecessor dated 12 3.63.

Learned Counsel for plaintiff also objects to issue No. 5. Learned

20 Counsel for defendant heard—

He says that that order is not binding as these issues did not arise then. He refers to the proceedings of 5.9.62 and to issues 4,5 and 6 suggested by him. Learned Counsel for plaintiff did not object to these issues then. Those issues 4 and 5 are now split to issues 4(a) to (c). He reads issue No. 5 raised on the last date of trial and also issue No. 5. These issues 4(a)-(c) arise from the answer. Para 9(a) of the answer read. Defendant's case is that plaintiff imported into the Island 50 bags said to contain Mathe seeds and he submitted an entry to the Customs Authorities for the removal of the said 50 bags which

30 contained Mathe seeds and that out of the said consignment 20 bags contained white poppy seeds. We said that under our law the whole consignment was confiscated. It is for the court to decide whether 30 bags of mathe seeds should be returned to plaintiff or not and whether the 20 bags of poppy seeds should be confiscated.

Learned Counsel for plaintiff heard in reply. The question of entry is a relevant matter in this case cannot hold good for a moment because clause (c) of para 9 of the original answer limits the ground on which the forfeiture was pleaded. Was the forfeiture under sections 43 and 125 lawful? If not the

40 answer must be in favour of the plaintiff. The forfeiture pleaded in the original answer was under sections 43 and 125. The question

No. 11
Issues Framed.
12. 3. 64
—Continued

whether the 50 bags of which 30 bags contained Mathe seeds and 20 bags containing White Poppy seeds did not agree with the entry submitted by the representative of the plaintiff he respectfully submits is not a question which should be gone into as the order made by Court on the points raised is binding on the parties.

Order

Learned Counsel for plaintiff has objected to issues 4A to C and 5 for the reasons urged by him. He submits that the Crown cannot be allowed to raise any issues which have no relevance to the disputes between parties under section 47 of the Customs Ordinance Cap. 285. He has referred to the proceedings held before my predecessor on 5.9.62 and 23.1.63 where my predecessor has proceeded to discuss the 10
plaint and answer and has objected to the amended answer dated 12.10.1962 on the ground that Section 47 is not referred to in letter dated 5.6.61 sent by the Assistant Collector of Customs to plaintiff (P1). By that letter the Assistant Collector of Customs has informed plaintiff that out of the consignment of 50 bags of Mathe seed 20 bags were found to contain white poppy seeds and that these 20 bags of poppy seeds have been confiscated under section 45 of the Customs Ordinance Cap. 185 read with section 27 of the Poisons, Opium and 20
Dangerous Drugs Ordinance and that the 30 bags of Mathe seeds have been confiscated under section 123 of the Customs Ordinance. That being so, I uphold the objection and rule out issues 4 (a) to (c) and 5 as they are not relevant to the disputes between the plaintiff and defendant.

I also hold that the order made by my predecessor cannot be disregarded by me and that I have no power to vary or to set aside the order rejecting the amended answer.

Sgd.

Additional District Judge. 30

Learned Counsel for defendant suggests the following issues:-

- (6) Was the forfeiture (a) of 20 bags of poppy seeds and (b) 30 bags of Mathe seeds out of the consignment of 50 bags lawful as set out in para 9(d) of the original answer?

Learned Counsel for plaintiff does not object to this issue.
I adopt issues 1 to 3 and 6.

Sgd.

Additional District Judge.

After Lunch

No. 11
 Issues Framed.
 12. 3. 64
 —Continued

Learned Counsel for plaintiff submits that the burden of proving that the forfeiture of 30 bags of Mathe seeds was lawful is on the Crown. He refers to 61 N. L. R. p. 254 in that Their Lordships have said that the Crown must establish beyond any reasonable doubt the offence committed by the plaintiff in consequence of which the forfeiture was made as in a criminal prosecution. In this case the forfeiture comes under section 43 of the Customs Ordinance (Read). All the facts which are enumerated in section 43 are to be proved by the Crown. He reads section 152. This section is same as old
 10 section 144. He refers to section 102 of the Evidence Ordinance. Supposing no evidence is led in this case the court will be left with only the allegation of the Crown that 30 bags of Mathe seeds had been forfeited. Who is to prove that the forfeiture was lawful. He submits that the forfeiture is admitted by the defendant. The defendant must satisfy court that the forfeiture was lawful and therefore the burden of proof is on the defendant. If the defendant fails to discharge the burden of proof the plaintiff must have judgment.

Learned Counsel for defendant submits that it is admitted that these bags were imported. Section applicable in this case is section
 20 152 of the Customs Ordinance (Read). He refers to 61 NLR case also. In that case the gold bars were seized in some premises—they were not seized at the customs. There the question was whether the gold had been imported or not. There it was held by Their Lordships that the burden of proving that the gold was imported was on the Crown. There the question of importation arose and therefore the case reported in 61 NLR has no bearing. In this case the bags that were seized were imported. At least 30 bags of Mathe seeds were admittedly imported. Under section 152 the onus is not on the Crown. Leaving aside the
 30 20 bags of poppy seeds the 30 bags of Mathe seeds had been forfeited and the burden of proof is on the plaintiff. The case of the Crown is that 50 bags were imported by the plaintiff. Evidence Ordinance has no bearing when there is statutory provision. Section 152 of the Customs Ordinance is statutory provision.

Learned Counsel for plaintiff refers to the last few words of section 152 (Read). He submits that under section 152 plaintiff claims to be the owner of only 30 bags of Mathe seeds and repudiates the alleged ownership of 20 bags of poppy seeds. He submits that out of the entire cargo of 50 bags the defendant has to prove that 20 bags were unlawfully imported into Ceylon.

40

Sgd.
Additional District Judge.
 12. 3. 64

O R D E R

Learned Counsel for plaintiff has submitted that the onus of proof in this case is on the defendant who represents the Collector of Customs. The plaintiff in the plaint states that the Master of the Boat inter alia only delivered 30 bages of Mathe seeds at the Customs Warehouse at Kayts as shipped and consigned to the plaintiffs and that 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. Nowhere in the plaint has the plaintiff admitted that 20 bags of poppy seeds which are referred to in the answer of the defendant and also in the letter P1 written by the Assistant Collector of Customs to plaintiff were the property consigned to him or that they belonged to him. Learned Counsel for plaintiff submitted that therefore section 152 of the Customs Ordinance would not apply in a case like this. He submits that in as much as the plaintiff does not claim to be the owner of 20 bags of poppy seeds there is no burdien cast on the plaintiffs to prove that these poppy seeds were lawfully imported. 10

He also refers to section 102 of the Evidence Ordinance where it is stated that the burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side. He submitted that the only issue in this case is whether the 30 bags of Mathe seeds which the plaintiff claimed to be the owner of and consignee were lawfully confiscated by the Crown. He points out that the seizure of those 30 bags of Mathe seeds, according to the Customs Officer, was made under section 123 of the Customs Ordinance. In this connection the case of Attorney-General v. Lebbe Thamby in 61 N. L. R. p. 254 was cited. In the last but one paragraph of that Judgment Their Lordships have said- 20

“The Customs Ordinance is a penal enactment which imposes severe penalties on those who violate its provisions. The Crown must therefore establish any breach of those provisions beyond reasonable doubt as in a criminal prosecution.” 30

Therefore it necessarily follows in my view, that the burden will lie on the Crown of proving these ingredients of the offences which entitled them to forfeit the 30 bags of Mathe seeds. I therefore rule that the burden is on the Crown.

Sgd.
Additional District Judge.

Learned Counsel for defendant moves for a postponement of the trial on the ground that certain material witnesses for the Crown Mr. Fernando, Assistant Collector of Customs at Kayts and now in Colombo and Mr. P. Amirthalingam of Colombo Customs have not been served with summons.

No. 11
Issues Framed.
12. 3. 64
--Continued

Learned Counsel for plaintiff has no objection provided costs of the day are paid.

The defendant will pay to plaintiff 12 guineas as costs of today.

10 Further trial on 24. 4. 64.

Sgd.
Additional District Judge.
12. 3. 64

No. 12
Defendant's Evidence

No. 12
Defendant's
Evidence.

24. 4. 64

Parties present.
Same appearances as before.

Trial continued
Defendant's case

20

Learned Counsel for defendant moves for permission of Court to allow Mr. Thirunavukarasu, Assistant Collector of Customs to remain in Court. He says that Mr. Thirunavakarasu is called as a witness to produce certain documents and that he will not be speaking to facts except with regard to the order he made on the facts placed before him.

Learned Counsel for plaintiff objects to this and says that if the Assistant Collector of Customs is called as the 1st witness and gives answers and speak to facts which led him to make the order he would not take objection.

30

Learned Counsel for defendant says that he would call Mr. Thirunavukarasu, Assistant Collector of Customs, first.
I allow the application.

Sgd.
Additional District Judge.
24. 4. 64.

Kandiah Thirunavukarasu, Affirmed. 59, Assistant Collector of Customs, Jaffna.

—
Evidence of
K. Thirunavuk-
arasu—
Examination.

40 I was Assistant Collector of Customs at the time this question arose about the consignment of Mathe seeds which plaintiffs received from India - That was in June 1961. With

No. 12
Defendant's
Evidence.
—
Evidence of
K. Thirunavuk-
arasu-
Examination.
—Continued

regard to the 50 bags of Mathe seeds (Fenugreek seeds) consigned to plaintiffs from India I made an order on documents and evidence placed before me. I made the order P1.

(Shown P1). This is a copy of the order which I made. This has been communicated to plaintiffs by Mr. Duraisingham, who was sub-collector of Customs, Jaffna at the time of this letter.

(P1 was produced in evidence at the earlier inquiry had in this case)

(Shown entry form D1).

(Objected to unless the person who signed the form on behalf of S. M. R. & Co. is called.) 10

Learned Counsel for defendant says that this witness made an order on certain documents placed before him and one of the Documents is D1.

ORDER

Document D1 is allowed subject to proof.

Sgd.

Additional District Judge.

24. 4. 64.

Learned Counsel for plaintiff says that if the witness is asked to speak about the contents of the document he objects to the witness referring to the contents of document D1 unless the person who filled D1 is called. Learned Counsel for defendant says that if the plaintiff disputes this document he would call Sabaratnam. 20

ORDER

The document has been allowed to be marked but the witness is not to be questioned about the contents of the document unless Learned Counsel for defendant undertakes to call Sabaratnam, who according to him, signed the document. Learned Counsel for defendant undertakes to call Sabaratnam. 30

Sgd.

Additional District Judge.

24. 4. 64.

Examination in chief (continued)

This document D1 was placed before me along with other evidence recorded by Mr. Fernando, Sub-collector of Customs, Kayts, before I made the order P1.

According to this document 50 bags of Mathe seeds (Fenugreek seeds) were consigned to S. M. R. & Co. with the mark "Mani" On the face of it this document was prepared by Christopher, the entry clerk working in Kayts Customs and was signed by one Sabaratnam for and on behalf of S. M. R. & Co. In connection with this Mr. Fernando, Sub-collector of Customs, Kayts recorded the statement of Sabaratnam.

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Examination
— Continued

(Learned Counsel for defendant moves to produce the statement of Sabaratnam to Mr. Fernando as (D2). Learned Counsel for
10 defendant says that he is calling both Sabaratnam and Fernando. Learned Counsel for plaintiff objects to this statement being produced unless there is proof before court that when he made the statement, to Mr. Fernando, he was a Judicial Officer.

He also states that is a statement made to a third party. He refers to section 155(c) of the Evidence Ordinance. He says that even assuming that Sabaratnam made a statement, that is not evidence by him and it can be used in certain circumstances to contradict the evidence, where a witness can be contradicted by a former statement made by him. Learned Counsel for defendant says
20 that he wants to mark the document to corroborate Sabaratnam, a witness whom he intends to call and that he must satisfy Court that he is entitled to mark the document under section 156. He also states that he undertakes to call both Mr. Fernando and Sabaratnam. He also refers to section 8 of the Customs Ordinance Chapter 235 which empowers the Collector of Customs to examine witnesses on oath. Mr. Fernando was the person who examined his witness. He says that the other objection is based on misconception of facts. If plaintiff or his agent had written letter to defendant, according to plaintiff, they are not evidence. He submits that the
30 statement was made on oath to Mr. Fernando who was Sub-collector of Customs Kayts. Mr. Fernando was a competent authority before whom documents regarding consignments were submitted and he assessed the duty leviable on goods consigned. Learned Counsel for plaintiff says that under section 8(1) examination or inquiry must be held by the Collector or by other principal officer of the Customs or by other persons appointed to make such examination and inquiry.

Learned Counsel for defendant says that he would first lead evidence to satisfy Court that in terms of section 8(1) of the
40 Customs Ordinance Mr. Fernando before whom Sabaratnam made statement which he seeks to produce was made was appointed by Gazette notification.

Allowed

Sgd.
Additional District Judge.
24. 4. 64.

No. 12
Defendant's
Evidence.
—
Evidence of
K. Thirunavuk-
arasu—
Examination
—Continued

Examined

Q. Was Mr. Fernando appointed by Gazette and authorised to record statements on oath?

A. Yes.

Q. Can you produce that Gazette?

A. Yes.

Sgd.
Additional District Judge.
24. 4. 64.

It is now time for adjournment.

Learned Counsel for defendant states that he would produce the relevant Gazette in the afternoon.

10

Sgd.
Additional District Judge.
24. 4. 64.

After lunch

K. Thirunavukarasu, Recalled, Re-affirmed. Examination in chief continued.

Mr. Fernando was the Assistant Preventive Officer of Customs.

Q. Did he have authority to take statements on oath?

A. Yes.

Q. Have you been able to ascertain the date of the publication in the Gazette regarding his appointment?

A. There was a notification made in the Gazette by the late Hon'ble Mr. Bandaranaike but I am unable to trace that Gazette at the present moment.

20

Sgd.
Additional District Judge.
24. 4. 64.

Learned Counsel for defendant submits that in view of the decision of Their Lordships in the case of *Wilbert v Vanden Driesen* reported in 62 N. L. R. p. 381 where it was held that an officer of the Customs is not a Police Officer within the meaning of section 25 of the Evidence Ordinance. In a prosecution therefore for an offence punishable under section 158(1) of the Customs Ordinance, a confession made by the accused person to an Assistant Preventive Officer of the Customs is admissible in evidence.

30

He therefore submits that Mr. Fernando being an Assistant Preventive Officer who recorded the statement of Sabaratnam on oath is entitled to produce the statement which is admissible and that it is therefore admissible. Learned Counsel for plaintiff submits that the authority cited has no application to the question before Court. (Section 8 of the Customs Ordinance read). He submits that before a document is admitted it has to be proved that Mr. Fernando was an appointed officer to inquire into the matter.

40

ORDER

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Examination
—Continued

Learned Counsel for defendant has sought to mark in evidence the document D2, which is a statement purported to have been made by Sabaratnam to Mr. Fernando, Assistant Preventive Officer, Kayts in the course of an inquiry held by Mr. Fernando. Learned Counsel for plaintiff objects to the document being produced. He refers to section 155(c), 156 and 157 of the Evidence Ordinance. Learned Counsel for plaintiff submitted that under section 8(1) of the Customs Ordinance there must be proof before Court that the officer who held the inquiry - in this case Mr. Fernando - was a person appointed within the meaning of that section to hold an inquiry. There is no proof before Court by production of any gazette notification that Mr. Fernando was duly appointed to hold such inquiries. Learned Counsel for defendant referred to the Judgment of Their Lordships Court reported in 62 N. L. R. p.381. I do not think that the decision in that case can be applied to the question before this Court. In my view the gazette notification must be produced before the statement purported to have been recorded before Mr Fernando is produced. If that is not done the document cannot be produced whether to corroborate the witness Sabaratnam when he is called or to contradict Sabaratnam when he is called under section 155 and 157 of the Evidence Ordinance respectively. I therefore disallow the document. It would be open for Learned Counsel for defendant to renew his application to produce the document D2 after the gazette notification is produced and marked in evidence.

Sgd.

Additional District Judge.

24. 4. 64.

30 **Examination in chief continued.**

Mr Fernando recorded the statement of the 1st plaintiff in this case.

(Learned Counsel for defendant moves to produce this statement as (D3).

Objected to.

Disallowed. It would be open for Learned Counsel for defendant to renew his application to produce the document after the gazette notification is produced and marked.

Sgd.

Additional District Judge

24.4.64

No. 12
Defendant's
Evidence.
—
Evidence of
K. Thirunavuk-
arasu—
Examination.
—Continued

Q. On the facts placed before you, you made the order P1.

A. Yes.

(P1 read),

It reads as follows:-

“With reference to the consignment of 50 bags of Mathe seeds I have the honour to inform you that the 20 bags of poppy seeds are confiscated under Section 45 of the Customs Ordinance Chap. 185 read with section 27 of the Poisons, Opium, and Dangerous Drugs Ordinance. The 30 bags Mathe seeds are confiscated under section 123 of the Customs Ordinance. 10

I have also imposed a penalty of Rs. 45000/- on you under sec. 127 of the Customs Ordinance. However acting under sec. 155, I am prepared to mitigate the penalty of Rs. 45000/- to Rs. 15000/- which amount please remit to this office within one week from this date. ..”

Section 123 is now section 125 of the Customs Ordinance in the Revised 1956 Edition. Section 45 is section 43 in the Revised 1956 Edition

To Court:

Q. You said that you made the order on the facts placed before you. 20

A. Yes.

P1 is a letter written by me to 1st plaintiff. P1 is really a letter based on my order made by me. P1 is not the order.

Examination in chief continued

I made the order and P1 refers to that order. That order is found in the official file maintained by me in the course of my official duties.

(Learned Counsel for defendant moves to mark certified copy of this order as (D4). 30

Allowed.

Sgd.

Additional District Judge

24. 4. 64

It reads as follows:-

“I order the confiscation of 20 bags of poppy seeds under section 45 of the Customs Ordinance Chap. 185 read with section 27 of the Poisons, Opium and Dangerous Drugs Ordinance Chap. 172. Under section 123 of the Customs Ordinance I order the confiscation of 30 bags of Mathe seeds. I impose a penalty of Rs. 45000/- on you under section 127 of the Customs Ordinance Chap. 185. I mitigate 40

the penalty of Rs. 45000/- to Rs. 15000/- under section 185 of the Customs Ordinance. In view of the fact that the Master of the boat had taken the sample and given to the tide waiter on board it is difficult to prove "knowingly concerned."

I took the words "unknowingly concerned" from section 129 of the Customs Ordinance. I confiscated the goods under section 43. I had the power as Assistant Collector of Customs to impose a penalty under section 129.

10 (Learned Counsel for defendant says at this stage that he desires to put questions in relation to section 47 of the Customs Ordinance (Shown D1).

Q. Under provisions of what section has this form been tendered by Sabaratnam?

A. D1 is a form prescribed by the Customs Ordinance and it must be filled by the Importer of goods and delivered as required by section 47 of the Customs Ordinance, to the Collector of Customs. D1 is a Bill of Entry.

To court

20 *Q.* The size, colour of the form tendered must be specified by the Collector by publication in the Gazette?

A. Yes.

Q. There is a gazette which prescribes the kind of form that must be used?

A. Yes. I don't have that gazette.

Cross-Examination:

Q. For how long have you been functioning as Assistant Collector of Customs, Jaffna?

A. For the last four years.

30 *Q.* Your experience in making orders of this kind was gained during the last four years?

A. Yes.

Q. Were you given any special tuition in the provisions of the Customs Ordinance?

A. No.

Q. The Customs Ordinance is a complicated piece of legislation?

A. Yes.

Q. One of the sections under which you purported to act is section 43?

A. Yes.

40 *Q.* Under the 1st para of that section you forfeited 20 bags of poppy seeds?

A. Yes.

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Examination
— Continued

Evidence of
K. Thirunavuk-
arasu-
Cross-
Examination.

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-Cross
Examination
—Continued

Q. The plaintiffs all along contended that those 20 bags of poppy seeds were not consigned to them?

A. Yes.

It was the 1st plaintiff Mandirampillai who claimed that those 20 bags of poppy seeds were not his.

Q. Whoever imported the poppy seeds that importation was illegal?

A. Yes.

Q. You forfeited 20 bags of poppy seeds under 1st para of section 43 Chap. 235? 10

A. Yes.

Q. You did not act under the 2nd para of section 43? (read)

A. No.

Q. You went in search of authority and you found section 125 Chap. 235?

A. Yes.

(Section 125 is read to witness).

Q. Having forfeited 20 bags of poppy seeds under that section you proceeded to forfeit 30 bags Mathe seeds (Fenugreek seeds) under section 125? 20

A. Yes.

Q. You ordered confiscation on the ground that those 30 bags of Fenugreek seeds were packed with 20 bags of poppy seeds?

A. Not because they were packed together but they were part of the same consignment.

Q. Your position in action under section 125 was that either 20 bags of poppy seeds were packed with 30 bags of Fenugreek seeds or those bags of Fenugreek seeds were used for the purpose of concealing the bags of poppy seeds? 30

A. Yes. My idea was that those bags of Fenugreek seeds were a sort of cover to conceal the 20 bags of poppy seeds.

Q. You found that those 2 sets of bags viz. 20 bags of poppy seeds and 30 bags of Fenugreek seeds were imported under the same consignment?

A. Under the same mark.

Q. What were the materials on which you felt that these two sets of bags were imported as part and parcel of the same consignment? Did you examine the Indent sent by the plaintiffs' Firm?

A. No. 40

Q. Then what were the materials on which you felt that these two sets of bags formed part and parcel of the same consignment?

A. The consignment of 50 bags including the 20 bags of poppy seeds bore the mark "Mani".

The word "Mani" was written in English with the same kind of liquid colour ink. It was written on everyone of those 50 bags.

Q. So the ground on which you arrived at this conclusion was the presence of the mark "Mani" on the bags?

A. Yes.

Q. In addition to the 50 bags did you examine the other bags in the ship?

A. No.

Q. Do you deny that there were 600 to 700 bags of goods loaded
10 in that boat?

A. I don't deny that. I admit that.

Q. Did you examine the invoice for these goods which had been ordered by the plaintiffs?

A. Yes.

(Shown the invoice)

Objected to by Learned Counsel for defendant unless the writer is called)

Q. Was this the invoice dated 9. 5. 61 which you read?

A. Yes.

20 (In view of this admission Learned Counsel for plaintiff moves to mark this invoice as P2. He states that he would be calling Velauthapillai who signed this in India and he would be calling a witness who is familiar with the writing contained in P2.

Allowed.)

Sgd.

Additional District Judge

24. 4. 64

Q. The invoice P2 states that 50 bags of Fenugreek seeds marked "Mani" were being exported to plaintiff's firm S. M. R. & Co?

30 A. Yes.

Q. What was your reaction on this document P2. With reference to section 43 and section 125 how did you react to this document P2?

A. I thought 20 bags out of 50 bags had been removed and 20 bags of poppy seeds were substituted and shipped.

Q. You have stated that the plaintiffs did not claim these substituted 20 bags of poppy seeds?

A. Yes.

Q. You had no evidence as to who effected the substitution?

40 A. No.

Q. Yours was only a suspicion?

A. Yes. I thought that they must have been exported.

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Cross-
Examination.
—Continued

No. 12
Defendant's
Evidence.
—
Evidence of
K. Thirunavuk-
arasu—Cross
Examination
—Continued

Q. You really do not say who effected the substitution?

A. Yes.

Q. Did you also examine the Bill of Lading?

A. Yes.

(Shown bill of lading dated 10. 5. 61)

Objected to.

Q. Did you examine this Bill of lading?

A. Yes.

(Learned Counsel for plaintiff moves to mark in evidence this document as P3).

10

Order

The contents of it will be allowed to be read only subject to proof.

Sgd.

Additional District Judge

24. 4. 64

Q. You would not have allowed these goods to be landed at the jetty without the consent of the Master of the vessel?

A. Yes—it was the Master who delivered the goods. D3 was handed by the consignee or his representative to the Sub-collector at Kayts, along with the Bill of Entry and invoice. The bill of lading refers to 50 bags of Fenugreek seeds bearing the mark 'Mani'.

20

Q. Your officer Mr. Fernando examined the documents?

A. I cannot speak to that.

I took into consideration the bill of lading and the invoice.

Q. The bill of lading refers to 50 bags of Fenugreek seeds bearing the Mark "Mani"?

A. Yes.

Q. There was no address on the bags?

A. Only the marks "Mani" were there

30

Q. In the Bill of Entry the plaintiffs wanted delivery of 50 bags of Fenugreek seeds?

A. Yes.

Q. When you told the 1st plaintiff that out of 50 bags 20 contained prohibited goods such as poppy seeds, he told you that he wanted only 30 bags of Fenugreek seeds?

A. Yes.

Q. You were of the view that the 30 bags of Fenugreek seeds were used for the purpose of concealing the 20 bags of poppy seeds?

A. Yes.

40

Q. Each of those bags were packed separately?

A. Yes.

Q. The master of the vessel Rozairo Fernando informed your officer of the presence of 20 bags of poppy seeds?

(Objected to unless the master of the vessel is called.

Order

Question disallowed.)

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Cross-
Examination
—Continued

Sgd.

Additional District Judge.

24. 4. 64

(Shown D4).

10 (Last para read)

This was written and signed by me.

Q. Yet you proceeded to impose a penalty of Rs. 45000/- on the importer?

A. Yes.

Last para refers to the fact that there was no proof that the master was knowingly concerned with the importation of 20 bags of poppy seeds and that he was a common carrier and that there was no proof that he was knowingly concerned with the illegal importation of the poppy seeds. I examined the master of the vessel.

20 Q. Do you agree that so far as the master was concerned, the 20 bags were there and they were not in the manifest?

A. Yes.

Q. You will agree that under those circumstances the master of the vessel must be regarded as the owner of the 20 bags of poppy seeds?

(Objected to as it calls for the opinion of the witness.

Order:

Question disallowed)

Sgd.

Additional District Judge.

24. 4. 64

30

Q. Suppose there are out of 50 bags referred to in the manifest 20 bags of corriander, what would be the position?

A. If it is a prohibited imported article I would have taken the same steps.

Q. You would forfeit 30 bags under section 125?

A. Yes.

Q. You have stated that each of those 50 bags were packed separately?

40

A. Yes.

Q. So that the 30 bags were not packed with the 20 bags?

A. Yes.

No. 12
Defendant's
Evidence.
—
Evidence of
K. Thirunavuk-
arasu—
Cross-
Examination
—Continue!

Q. You seemed to have had suspicion that 30 bags were used for the purpose of concealing the 20 bags?

A. Yes.

Q. How were they used for concealing the 20 bags. By looking at those bags you could easily identify them containing poppy seeds?

A. Unless one opens the bags and examines them one cannot say what they contained.

To Court

Q. Did you go and personally see those 50 bags? 10

A. No.

I acted on the file placed before me. All that I did was that I went through the file which was handed over to me, read all the papers and I made an order. I did not examine anybody. I read the report of Mr. Fernando. I read the documents that had been sent with the file and I made the order.

Cross-Examination Continued.

I know the meaning of the word "concealment"?

Q. You do not know who concealed?

A. I do not know. 20

Q. How did you come to impose a penalty under section 129?

A. As consignee of the goods he was responsible.

Q. He was the consignee of 50 bags of Fenugreek seeds?

A. Yes.

Q. How did you come to conclude that he was knowingly concerned in the importation of 20 bags of poppy seeds?

A. The whole consignment of 50 bags were consigned to him. I took it for granted that he knew that of the 50 bags on the face of the invoice were stated to contain Fenugreek seeds he knew that 20 bags of poppy seeds were imported illegally and he was knowingly concerned with it. 30

To Court

Q. Suppose a person imports Rs. 1000/- worth of books and in that package containing books are found some prohibited articles. as far as you are concerned you would hold that he was knowingly concerned in the importation of prohibited articles and impose a penalty and forfeit the entire goods?

A. Yes, provided that it was entered in one invoice and in one bill of lading, in which case I would treat it as one consignment.

Cross-Examination Continued. 40

Q. Did you or did you not arrive at the conclusion that the 30 bags of Fenugreek seeds were used for concealing the 20 bags of poppy seeds?

A. I arrived at the conclusion that the 30 bags of Fenugreek seeds were used to conceal the 20 bags of poppy seeds and for all purposes it was part of the consignment.

Major part of the cargo in that vessel was cement bags.

Q. It was after you examined the cargoes that you allowed them to be unloaded?

A. Not I, Mr. Fernando must have allowed landing.

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Cross-
Examination
—Continued

The inquiry was held by Mr. Fernando under section 43 and I made the order. Mr. Fernando also can make an order. The
10 practice was for him to record statements and submit to me with his report. I visit the spot only if I find it necessary, otherwise I go through the documents and file and make a report.

Q. Did you or Mr. Fernando examine the bags on board the ship?

A. I did not examine the bags.

Q. Do you know whether Mr. Fernando examined them?

A. I cannot say that.

I did not ask Mr. Fernando about it.

Q. You relied solely on the alleged consignment and held
20 that 30 bags of Fenugreek seeds were used for the purpose of concealing the other 20 bags?

A. Yes.

Q. Didn't you think that the manner in which the bags were placed in the ship would indicate as to whether there was an attempt to conceal the prohibited articles?

A. What is entered in the Manifest would be put outside so that people can see it and over and above that would be concealed elsewhere.

Q. Was there anything to indicate that 20 bags of poppy
30 seeds were concealed?

A. No.

To Court

What is the reference to "sample" found in last para of D4?

A. When the tide waiter went to tally or count the cargo from the ship and put them into the small boats to bring them ashore he was shown a sample of poppy seeds by the master of the vessel.

Cross-Examination Continued

Q. On the bare statement of the Master that the 20 bags
40 contained poppy seeds you thought that plaintiff was knowingly concerned in the importation of the prohibited goods?

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Cross-
Examination
—Continued

A. It was not on the statement of the master but when we examined the goods in the warehouse we found that 20 bags contained poppy seeds.

Q. Did it not strike you that any other person than the plaintiff was responsible for this substitution?

A. It did not strike me.

Q. You assumed that it was the plaintiff who substituted these 20 bags of poppy seeds for the 20 bags of Fenugreek seeds referred to in the invoice and Bill of Lading?

A. The plaintiff or his Agent substituted the 20 bags of poppy seeds. 10

The Agent could have been the shippers at Tuticorin. I am not aware whether the Firm who supplied 50 bags of Fenugreek seeds were Mani traders in Madura. I did not try to find out what the meaning of the word "Mani" is. I thought that the word "Mani" was the identification Mark. It depends on the shippers to give identification marks.

Q. Did the 1st plaintiff tell you that he bought 50 bags of Fenugreek seeds from Mani traders in Madura?

A. I don't remember. 20

Q. All that you remember is that Velauthampillai exported these goods to plaintiffs from Tuticorin?

A. Yes.

Q. Are you surprised to hear today that the mark "Mani" is the mark of the Firm which supplied goods to plaintiffs?

A. It may be.

Q. Did you try to find out whether that firm supplied goods to plaintiffs?

A. No.

Q. You stopped with the exporters at Tuticorin? 30

A. Yes.

Q. You thought that the exporter must have purposely invoiced 50 bags of Fenugreek seeds and quietly put in 20 bags of poppy seeds?

A. Yes.

Q. You had no evidence to act and you acted on suspicion?

A. As the invoice was for 50 bags of Fenugreek seeds and there were 20 bags of poppy seeds I took it for granted that 20 bags of poppy seeds were part of the consignment meant for plaintiff. 40

During the period I have been functioning as Assistant Collector of Customs I have had no occasion to order forfeiture of goods that have been brought in and introduced by a 3rd party.

This was a time of Emergency which was going on. The military were about the place at Kayts at this time. Navy was there to protect the sea and prevent illegal immigration.

Q. It would be very difficult for the master of the ship under those circumstances to dispose of the prohibited goods like Poppy?

10 A. I can't answer this question.

Q. Did you try to get anybody to identify these bags?

A. No.

Q. Did you get information from anybody that 20 bags of poppy seeds were actually consigned?

A. The bags containing poppy seeds were discharged from the same boat and the only inference is that they had been shipped from Tuticorin.

Q. The mark Mani must have been registered?

20 A. No. Plaintiff could have changed the mark for every consignment that he got down from India.

Q. The plaintiff wrote to you asking you to deliver 30 bags of Fenugreek seeds to them?

A. Yes.

I refused on the ground that they have been used for the purpose of concealing 20 bags of poppy seeds. Those 20 bags of poppy seeds were individually packed separately.

Q. You said that you read through the protest before making the order?

A. Yes.

30 I was not personally aware that cement bags were jettisoned. I came to know of it from a protest entered by the master of the vessel. Generally goods are jettisoned in high seas. I cannot say whether there were high seas at that time. I did not suspect the master.

Q. You thought that there was some jugglery that commenced at Tuticorin and came to a halt at Kayts Customs.

A. Yes.

Q. If you had charged the master with concealment you would have imposed a penalty on the master and forfeited the ship?

40 A. Yes.

Q. You did not charge the master because he gave sample to your tide waiter?

A. Yes.

No. 12
Defendant's
Evidence.

Evidence of
K. Thirunavuk-
arasu-
Cross-
Examination
—Continued

No. 12
Defendant's
Evidence.
—
Evidence of
K. Thirunavuk-
arasu—
Re-examination

Re-Examination:

Q. When goods are consigned to Jaffna to any particular person what does the consignee do?

A. He prepares the bill of entry and along with the invoice and other documents he hands them to the sub-collector.

Then the Sub-collector checks the goods whether they are in conformity with the bill of lading and bill of entry. After seeing them he imposes the duty and releases the goods.

Q. On the bill of entry D1 what was the consignment claimed by Sabaratnam for and on behalf of plaintiff's firm? 10

A. 50 bags of Fenugreek seeds.

(Witness reads from D1).

Q. Does it refer to any marks?

A. Yes marks bearing "Mani".

Q. When this was presented along with the Bill of Lading and invoice what was the duty of the sub-collector of Customs?

A. To check the goods, recover the duty and pass them.

Q. Sabaratnam when he delivered these documents wanted to remove 50 bags which bore the mark 'Mani'? 20

A. Yes.

Q. If the ship carried these goods with the knowledge of the Master, under the Customs Ordinance, the ship also was also liable to be forfeited?

A. Yes.

Q. You thought that the master was unknowingly concerned with the transport of these goods to Kayts?

A. Yes.

To Court

Q. When this document D1 was handed by Sabaratnam to the Sub-collector of Customs at Kayts, where were these goods? 30

A. They were in the warehouse.

Q. Did the plaintiffs or their agent have anything to do with the transport of the goods from the ship to the warehouse?

A. I don't think.

Sabaratnam may have presented the documents before the goods were discharged, I cannot say whether the goods were in the warehouse when this entry D1 was submitted.

Q. On page 1 of D1 there is a column "Marks and numbers"?

A. Yes.

Marks refer to "Mani". With regard to numbers if there are 15 packages we have to number 1 to 15. Generally the bag cargoes are not numbered. Case cargoes are numbered. 40

Q. When the sample is taken is the consignee asked to be present?

A. It is not an officialy drawn sample. The master of the ship draws some seeds from the bags and hands it to the tide waiter.

No. 12
Defendant's
Evidence.
—
Evidence of
K. Thirunavuk-
arasu-
Re-examination
—Continued

Not in all cases, where we suspect we take samples, but when we suspected that 20 bags contained poppy seeds Mr. Fernando must have examined every one of those bags. In this case few poppy seeds were shown to me before I made the order. Those 20 bags of poppy seeds are still in the Customs. 30 bags of Fenugreek seeds had been
10 handed over to plaintiff on security.

Sgd.
Additional District Judge
24. 4. 64

Further hearing on 26.6.64.

Learned Counsel for defendant states that witness K.P.W. Fernando, Christopher, K. Manickavasagar, Amirthalingam and Sabaratnam are his witnesses and are present in Court on summons and moves that they be warned to appear on the next date and that their batta will be paid to those who are entitled to batta by the defendant.

20 Application allowed. They are warned to appear on the nex date.

Sgd.
Additional District Judge
24. 4. 64

26. 6. 64

Vide Journal Entry of 23. 6. 64

Mr. Somasegaram for defendant says that his Counsel Mr. Advocate Muthusamypillai is unwell and moves for a postponement of the trial. Learned Counsel for plaintiff has no objection to a postponement.

30 Of consent call case on 6.7. 64 to fix further date of trial.

Sgd.
Additional District Judge
26. 6. 64

13. 10. 1964

Same appearances as before.

1st plaintiff is present. 2nd plaintiff is absent. The defendant is the Hon'ble Attorney-General and is represented by Mr. Thirunavukarasu, Assistant Collector of Customs, Jaffna.

No. 12
Defendant's
Evidence.
—
Evidence of
K. P. W.
Fernando
Examination

Defendant's Case Continued

Mr. Muthusamipillai calls:

Kumarawattage Percy William Fernando, affirmed.

46 years, Chief Assistant Preventive Officer, H. M. Customs, Colombo.

I was Sub-collector of Kayts Customs in June 1961 and also Chief Assistant Preventive Officer at that time. I produce marked D1A the original copy of D1 bill of entry. This is signed by me and Sabaratnam for and on behalf of the plaintiff company.

(Learned Counsel for plaintiff objects to D1. He refers to page 10 of the proceedings when the document D1 was allowed subject to proof. He also refers to pages 13 and 14 of the proceedings. 10

(Order. Before the Court proceeds to make order on the objections the Court questions the witness:)

Questioned by Court:

Q. Under what provision of law did you get this D1 filled and by what authority did you get this D1 filled?

A. Under section 47; in my capacity as Sub-collector of Kayts.

Q. And that appointment was gazetted?

A. That appointment was not gazetted. It was made by the Principal Collector of Customs. 20

Order:

I find that D1, according to the order of Court recorded on page 14 of the last day's proceedings was allowed subject to proof and Learned Counsel for defendant undertook to call Mr. Fernando and Mr. Sabaratnam. I allow D1 to be produced).

I said that I was Sub-collector of Customs, Kayts, and as Sub-collector and Preventive Officer of Customs I recorded the statement of Mr. Sabaratnam in connection with the entry form D1.

Q. You produce the statement made by Sabaratnam to you at the inquiry as D2? 30

(Objected to. Learned Counsel for plaintiff refers to the order made on page 14 of the last day's proceedings.

Order

The document has already been disallowed, unless the Gazette Notification is produced).

I produce marked D5 a copy of the order made by the Minister of Finance then appointing me as Preventive Officer in terms of section 8(1) of the Customs Ordinance and with power to hold examinations and inquiries under the Customs Ordinance during the tenure of office to which I was appointed. 40

(Mr. Muthusamipillai refers to section 167 of the Customs Ordinance. He refers to the definition of the word "collector" found in section 167.

No. 12
Defendant's
Evidence.

Evidence of
K. P. W.
Fernando
Examination
—Continued

Learned Counsel for plaintiff objects to D5 as the document D5 is signed for the Principal Collector of Customs by some one else and purports to be a certified true copy of order made by the Hon'ble Minister of Finance under section 8(1) of the Customs Ordinance. He says that there is no seal of the Principal Collector of Customs to show that this document is authentic.

10 **Order:** I allow the document to be produced).

I produce the statement made by Sabaratnam to me.

(Learned Counsel for defendant now moves that D2 be allowed. Order-allowed.)

(Shown D2. Witness reads D2) I produce marked D2A a further statement made by Sabaratnam. (Witness reads D2A). Then the first plaintiff appeared before me at Kayts and he also made a statement which I recorded. I produce that statement marked D3. (Witness reads D3. Shown 1st plaintiff). He is the person who made that statement. Thereafter I recorded these statements after checking the
20 goods. I found 20 bags contained white poppy seeds and 30 bags contained mathe seeds. I placed the matter before the Assistant Collector of Customs, Mr. Thirunavukkarasu who made the order D4 confiscating the goods. (Vide page 16 of the last day's proceedings when D4 was marked). The 50 bags referred to in the entry form D1 were the only 50 bags bearing the mark "Mani" out of the goods which were brought by the boat "Nooraniah."

Q. Was there any suspicion which made you to examine the the consignment before passing the goods for delivery?

A. Yes.

30 *Q.* What was that?

A. This clerk Mr. Sabaratnam came to the Port of Kayts before the arrival of the boat and made inquiries when the boat would come to the Port of Kayts and that aroused my suspicion and before the goods were landed this was the first entry that was made to me. Further he was in a hurry to get through his goods. D1 was the first entry.

To Court

This aroused my suspicions.

Cross-Examination.

40 I said that I was Sub-collector of Kayts Customs. I was appointed Sub-collector in 1959. That is 1st of July 1959. I was appointed by the Principal Collector of Customs. I don't have the letter of

Evidence of
K. P. W.
Fernando—
Cross
Examination

No. 12
Defendant's
Evidence.
—
Evidence of
K. P. W.
Fernando
Cross-
Examination
—Continued

appointment now. It will be in the office files. It would be in the Jaffna office as well as in the Colombo office. I have been in the Customs Department for about 23 years.

Q. What is the position you hold now?

A. Chief Assistant Preventive Officer.

I am residing in Colombo. I have said in evidence about the consignment addressed to the plaintiff-firm, bearing "Mani" mark.

Q. In addition to the consignment bearing "Mani" mark there were other consignments addressed to the plaintiff? Were there other consignments brought to the plaintiff-firm by the ship Nooraniah? 10

A. If I see the Manifest I can answer. I can't remember.

Q. In your experience as Customs Officer in the Northern ports you have had to deal with consignments previously forwarded to plaintiff's firm?

A. Yes.

I knew that the plaintiff's firm imported goods from India to Ceylon.

Q. You have had no occasion to deal with them as persons who attempted to smuggle goods into Ceylon?

A. No. 20

(Learned Counsel for defendant now hands over the Manifest which is marked D6, the original, to the witness).

To Court.

"S. M. R." in the Manifest refers to the plaintiff's firm. It is "Sana Mana Rawanna."

Cross-Examination Continued

There were other goods also which came by the boat Nooraniah to the plaintiff's firm and Sabaratnam's entry form was in respect of the 50 bags marked "Mani" but he did not make any entry form in respect of the other goods which came by this boat on that day that is on the day on which he made application D1. One of the items of goods referred to in this Manifest is 2000 bags of Portland Cement. That was a consignment to Jafferjee Brothers. A portion of this cement had been jettisoned into the sea by the Master of the boat Nooraniah on its voyage to Kays. The master of the boat entered into a deed of protest and I have seen that deed of protest. I can recognise the deed of protest. (Learned Counsel for plaintiff marks in evidence deed of protest No. 3052 dated 31 May 1961 attested by N. T. Sivagnanam, Notary Public as P4). I checked up this matter on board the 30

Nocraniah.

Q. And you found 150 bags of cement were actually missing?

A. There were only 119 bags of cement.

Q. In your evidence you said that there was an additional mark on the bags containing the poppy seeds?

A. No.

To Court:

Q. You said so?

A. The additional mark was on the bags containing Mathe seeds.

10 The 30 bags containing mathe seeds with marks "Mani" had also another mark "218 X." In this document D6 the only mark given for poppy seeds is "Mani."

Cross-Examination Continued.

Q. Those 20 bags of poppy seeds did not have the additional mark "218 X"?

A. No.

I examined each of those bags. I have no idea what those figures "218 X" mean.

20 Q. To the best of your recollection can you say whether it is in the same ink.

A. It appears to be in the same ink. That is green ink.

To Court:

Q. Are they hand written or printed?

A. The word "Mani" was stencilled but "218 X" appears to have been written by hand.

Cross-Examination Continued.

Q. Do you know from where these 50 bags were shipped?

A. Yes. Tuticorin.

30 Q. Before they were shipped the Tuticorin Customs authorities would have checked the consignment?

A. Normally they have to be checked and they must have checked them.

Q. With regard to D6 the plaintiff would be entitled to only the 30 bags of Fenugreek seeds?

(Objected to as it calls for the opinion of the witness.

Order: Disallowed).

Q. Would you have delivered to the plaintiff under this manifest any bag other than the bags of Fenugreek seeds?

A. No.

40 Q. Did you question the Master as to how the 20 bags came to be?

A. Yes. I questioned the Master, Rosairo. I recorded the statement.

Re-examination: Nil.

No. 12
Defendant's
Evidence.

—
Evidence of
K. P. W.
Fernando
Cross-
Examination

—Continued

To Court:

Sabaratnam was allowed to see the consignment. He was accompanied by Customs officers when he went to see the consignment. Sabaratnam took one sample.

Q. Do you take samples from every bag?

A. No. Not from every bag, and no officer accompanies the person when he takes samples.

Q. On what does that person bring the samples.

A. He is given a needle and he perforates the bags and takes the samples. No officer accompanies him. 10

In the case of Sabaratnam he went to the place where the bags were unloaded and brought one sample.

Q. And that sample contained mathe seeds?

A. Yes.

Q. Where is that sample? Was that sealed?

Had the Customs sealed it and put that away separately?

A. I can't say whether it was sealed.

Q. At the subsequent inquiry held by the Assistant Collector of Customs was the sample produced?

A. Yes. It was produced before the Assistant Collector. 20

Q. After Sabaratnam brought the sample according to Sabaratnam, the Sub-collector sent somebody to bring further samples?

A. Yes. One of the officers. I sent some officers.

Q. Did Sabaratnam go with those officers or did those officers go alone?

A. They went alone.

Q. They also brought one sample?

A. Yes.

Q. That was sealed?

A. That was brought to my table. That contained poppy seeds. 30

In the consignment which had come for plaintiffs there were both mathe seeds and poppy seeds. The officers who were sent brought two samples, one was Fenugreek seeds and the other poppy seeds. Thereafter I inspected every bag by perforating them with a needle and then I found that the 30 bags containing mathe seeds with marks "Mani" had also another mark "218X" whereas the 20 bags containing poppy seeds had only marks "Mani"

I said that I questioned the Master of the boat. I did not ask the Master how, out of the 50 bags which he had delivered, 30 bags containing mathe seeds had in addition to the mark "Mani" the mark "218X" whereas the 20 bags containing poppy seeds had only marks "Mani." 40

Q. When these samples were taken either by Sabaratnam or by your officers it was in the presence of the Master?

A. He was not present.

Q. When were these things unloaded, these 50 bags?

A. On 1.6.1961, at 9.30.

Q. And they were kept in a warehouse which had been locked?

A. Yes.

10 Q. It was on the second day that Sabaratnam came and gave the entry form D1A?

A. It was on the first day that D1 was produced that D1A was produced.

Q. On the same day Sabaratnam produced D1?

A. Yes.

Q. The statement D2 was recorded on the next day?

A. Yes. He was not available on that day to record his statement.

To Court:

20 Q. In D1 Sabaratnam has made a declaration that he is the importer of the goods contained in this entry D1?

A. Yes.

Q. That is for the 50 bags?

A. Yes.

Q. He made the declaration without having seen the samples?

A. Yes.

Q. At that time he had the bill of lading P3 with him?

A. Yes.

Q. The bill of lading is a document signed by the Master?

A. Signed by the Master of the Vessel Nooraniah.

30 Q. In your experience as a Customs Officer can you say whether the Master of the ship examines the goods inside the bags when a consignment is handed to him?

Does the Master of a ship examine or take a sample of the goods?

A. Normally he does not take any samples. He only sees to the marks.

Q. When you looked at the 50 bags you would have seen the marks appearing on the 20 bags and the additional marks on them "218 X"?

40 A. Yes.

No. 12
Defendant's
Evidence.

Evidence of
K. P. W.
Fernando
Cross-
Examination
—Continued

No. 12
Defendant's
Evidence.
—
Evidence of
K. P. W.
Fernando
Cross-
Examination
—Continued

Q. What happens if the Master is handed goods which on the bill of lading is stated to have the marks "Mani" but is found to contain other marks also?

What would the Master do?

A. If he sees it he will not accept it.

Q. Will you as Customs Officer deliver to the consignee named in the bill of lading and on the application, that is the entry form, goods which bear marks different to that appearing on the bill of lading or in the entry form?

A. I would have normally delivered because the counter mark "Mani" was there. 10

Q. When was this discovered that there were additional marks, that is "218 X" on the 30 bags containing the Fenugreek seeds?

A. That was discovered only when we punctured the bags. That is after Sabaratnam made the first statement.

Sabaratnam was asked for an explanation for the marks on the bags. He was unable to give an explanation.

Q. Having made your inquiries you went through all the papers contained in the file? 20

A. Yes.

Q. Which you opened for the purpose of holding this inquiry?

A. Yes.

Q. You placed before the Assistant Collector of Customs the statement made by Sabaratnam, the statement made by the first plaintiff and the statement made by the Master of the ship?

A. Yes.

Q. Apart from that was any evidence taken on oath by the Assistant Collector of Customs or by you?

A. No 30

Q. At the inquiry held by you you took written statements?

A. Yes.

Q. Were they voluntarily made to you or were they in answer to questions put by you?

A. They voluntarily made the statements.

Q. Does D2A on the face of it look like a voluntary statement?

A. That must be in answer to questions.

Q. Questions were put when Sabaratnam and the first plaintiff made the statements to you? You put questions?

A. Yes. 40

Re-examination with permission:

I produce marked D7 the order sent by the Collector of Customs from the Jaffna Customs that I was to succeed Mr. De Niese. That is my letter of appointment.

Sgd. ...
Additional District Judge.
 13. 10. 1964.

No. 12
 Defendant's
 Evidence.
 —
 Evidence of
 K. P. W.
 Fernando
 Re-examination

Learned Counsel for defendant calls:

V Sabaratnam: Affirmed

Evidence of
 V. Sabaratnam

10 (At this stage Learned Counsel for plaintiff says that he has no objection to the statement of Sabaratnam D1, D1A, D2 and D2A going in evidence without formal proof. They are accordingly admitted in evidence without formal proof).

Learned Counsel for defendant closes his case reading in evidence. D1 to D7.

Sgd. ...
Additional District Judge
 13. 10. 1964

Adjourned for lunch.

20

No. 13
Plaintiffs' Evidence

13. 10. 1964

Trial resumed after lunch.

Plaintiffs' case

Mr. Kulasingham calls:

Velauthampillai Mandirampillai, Affirmed, 54 years, Trader, S. M. R. & Co. 212 Hospital Road, Jaffna.

No. 13
 Plaintiffs'
 Evidence
 —
 Evidence of
 V. Mandiram-
 pillai
 Examination.

30 I am the first plaintiff in this case. The second plaintiff Velauthampillai is my partner. I produce marked P5 certificate of registration in which it is stated that the partners are myself and the 2nd plaintiff. I have been carrying on business for 24 years. My firm has business in Colombo as well as in Jaffna. My firm imports goods from India to Ceylon. The second plaintiff has also an export business of his own at Tuticorin. I know the 2nd plaintiff's handwriting. He is now in Madras. My firm sends out an indent when it wishes to import goods. Three copies of the indent are prepared. One copy is retained in the office of my firm and the other two copies are sent to Tuticorin. My firm sent an indent dated 2nd May 1961 as from Sana Mana Rawanna and Company, 58 Fourth Cross Street, Colombo. (Shown indent dated 2nd May 1961

40 marked P6). This was signed by me.

No. 13
Plaintiffs'
Evidence
—
Evidence of
V. Mandiram-
pillai
Examination.
—Continued

Q. It is also confirmed by Velauthampillai your partner?

(Objected to as Velauthampillai the writer is not being called. Learned Counsel for plaintiffs states that the 1st plaintiff and Velauthampillai are carrying on business in partnership and that the 1st plaintiff the witness knows the writing of Velauthampillai and he can identify it.

Order. I allow the question to be put).

A. I identify the signature of Velauthampillai and he has also confirmed the indent. By P6 my firm ordered 50 bags of Fenugreek seeds from India subject to certain terms. (Fenugreek seeds are called in Tamil "venthayam" or dil seed). 10

Q. Your agent for export at Tuticorin was Velauthampillai your partner in this firm?

A. Yes.

Q. Who obtained the consignment of 50 bags in India?

A. Velauthampillai.

Q. And he invoiced it to your firm by P2?

A. Yes.

The mark is described in P2 as "Mani" and the details, number of packages, contents, value and so on, are given. I also produce marked P2A the same document bearing the seal of the Customs at Kayts to show that this invoice had passed through the Customs at Kayts. This P2A bears also the seal of the Customs of Tuticorin Port. My partner and agent Velauthampillai made an application for export of these goods. This application is called "exports application". I produce marked P7 the export application. P7 also refers to a number of packages and the contents of the packages and the value and so on in the same term as the invoice. 20

(Learned Counsel for defendant objects to the production of P7 on the ground that it has to be proved. Order - Allowed subject to proof). 30

Velauthampillai is my partner in the plaintiffs' firm. He is also an export agent of the firm at Tuticorin and I identify his signature on P7. I am familiar with his signature in the course of business.

Q. Is it possible for Velauthampillai to come to Ceylon?

A. No.

Q. Why?

A. Because of travel restrictions.

(Learned Counsel for plaintiffs states that summons was taken out on another member of the Firm of Velauthampillai in Tuticorin in connection with this case but he was not permitted to come to Ceylon). 40

When goods are imported the importer has got to make a declaration giving the name and address of the importer. I produce the name and address of the importer furnished by me to the Collector of Customs, Kayts, marked P8. P8 also contains the same particulars as the earlier documents. I authorised Sabaratnam an employee of us to remove these 50 bags of Fennugreek seeds when the boat arrived at the Kayts Port.

No. 13
Plaintiffs'
Evidence
—
Evidence of
V. Mandiram-
pillai
Examination.
—Continued

Q. At that time did you know that any of these 50 bags which arrived by that boat contained poppy seeds?

10 A. No.

Q. As a matter of fact have you at any time imported poppy seeds from India to Ceylon?

A. No.

Q. You know that the import of poppy seeds is prohibited in Ceylon?

A. Yes.

Q. But in India are these prohibited?

A. No.

Q. You sent Sabaratnam and later you were told that 20 bags contained poppy seeds?

A. Yes.

Q. You requested the Customs to hand over to you the 30 bags which contained Fennugreek seeds?

A. Yes.

Q. The Customs refused and sent you the letter P1?

A. Yes.

Q. By P1 the Customs purported to confiscate these 30 bags of Fennugreek seeds under certain provisions of the Customs Ordinance?

A. Yes.

Q. You deny that these 30 bags of Fennugreek seeds were used at any time for concealing these poppy seeds?

A. Yes. I did not know that the consignment contained poppy seeds.

I deny that I was concerned in the importation of these poppy seeds.

Q. Each of these bags was separately packed?

A. Yes. I have not even seen any of the bags.

Q. By the letter P1 the Collector of Customs not only confiscated 30 bags of Fennugreek seeds but also imposed a fine of Rs. 45,000/- which he reduced to Rs. 15,000/-?

4J A. Yes.

No. 13
Plaintiffs'
Evidence
—
Evidence of
V. Mandiram-
pillai
Examination.
—Continued

I protested against it. I was ordered to give security in a sum of Rs. 5,000/-. I produce a true copy of the bond I entered into with the Customs marked P9 and I was allowed to take charge of the 30 bags of Fennugreek seeds. In this case I ask for a declaration that I am entitled to the 30 bags of Fennugreek seeds, and that the Collector of Customs, Jaffna, be ordered to restore the goods to me, and also that the defendant be ordered and decreed to refund the security of Rs. 5,000/- which I deposited with the Collector of Customs, Jaffna, for the safe return of the 30 bags of Fennugreek seeds in the event of the Court holding in favour of the defendant. In this bond P9 it is stated that the forfeiture has taken place under the provisions of section 45 of the Customs Ordinance, Chapter 185 (In the new Edition it is section 43). 10

Evidence of
V. Mandiram-
pillai
Cross-
Examination

Cross-Examination

I am not a citizen of Ceylon. I am here on a temporary residence permit. I have a visa which is renewable once in two years.

Q. Was this so called partner Velauthampillai ever a resident of Ceylon?

A. Yes. He was. He had a temporary residence permit. At that time he was a minor. He is now studying law in India. He is my son. 20

Q. After he became a major he never lived in Ceylon?

A. No.

Q. What is the capital of your partnership?

Is it over a lakh of rupees?

A. More than a lakh of rupees.

Q. No deed of partnership was entered into at any time?

A. Yes. In connection with Indian income tax a deed of partnership was drawn up. 30

Q. In Ceylon is there a deed of partnership?

A. No. But there is a deed of partnership drawn up in India. The assets of this partnership of the plaintiffs' firm are included in the partnership deed executed in India.

Q. No partnership deed was executed before a Notary in India?

A. That is not necessary in India.

To Court:

In India a deed of partnership is valid if it is registered. It need not be attested by a Notary. 40

Cross-examination Continued.

No. 13
 Plaintiffs'
 Evidence
 —
 Evidence of
 V. Mandiram-
 pillai
 Cross-
 Examination.
 —Continued

Q. Are you a partnership in Ceylon?

A. Yes.

Q. Is your partnership constituted by notarial deed in Ceylon?

A. It is not necessary. No.

Q. This document P6 was it sent by you to India or was it kept by you in your office?

A. It was sent to India.

Q. Here the confirmation is said to be by M Velauthampillai, sole proprietor?

A. Yes.

Q. So that this Velauthampillai sole proprietor was sole proprietor of what?

A. He was sole proprietor of the firm called V.M. Velauthampillai.

To Court:

That firm is in Tuticorin. I am not a partner of that firm.

Q. But your son is the agent of the plaintiff's firm S. M. R. & Co 212 Hospital Road, Jaffna, in Tuticorin. As sole proprietor of that other firm he is your agent?

A. There is a firm in Tuticorin by the same name S. M. R. & Co

Q. But that is not the same as the plaintiff firm? That is a different firm?

A. Yes.

Cross-examination Continued.

Q. Velauthampillai who signed as sole proprietor in P6 has not signed as V. M. Velauthampillai sole proprietor, Tuticorin?

A. Yes.

Q. So that he did not sign this document P6 as your partner?

A. No.

Q. This order P6 was placed by you with Messrs V. P. Velauthampillai?

A. Yes.

Q. Was this the original?

A. I sent two copies to them. They retained one and sent me the other. P6 is the one that came back.

Q. You see that the typewritten part of P6 shows that it is a carbon copy?

A. Yes.

No. 13
Plaintiffs'
Evidence
—
Evidence of
V.Mandiram-
pillai
Cross-
Examination.
—Continued

Q. You did not cite Velauthampillai to give evidence in this case?

A. He was unable to come and my Proctor decided whether to cite him or not.

Q. You know that white poppy seed is in demand as a delicacy?

A. I do not know.

Q. You made a statement to Mr. Fernando, Sub-Collector?

A. I gave answers to questions put by him. He did not accept some of the statements made by me.

10

To Court

Q. Do you say that some of the answers given by you had not been recorded?

A. I can't say that. If I read the statement recorded I can say whether all that is recorded was made by me.

Cross-examination Continued.

The signature on D3 is my signature.

To Court

Q. Before you signed D3 was D3 read over and explained to you?

A. No.

Q. Do you know English?

A. I did not study English but I can speak a little English.

Q. Can you read this?

A. To a certain extent I can read. I can read with difficulty what is recorded in D3.

20

Cross-examination Continued.

Q. You told Court that white poppy seed is not contraband in India?

A. Yes.

Q. Did you say this: "I wish to state that an exporter deals in white poppy seed which was a common curry ingredient in India"?

A. I told Mr. Fernando that there are no restrictions to the sale of poppy seeds in India.

30

To Court:

Q. Did you also say that it was a common curry ingredient in India?

A. Yes.

Cross-examination Continued.

Q. You admit that Sabaratnam filled up that entry form D1?

A. No. He did not.

To Court:

Q. Who filled it up?

A. I think it was done by the entry clerk working in the Customs, Kayts. He is a Government Clerk who works in the Customs, Kayts. He must have filled it for Sabaratnam.

Cross-examination Continued.

10 *(Shown DIA)* It is signed by Sabaratnam. It has not been filled up by Sabaratnam. The writing is not that of Sabaratnam.

Q. This application was made to the Sub-Collector of Customs for the removal of the 50 bags?

A. Yes.

Q. Bearing mark "Mani"?

A. Yes.

To Court:

Q. He was sent by you as your representative?

A. I did not send him but somebody in my office had sent him.

20 He was my agent.

Cross-examination Continued.

Q. Did you go up to Customs, Kayts, on that day 1st of June?

A. No. I went there on the 2nd of June.

Q. Were there 50 bags with the mark "Mani" brought by the boat Nooraniah?

A. I was not shown any bag.

To Court:

30 *Q.* You did not go and see this consignment which was inside the warehouse?

A. I did not go to the warehouse at all.

Q. Were you shown any samples taken from the consignment by any of the Customs Officers?

A. Yes. On the table of Mr. Fernando I saw samples of poppy seeds.

Cross-examination Continued.

Q. Do you maintain that the boat Nooraniah brought 50 bags of Fennugreek seeds?

40 *A.* I can only say that 50 bags of Fennugreek seeds should have been brought by the ship Nooraniah to me as consignment.

No. 13
Plaintiffs'
Evidence

—
Evidence of
V. Mandiram-
pillai
Cross-
Examination.
—Continued

No. 13
Plaintiffs'
Evidence
—
Evidence of
V. Mandiram-
pillai
Cross-
Examination.
—Continued

Q. Do you admit or deny that the boat Nooraniah brought 50 bags of articles consigned to you?

A. No. I do not know personally. All that I know is that I placed an order for 50 bags of Fennugreek seeds.

I have deposited Rs. 5000/- with the Collector of Customs on 3-9.

Q. Out of this Rs. 5000/-, Rs. 3000/- represents the value of the 30 bags of Mathe seeds?

A. I was told by Mr. Thirunavukkarasu.

Q. And you were allowed to remove those 30 bags of Mathe seeds? 10

A. Yes.

Q. And the Rs. 2000/- represents the security for costs that may be ordered in favour of the defendant?

A. Yes.

Q. Did you tell the Assistant Collector that the value of Mathe seeds even in India was Rs. 5000/-?

A. I did not.

Q. You know that curry stuffs are allowed to be imported into Ceylon free of duty? 20

A. Not all curry stuffs. Imports are restricted.

Q. Any way Fennugreek seeds (venthayam) were allowed to be imported into Ceylon free of duty?

A. Yes.

Re-examination

Q. When you received the advice that Nooraniah would reach Kayts did you expect any delay of the boat?

A. Normally the boat coming from Tuticorin would reach Jaffna in 3 or 4 days but this time it took 24 days.

To Court:

Q. Apart from the 50 bags of Fennugreek seeds the ship Nooraniah brought other things also, other goods? 30

A. Yes

Q. On 1. 6. 1962 your agent Sabaratnam or whoever it be filled up an entry form only to remove Fennugreek seeds?

A. Yes. Fennugreek seeds were duty free

The other goods had to be weighed and duty had to be calculated and paid and there would be delay in getting those things done.

Evidence of
V. Mandiram-
pillai
Re-examination

Q. So Sabaratnam filled an entry form to clear the duty free goods?

A. Yes. Also we were aware that some goods had been jettisoned into the sea. We had to clear the Fennugreek seeds and dry them before they got spoilt. I have been in business for 24 years. I have been in business in Ceylon for 14 years.

Q. During that period was any penalty imposed on you under the Customs Ordinance or under any other Ordinance?

A. No.

No. 13
Plaintiffs'
Evidence

Evidence of
V. Mandiram-
pillai
Re-examination
—Continued

10

Sgd. ...
Additional District Judge.
13. 10. 1964

Mr. Kulasingham closes his case reading in evidence P1 to P9.

On application of learned Counsel for defendant and learned Counsel for plaintiff not objecting learned Counsel for defendant is allowed to put in a certified copy of D1, D1A, D2 and D4, to be certified by the Assistant Collector of Customs.

Addresses on 23. 11. 1964.

20

Sgd. ...
Additional District Judge.
13. 10. 1964.

No. 14
Addresses to Court

No. 14
Addresses to
Court-

15. 12. 1964

Same appearances as before.

Mr. Advocate Kulasingham for Plaintiffs addresses Court:

30 He refers to the plaint. The plaintiffs gave security to the satisfaction of the Collector of Customs in a sum of Rs. 5,000/- as required by section 146 of the Customs Ordinance Chapter 186 of the Legislative Enactments of Ceylon. Prayer to the plaint referred to. The plaintiffs have prayed that the defendant be ordered to refund the money deposited with the Collector of Customs.

The Customs officials have apparently misapplied the provisions of sections of the Customs Ordinance.

He refers to the issues in the proceedings of 12. 3. 1964. He refers to issues 1 to 3. He states that issue 3 is hardly necessary. Issue 1 is as follows:—

“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”?

It does not refer to any dispute. It refers to a particular kind of refusal, That is the refusal referred to in the pleadings. He refers to the plaint and states that it is made very clear. Paragraph 4 of the plaint referred to. He refers to paragraph 7 and P1 of 5. 6. 1961. What is referred to is the seizure and detention of the goods as per P1 which has been produced by the plaintiff. It is specifically stated. Evidence has been led to prove how the Customs Officer in question came to arrive at the conclusion that the articles were liable for forfeiture. He submits that he might say at once that the Customs Ordinance contains a provision of criminal law. The Collector of Customs and his assistants in certain circumstances of the case can forfeit the articles seized. They can only act in accordance with the provisions of the Customs Ordinance. The provisions of the Ordinance have been construed strictly because they are intended to operate against the subject when they are administered by laymen. It is very necessary in dealing with a complicated matter. For instance learned Counsel for defendant was entitled to suggest those issues 4A to 4C and issue 5 but in doing so he was going against the order of Mr. Thanabalasingham former A. D. J. and trying to introduce a new element into the case. The case was as outlined in the letter P1 written by the Assistant Collector of Customs. Learned Counsel for defendant tried to take the matter further by introducing a new fact into the case in the form of issue 4A.

Mr. Kulasingham refers to section 47 of the 1956 Edition (section 49 in the old Edition) Customs Ordinance. The Crown is making in this case in the first instance the forfeiture of the goods. If that section were to apply it will not help the Crown because the Court will see the importer by the earlier section 47 is required to give a correct entry of the goods.

He refers to invoice dated 9. 5. 61. This is an invoice sent by the agent. P2A is an invoice dated 9. 5. 1961. P2A shows on the face of it that it has passed through the Customs. Learned Counsel for defendant was taking a partisan view of the matter. He states

that a number of documents have been produced by the plaintiff and these documents show the real position or intention of the plaintiff in this case. The plaintiffs never intended to import poppy seeds. The plaintiff has said that in evidence. He has said that he was aware that poppy seeds cannot be imported into Ceylon. P2 and P2A clearly prove that the invoice was in respect of 50 bags of Fennugreek seeds. By P2 and P2A the plaintiff has proved that he ordered for Fennugreek seeds. Document P6 referred to. P6 is indent dated 2nd May 1961. It is quite clear on the point. P6 read. This document is confirmed by Velauthampillai of the firm at Tuticorin. The indent should be taken as it is. It conclusively proves the invoice. What the plaintiff intended to order was not merely 30 bags but 50 bags of something, that is 50 bags of Fennugreek seeds. The mark itself is the mark of the agency of the firm, which supplied the goods. Their mark was put. By some coincidence or other bags containing poppy seeds were found in the consignment and the Customs officers thought that there was a conspiracy to import into the country prohibited goods and that the plaintiff was a party to it. In this connection he refers to the evidence of Mr. Thirunavukkarasu, Assistant Collector of Customs, Jaffna.

He refers to page 16 of the proceedings, bottom. Evidence of Mr. Thirunavukkarasu referred to. He said in evidence that he confiscated the goods under section 43. Section 43 referred to (old section 45). Section 43 is quite clear. That refers to imports-prohibition and restrictions. Section 44 referred to. That section refers to exports. He also refers to section 125 (old section 123). There are two elements in section 125.

The first element is that all goods and all ships and boats which are declared to be forfeited shall be seized by any officer of the Customs and such forfeiture of any ship or boat shall include the guns, tackle, etc. and the second element is that all carriages or other means of conveyance etc. and all other things made use of in any way in the concealment or removal of any goods liable to forfeiture shall be forfeited. Section 125 says that "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."

The Customs Officer had to satisfy himself that a prohibited article namely poppy seeds had been packed. He had to make up his mind on one of the two elements. He has mismanaged the whole thing. Mr. Kulasingham refers to the evidence of Mr. Thirunavukkarasu at page 17 middle.

He submits that the Customs Officer gave up the idea of consignment and proceeded to take refuge in the latter portion of section 125. He stated in evidence that his idea was that those bags of Fennugreek seeds were a sort of cover to conceal the 20 bags of poppy seeds. Evidence at page 18 referred to. The Customs Officer was further questioned. Mr. Thirunavukkrasu relied earlier on consignment and dissociated himself from it and said "under the same mark." Cross examination of Mr. Thirunavukkrasu read.

Mr. Kulasingham submits that P2 and P2A show that it was Fennugreek seeds that was ordered. If somebody effected a substitution how could the plaintiff be held liable. D1 referred to in this connection. Somebody must have exported the poppy seeds. There was a hidden hand and the question is which was the hidden hand? Mr. Thirunavukkrasu was unable to say who effected the substitution. Provisions of the Customs Ordinance were misapplied. He submits that the bill of lading is a document which the Customs had received and examined and the witness Mr. Thirunavukkrasu admits that Section 152 has no application. Plaintiff is not asking for the poppy seeds. Somebody put them there. 10

The manifest refers to 50 bags of Fennugreek seeds. Mr. Thirunavukkrasu said that he did not know who put the poppy seeds and who put the mark. In fact no poppy seed has been produced before Court. The only consignment plaintiffs indented was 50 bags of Fennugreek seeds. P4 shows that certain articles were jettisoned and Mr. Fernando, Chief Assistant Preventive Officer, has admitted it. Evidence at page 28 referred to. Mr. Thirunavukkrasu said that he was not personally aware that cement bags were jettisoned and that he came to know of it from a protest entered by the Master of the Vessel. It is very unsatisfactory on the part of the Customs to associate a reputable firm like the plaintiffs' firm in that way. He submits that the defendant is not entitled to plead that the forfeiture was under the other section. Even if that is pleaded the entry form is for 50 bags of Fennugreek seeds. Mr. Fernando in his evidence has said that they were in a hurry to remove the goods because of the condition of the seeds. The plaintiff Manthirampillai was afraid that the seeds might get spoilt and he wanted to dry them before they got spoilt. Court must exercise caution and carefulness. Customs conduct verges on undue suspicion. The thing must be definitely proved. 20 30

Not only the invoice but the other documents clearly prove that the articles that were consigned were 50 bags of Fennugreek seeds. Bill of lading is quite clear. He submits that on the face of documentary evidence and the position taken up by the plaintiff the Customs Officers should have acted with greater care and caution. P7 referred to. There also it is 50 bags of fennugreek seeds. The plaintiff had to apply for permission to the Indian Government. P8 is a declaration by the plaintiff. It was submitted that the Collector of Customs at Kayts had broken the Customs seal. It was also 50 bags of Fennugreek seeds. He submits that the Customs Officers in question have grossly exceeded the powers given by the law and acted illegally and arbitrarily and the plaintiffs are entitled to the relief claimed by them.

Mr. Advocate Muttusamipillai for defendant addresses Court:

In this case the Court may be inclined to think that when a man orders for goods which are not prohibited and someone puts goods which are prohibited along with the goods which are not prohibited the situation would be dangerous. That is a presumption which one would draw provided there is nothing to show that those prohibited goods were ordered or consigned by some one deliberately. He asks the Court to consider this: Poppy seeds are considered a delicacy for curries and if all the 50 bags had been permitted to be removed on that entry form, could the plaintiffs have returned these 20 bags of poppy seeds seeing that they are not Fennugreek seeds? Or would the plaintiffs have sold them and realised a big profit. If a book-seller ordered for books and the books were identified by a particular mark and some prohibited sexy books were included and they have the same mark is it not reasonable inference to draw that the consignee had ordered for all the books? Because those obscene books will fetch a very high price.

In this case the sections which had to be considered are sections 47, 32 and 125. Pleadings referred to. Paragraph 9 (d) of the answer referred to. It was stated that it is too vague and that it should be rejected. It is needless for him, he submits, that the amendment refers to section 47 and learned Counsel for plaintiff took up the ground that that amendment should be rejected and it has been rejected. He submits that he does not canvass the propriety of the Court's order. But section 47 cannot be ruled out and not considered by Court for the simple reason that the entry form D1 made by the consignee is under section 47. It is under this section that the entry forms were delivered by Sabaratnam to the Customs. These documents were objected to without Sabaratnam being called in the usual way. Then Sabaratnam was called and these documents were accepted by Court.

D1 which is a carbon copy of D1A is silent testimony to what the plaintiff wanted to do. There were 50 bags in the Customs warehouse for delivery to the consignee. The consignee had gone and entered the descriptions of the goods as required by section 47. It is under this section that the declaration has been made. What is that declaration? It is 50 bags of Fennugreek seeds (Mathe seeds). Evidence at page 36 referred to. The question which has to be considered by Court is simple. The mark "218 X" is a secret mark. The application was for bags marked Mani. Having called for 50 bags with this mark Mani his entry form was given. Fennugreek seed was free of duty. If the plaintiffs had succeeded in removing this consignment there would have been a fortune for them. The suspicion was aroused by the conduct of plaintiffs' agent Sabaratnam. It is not denied that Sabaratnam was the agent of plaintiff's firm. 10

On the question whether the plaintiffs can maintain this action, he submits that there is no partnership in writing and this action is not properly constituted and there is no specific issue on the matter and the pleadings show that defendant was not aware of the fact that the plaintiffs are partners and in the examination in chief the plaintiff produced the registration of Business Names Certificate. That is not enough to constitute a partnership. There should be some writing which is called for under the Statute of Frauds Ordinance, section 18 of the present Edition, L. E. C. It has not been possible for plaintiff to produce any more than P5. P5 was not called for by the defendant. He refers to page 45 of the evidence. On this point the plaintiff was cross-examined. 20

(Learned Counsel for plaintiffs says that the defendant is not entitled to take up the position that the plaintiffs are not partners. He states that the defendant is not entitled to now raise the issue whether the plaintiffs are partners or not and that has not been put in issue. Learned Counsel for plaintiffs will be entitled to reply on this point). 30

Mr. Muttusamipillai refers to paragraph 1 of the answer. He refers to the amended answer which the defendant tendered and which was not accepted. The plaintiffs having come into Court as partners, it is their duty to prove that they executed a partnership. In support of his contention Mr. Muttusamipillai cites 64 N. L. R. 25 and 18 N.L.R. 289.

Mr. Muttusamipillai states that it may be borne in mind that the plaintiffs are father and son and the person who placed the order for goods was the first plaintiff who is the father. The 2nd plaintiff is the son. They have come into Court as partners and it is possible for them to do anything they liked. Their conduct has to be judged. Their integrity and honesty have to be judged by what has been done. Did these 50 bags which were brought by Nooraniah bear the word "Mani" or did they not. They did bear the word "Mani". There is no mention of it. Did not the plaintiffs

10 seek to remove the 50 bags with those marks? Plaintiff wanted to take delivery of the 50 bags. Bags containing poppy seeds bore the mark "Mani" alone. Under these circumstances was not the Customs justified in forfeiting the 30 bags of Fennugreek seeds. He submits that the relevant section which he has referred to may be considered. If it is under section 47 definitely the goods were forfeit. He states that if the Court reads section 47 there cannot be any doubt in the mind of Court that these goods were lawfully confiscated. The relevant portion of the section reads as follows: "If such goods

20 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." He submits that if that section applies the goods are forfeit. The sections which have been referred to in D3 by the Assistant Collector of Customs, Mr. Thirunavukkarasu are sections 43 and 125. Section 125 is of very great importance in this connection. Section 125 read. Learned Counsel for plaintiffs seems to think that, unless the poppy seeds and Fennugreek seeds were put into one bag and packed up they are not liable for forfeiture. He submits that the Court should give a liberal meaning

30 to that section. He submits that the word "Mani" is the cover under which the plaintiffs purported to remove these goods and these Fennugreek seeds were certainly used to conceal the poppy seeds. They were sent in 50 different bags with this mark "Mani" to cover the permitted articles and the prohibited articles.

He submits that the plaintiff has failed to prove the indent for poppy seeds. It is not for him he submits to set out on a voyage of discovery to find out what the father and the son wanted to do. It is for the plaintiffs to satisfy Court that they did not intend to remove these 50 bags. He submits, the plaintiffs

40 have signally failed. There were 50 bags. They wanted to remove the 50 bags. The application was not for 30 bags but for 50 bags

with the mark "Mani." It will be impossible for the Court to draw the inference that on this entry D1 the plaintiffs only asked for the removal of 30 bags of Fennugreek seeds.

Issues 4A, 4B and 4C referred to. They were vehemently objected to. Issue 4A refers to the facts of the case. That there were 50 bags is admitted. That there was entry form is admitted. These issues were ruled out but these are issues which arise on the evidence and on the facts placed before Court. Issue 6 at page 5 of the proceedings referred to. He states that he is referring to these issues only to show the attitude of the plaintiff. Sections 43 and 125 of the Customs Ordinance referred to. 10

Learned Counsel for plaintiffs objected to the production of statements made by the 1st plaintiff and his agent Sabaratnam and insisted on producing the Gazette Notification and the letters of appointments. That shows the attitude of the plaintiff. The attitude of the plaintiff has to be noted for observations in a case of this nature. Where the 1st plaintiff and his agent Sabaratnam have given statements and signed those statements as correct learned Counsel for plaintiffs objects to them saying that Mr. Fernando who recorded the statements has no authority and if he has authority that authority was to be produced. Why should the authority be produced? If the first plaintiff and his agent Sabaratnam have written something, is it not open to the defendant to say that they wrote this and gave it. He submits that he produced certain documents to show that Mr. Fernando who recorded the statements had authority to record the statements. He submits that when his turn came to call Sabaratnam to produce the statements, learned Counsel for plaintiffs then consented to the statements being admitted in evidence without formal proof. 20 30

D2 signed by Sabaratnam referred to. D2 read. Plaintiff wanted to remove the 50 bags. Is this conduct of the plaintiff consistent? Statement of 1st plaintiff referred to. It has been argued that poppy seeds were not produced. The 1st plaintiff admitted the bags of poppy seeds. He now restricts his claim to 30. Plaintiff admits that he had ordered for 50 bags and 50 bags were consigned to him but out of them 20 were white poppy seeds.

Mr. Muttusamipillai submits that on the evidence before Court it will not be possible to support the plaintiffs' case that there was any mistake or no mistake. Whether there was a mistake or no mistake it is no concern of the defendant. Crown is concerned with the honesty and integrity of the plaintiffs. Crown is not 40

concerned with their having been in business for 45 years in Ceylon and having done their business honestly. They may have done it honestly but here it is only the plaintiffs who wanted to remove from the Customs 50 bags bearing the mark "Mani". Out of those 50 bags which were all sent in one consignment 20 bags contained poppy seeds and, he submits, the mark given was the cover to conceal the 20 bags of poppy seeds. Therefore under section 43 and section 125 of the Customs Ordinance the defendant had the right to declare them forfeit.

10 Mr. Kulasingham in reply:

He refers to Ordinance No. 7 of 1840. On the question of forfeiture under section 47 he states that it must be proved. The "Mani" mark is a common denominator of the 50 bags. The bill of entry is for the removal of 50 bags containing Fennugreek seeds bearing the "Mani" mark. The only inference that can be drawn from the bill of entry is that the plaintiff wanted to remove the bags containing Fennugreek seeds and bearing the "Mani" mark. What was the number of the bags? Only 30. It is ridiculous to argue in the face of these premises. He states that the answer is
20 obvious. The description excludes the poppy seeds.

Learned Counsel for defendant has been unreasonable and therefore as a model of reasonableness wants the Court to believe that the plaintiff is not entitled to maintain this action because the partnership writing has not been produced. In this connection learned Counsel for plaintiffs refers to section 146. The issues in this case are the embodiment of that agreement under section 146. He submits that he would have produced the writing if the matter has been raised in issue. Section 146 cannot be ignored. Sub-section 2 of section 146 referred to. This is a case on the issues. Learned Counsel for Crown
30 has gone outside the issues far and wide. Ordinance No. 7 of 1840 prohibits rule of partnership except by a notarial deed. 1st plaintiff said that he has the writing. Without the issue why should he take the trouble to produce it? The authorities cited by learned Counsel for Crown namely 18 and 64 N. L. R. do not apply to the facts of this case.

Judgment on 26. 2. 1965.

Sgd.
Additional District Judge.
15. 12. 1964

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JUDGMENT

The first and second plaintiffs in this case are father and son respectively and carry on business in partnership under the name, style and firm of "Sana Mana Rawanna & Company" at 212, Hospital Road, Jaffna. The defendant is Honourable the Attorney-General of Ceylon.

The following facts are not in dispute and may be taken 10
as common ground in this case:-

1. The first plaintiff as partner of plaintiff-firm on 2. 5. 1961 sent an indent to Messrs. Velauthampillai, 47 Beach Road, Tuticorin (P6).
2. The sole proprietor of Messrs. V. M. Velauthampillai is the second plaintiff and therefore the indent P6 was sent by first plaintiff acting on behalf of the plaintiff-firm to his son who was acting as sole proprietor of V. M. Velauthampillai and Company.

(It would be convenient at this stage to reproduce P6 which 20
is in the following terms.

"M/s. V. M. Velautham Pillai,
47, Beach Road,
Tuticorin.
Dear Sirs,

INDENT

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

Article: Fennugreek Seed. 30
Quantity: 50 (Fifty) bags.
Price: Rs. 58/- Per Gross Cwt., CIF, 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.
Partner."

P6 is signed by first plaintiff as partner. On the left hand 40
side of P6, bottom, is the endorsement - "Confirmed: V. M. Velautham Pillai" and the endorsement is signed by the second plaintiff as sole proprietor. The endorsement is dated 9. 5. 1961).

3. That by invoice dated 9th May 1961 the 2nd plaintiff as sole proprietor of V. M. Velauthampillai and Company invoiced 50 bags of Fennugreek seed and shipped this consignment by boat "Nooraniah" from Tuticorin to Jaffna on account of and at the risk of M/s. Sana Mana Rawanna & Company, Jaffna.

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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.

- 10 4. The bill of lading P3 dated 10th May 1961 also shows that 50 bags of Fenugreek 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 Fennugreek 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
20 carrier.

(It has been held in the case of The Attorney-General Vs. The Scindia Steam Navigation Co. Ltd., India, 63 N. L. R. 385, that in view of the condition "weight, contents and value when shipped unknown," the bills of lading were not even prima facie evidence of the weight or contents or value of the bags. In other words, as was held by Lush J. in Hogarth Shipping Co. Ltd. Vs. Blyth, Greene, Jourdain & Co. Ltd (this case is cited in the 63 N. L. R. case at page 393) "the bill of lading was conclusive only as to the number of bags in the sense of skins or receptacles and not as to
30 their contents." In that case where the plaintiff claimed damages on the ground that there had been short delivery of a number of bags it was held that the burden was on the plaintiff to prove the contents of the bags or the weight of the bags and it was for him to prove his loss by proving what it was that the bags contained and by proving what was the value of what the bags contained. I have referred to this case at this point because of certain submissions made by learned Counsel for plaintiff to which I shall advert later).

- 40 5. V. M. Velautham Pillai 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 in the several cages that appear in it.

- “1. Name of Shipper or Agent: V. M. Velautham Pillai.
2. Serial Number of the Consignment: 1.
3. Number of packages: 50 bags.
4. Marks and Number of the consignment: “MANI”.
5. Description and the name of the : } Fennugreek Seed:
Commodities } 10
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 as R. Fernando.

6. 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.

In D1 the name of the vessel is given as Nooraniah and the following information is given inter alia in the respective cages: Mark “MANI” Description of Goods, 50 bags of Fenugreek seed (Mathe seeds). At the bottom of D1 the following declaration has been signed by Sabaratnam the agent of the plaintiff-company. 20

“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.

“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.” 30

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. X. Christopher, has drawn up P8 before it was signed by Sabaratnam the agent of the plaintiff-company.

7. 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 Shroff 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.

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Mr. Fernando, Assistant Collector of Customs, stated that he himself thereafter sent his officers to get samples from the 50 bags of Fenugreek seeds lying in the warehouse which Sabaratnam had claimed on behalf of the plaintiffs and found that some of the bags contained
 10 poppy seeds. He thereafter inspected the whole consignment and found that out of the 50 bags, 30 bags contained Fenugreek, and 20 bags contained poppy seeds. I might mention here that admittedly, it was found at this time that all the 50 bags had the mark "MANI" and that in addition on the 30 bags containing Fenugreek seeds there was an additional mark, to wit 218 X. Mr. Fernando said that he had been duly appointed by the Minister of Finance as Preventive Officer in terms of section 8(1) of the Customs Ordinance and with power to hold examination and inquiries under the Customs Ordinance during
 20 the period that he held that office. Under section 8(1) Mr. Fernando was therefore entitled to record the statements of Sabaratnam which he did. Sabaratnam made two statements to Mr. Fernando, both on 2.6.1961. They have been produced marked D2 and D2A. In D2 Sabaratnam has admitted that, after he paid the rent and submitted the entry for collection of the consignment brought by the ship Nooraniah for plaintiff-company, at the request of the Sub-collector, he went and took a sample from the 50 bags. He also admitted that later he came to know that the officer sent by the Sub-collector found poppy seeds in some of the bags. In D2A Sabaratnam said that he was unable to explain how the 30 bags containing the Fenugreek
 30 seeds had in addition to the mark "MANI" the mark 218 X and how the other 20 bags found to contain poppy seeds had the mark "MANI."

Mr. Fernando also said in the course of his evidence that Sabaratnam came to the Port of Kayts before the arrival of the boat 'Nooraniah' and had made inquiries as to the arrival of the boat and even before the goods were landed that Sabaratnam had filled up the entry D1 and submitted it and that this conduct of Sabaratnam aroused his suspicions. It is relevant to mention here that in addition to the 50 bags of Fenugreek seeds the ship Nooraniah had brought from Tuticorin for plaintiff-firm other goods. The manifest D6 which
 40 has been marked in evidence shows this. Mr. Fernando said that he also recorded on 2.6.1961 the statement of the first plaintiff. This

has been produced marked D3. The first part of the statement contains an admission by the first plaintiff that he placed an indent with suppliers in India for 50 bags of Fenugreek seeds (also known as Mathe seeds) in May 1961; and that he received the invoice and bill of lading relating to the consignment sent by his suppliers at his office; and that he instructed his clerk V. Sabaratnam to fill up and present the entry form and take delivery of the goods, that is 50 bags of Fenugreek seeds at the Kayts Customs. In the course of the statement the first plaintiff has stated:

“I gave Mr. Sabaratnam full authority to act as the representative of the firm of importers. Yesterday at about 5. 30 p. m. Mr. Sabaratnam telephoned me at my Jaffna office and told me that the Customs officers had found some other bags besides “Mathe seeds” and thereby held up the consignment. I then motored to Kayts Customs and found out that there were about 20 bags of “Wella Kasa Kasa” or white poppy seeds, in the consignment of 50 bags Fennugreek seeds indented and imported by my firm. I am satisfied now that 20 out of the 50 bags contain the white poppy seeds is a prohibited import under the Customs and Opium & Dangerous Drugs Ordinance in Ceylon. In my opinion I feel that the exporter in india has made a mistake in shipping 20 bags “white kasa kasa” along with the “Mathe seed” bags as there is no restriction in India regarding these white poppy seeds. This shipment was done by M/s. V. M. Velauthampillai of Beach Road, Tuticorin. My firm normally deals in the importation of all curry stuffs and country medicines and hold Import Control Licences for licensed goods. This is the first time that my firm got involved in any importation contrary to the law of the land. I had no intention of importing these restricted and prohibited goods viz. white poppy seeds. I cannot explain for the separate marking placed on the “Mathe Seeds” namely “218X” as I am not aware of these markings. According to my documents all the marks bear marks “MANI.” I also wish to state that the exporter deals in white poppy seeds which is a common curry ingredient in India. I feel that some of these bags which had been in his stores may have been erroneously shipped.....”

Mr. Fernando said that he placed the matter before the Assistant Collector of Customs and Mr. Thirunavukkarasu (witness). Mr. Thirunavukkarasu himself gave evidence and said that he inquired into the matter and considered the statements made by Sabaratnam and Mandirampillai and made an order. That order has been produced marked D4. It reads as follows:-

"I order the confiscation of the 20 bags poppy seed under section 45 of the Customs Ordinance Chapter 185 read with section 27 of the Poisons and Opium and Dangerous Drugs Ordinance Chapter 172. Under section 123 of the Customs Ordinance, I order the confiscation of the 30 bags Mathe seed. I impose a penalty of Rs. 45,000/- on Mr. V. Mandirampillai of Messrs. Sana Mana Rawanna & Co. under section 127 of the Customs Ordinance Chapter 185.

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I mitigate the penalty of Rs. 45,000/- to Rs. 15,000/- under section 155 of the Customs Ordinance.

10 In view of the fact that the Master of the Boat has taken the sample and given to the Tide Waiter on board it is difficult to prove "Knowingly concerned."

Mr. Thirunavukkarasu said that he communicated this order to the 1st plaintiff by letter dated 5. 6. 1961. P1 is as follows:-

"Mr. V. Mandirampillai,
Sana Mana Rawanna & Co.,
Jaffna.

Sir,

Entry No. 1 of 1.6.61 for 50 bags Mathe Seeds.

20 With reference to the consignment of 50 bags Mathe seeds I have the honour to inform you that the 20 bags poppy seeds are confiscated under sec. 45 of the Customs Ordinance Chapt. 185 read with sec. 27 of the Poisons, Opium and Dangerous Drugs Ordinance. The 30 bags Mathe Seeds are confiscated under sec. 123 of the Customs Ordinance.

I have also imposed a penalty of Rs. 45,000/- on you under sec. 127 of the Customs Ordinance. However acting under sec. 155, I am prepared to mitigate the penalty of Rs 45,000/- to Rs. 15,000/- which amount please remit to this office within one week from this
30 date.

I am, Sir,
Your obedient servant.
Sgd. K. Thirunavukkarasu
*Assistant Collector of Customs,
Northern Province.*"

40 It is common ground that thereafter the plaintiff took the necessary steps as required under the Customs Ordinance and on 3rd July 1961 gave notice in writing to the Collector of Customs, Northern Province, Jaffna, that he intended to enter a claim in this Court for the restoration of the 30 bags of ~~of~~ Mathe seeds which had been forfeited and thereafter the plaintiffs having given security in

a sum of Rs. 5000/- as required by section 146 of the Customs Ordinance; and also having given notice in writing to the Hon'ble the Attorney-General on 28th June 1960 as required by section 461 of the Civil Procedure Code have filed this action.

The case of the plaintiffs as set out in the plaint and by their Counsel at the trial is as follows:-

1. That on 1.6.1961 the plaintiff entered to be cleared as per entry No. 1 of 1.6.61 50 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. 10

2. That the Master of the 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.

3. That the plaintiffs are entitled according to law to be given delivery of the 20 bags of mathe seeds that has been landed and available for delivery to them.

4. That the Assistant Collector of Customs, N. P., Jaffna, by letter dated 5.6.1961 had informed the 1st plaintiff that the said 30 bags of mathe seeds are confiscated under section 123 of the Customs Ordinance and that this was illegal and wrongful. 20

5. The plaintiffs have therefore asked

- (a) that the plaintiffs be declared entitled to the said 30 bags of Mathe seeds,
- (b) that the Collector of Customs, N. P. Jaffna, be decreed and ordered to restore the goods to the plaintiffs and the plaintiffs be quieted in possession thereof,
- (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/- 30
- (d) that the defendant be ordered and decreed to refund the said security of Rs. 5,000/- deposited with the Collector of Customs, N. P. Jaffna, and
- (e) for costs.

In the answer Hon'ble the Attorney-General has stated that V. Sabaratnam purporting to act as the representative of Messrs. Sana

Mana Rawanna & Co. submitted an entry for 50 bags of Fenugreek seed marked "Mani", that payment was accepted and the entry was marked No. 1 of 1.6.1961 and that this entry was passed on to the Sub-collector of Customs, Kayts, for satisfaction. The position taken up by the defendant is that the confiscation of the 30 bags of Fennugreek seeds was made under section 125 of the Customs Ordinance (under the 1938 Legislative Enactments the number of the section is 123).

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The case went to trial on the following issues:-

- 10 1. Is the refusal to deliver 30 bags of Mathe seeds or Fennugreek seeds and/or their detention by the Customs referred to in the answer of the defendant lawful?
2. If the above issue is answered in the negative-
- (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?
- 20 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?

Issues 4 and 5 were ruled out as they did not arise from the pleadings. I might mention here that the defendant filed an amended answer and this was objected to and after inquiry by his order dated 12.3.1963 my predecessor rejected the amended answer. These issues 4 and 5 which were ruled out as they did not arise on the pleadings in the original answer.

- 30 6. Was the forfeiture (a) of 20 bags of poppy seeds and (b) 30 bags of Mathe seeds out of the consignment of 50 bags lawful as set out in para 9(d) of the original answer?

In the course of the judgment I have already set out the circumstances in which the Assistant Collector of Customs purported to confiscate the 20 bags of poppy seeds and 30 bags of Fenugreek seeds. The question before Court is whether the forfeiture of 30 bags of Fenugreek seeds was lawful. In his order the Assistant Collector of Customs has stated that the forfeiture was made under section 123 (now 125 of the Customs Ordinance). Section 125 reads as follows:-

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“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.”

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It was submitted by learned Counsel for plaintiffs 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.

I have carefully considered all the evidence in this case. The first plaintiff admitted that he placed the indent P6 with Velautham Pillai and Company of Tuticorin and that the sole proprietor of Velautham Pillai and Company was his son who was his partner in the Jaffna business of Sana Mana Rawanna and Company. It was also admitted by the first plaintiff that the Export Application made to Customs at Tuticorin was made by his son the second plaintiff as sole proprietor of Velautham and Company. Admittedly, plaintiffs' agent Sabaratnam filled in entry form D1 and applied to remove the 50 bags which had been handed by the second plaintiff as sole proprietor of Velautham Pillai to the Captain of the Nooraniah and which 50 bags had been landed at the warehouse at Kayts. Learned Counsel for plaintiffs submitted that some kind of substitution had been effected and that out of the 50 bags of Fenugreek seeds which had been handed to the Captain of the Nooraniah 20 bags of Fenugreek seeds have been spirited away and 20 bags of poppy seeds substituted. The evidence of the first plaintiff however and the statement of the first plaintiff to Mr. Fernando which has been produced marked D3 and the statements of Sabaratnam, the agent of the plaintiffs, which have been produced marked D2 and D3A, show that Sabaratnam the agent of the plaintiff has gone to the Customs and claimed the 50 bags in the warehouse having taken a sample. In view of this it is not open to the plaintiffs to state or for the learned Counsel for plaintiffs to submit that all that the plaintiffs claimed

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through their agent Sabaratnam was 50 bags of Fenugreek seed and nothing else. Mandirampillai 1st plaintiff in his statement D3 has stated "I am satisfied now that 20 out of the 50 bags containing white poppy seeds is a prohibited import under the Customs and Opium and Dangerous Drugs Ordinance in Ceylon. In my opinion I feel that the exporter in India has made a mistake in shipping 20 bags "white kasa kasa" along with the Mathe seed bags as there is no restriction in India regarding these white poppy seeds. This shipment was done by M/s. V. M. Velauthampillai of Beach

10 Road, Tuticorin. So that the position taken up by the first plaintiff before the Customs was that a mistake had been committed by their agent in India and not that their agent had put on board the Nooraniah 50 bags of Fenugreek seeds and that on board the ship 20 bags of Fenugreek seeds had been removed and in its place 20 bags of poppy seeds were substituted. As I have said the fact that Sabaratnam inspected the 50 bags in the warehouse and accepted them after taking a sample as the consignment sent by Velautham Pillai and Company to the plaintiff firm also militates against the submission made by learned Counsel for plaintiffs that a substitution had been effected on board the ship. In his statement

20 D2 Sabaratnam stated:

"I came to the Customs House, Kayts, yesterday 1st June 1961 along with the invoice, bill of lading and the necessary Customs entries and requested the entry clerk to frame the entry. The entry clerk asked me what these "Fenugreek seed" was and I told him they were "Mathe seed" and requested him to enter "Mathe seed" on the body of the entry within brackets. I annexed the invoice for Fenugreek seed the bill of lading and signed the copies of entries as the representative of the importer viz. M/s. Sana Mana Rawanna and Co. I signed all the copies of the entries.

30 I submitted the set of entries to the Shroff and paid Rs. 4.03 only representing the rent on the 50 bags of "Mathe seed" marked "MANI" as Mathe seed is duty free. After the payment of the rent, all the entries were submitted to the Sub-collector of Customs, Kayts. The Sub-collector then wanted me to bring samples of the so called "Fenugreek seed" for his perusal and inspection. I went to the place where the bags were being unloaded and brought a sample of "Mathe seed" and produced before him. After submitting the entries and sample I remained in the premises to transact other business. Meanwhile I saw the Sub-

40 collector getting down some samples through his officers and those samples were something other than the sample produced by me earlier .. "

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—Continued

The question arises whether the plaintiffs or their agent can now be heard to say or take up the position that they did not claim the 50 bags that were lying in the warehouse and which had been unloaded from the ship Nooraniah. The fact that the 30 bags containing Fenugreek seeds contained an additional mark "218X" together with the mark "MANI", and that the 20 bags of poppy seeds had the mark "MANI" only also shows that the additional mark was placed to enable whoever who went to claim the consignment to distinguish the bags containing the Fenugreek seeds from the bags containing poppy seeds if that became necessary. The plaintiffs could have called their agent in India, who, as I have said earlier, was actually the 2nd plaintiff to explain these matters. Although summons was allowed on the 2nd plaintiff to appear as witness for the plaintiffs' firm, at the trial he was not called and no explanation was given as to why he was not called. The only inference the Court can draw is that, if called, he would not have been in a position to explain the presence of the mark "218X" on the bags containing the Fenugreek seeds; and that his evidence would not have helped the plaintiffs' case. 10

Learned Counsel for plaintiffs submitted that in cases brought under the Customs Ordinance the onus of proving that an offence had been committed was on the Crown. No doubt, in a criminal case the onus of proving everything essential for the establishment of the charge against the accused lies upon the prosecution and every man has to be regarded as legally innocent until the contrary is proved and criminality is never to be presumed. In criminal cases the evidence must be such as to exclude to a moral certainty any reasonable doubt of the guilt of the accused and if there be any reasonable doubt as to the guilt of the accused he is entitled to the right of an acquittal. (Woodroffe and Amirali, Law of Evidence, 5th Edition page 117). 20 30

In the present case the Court has to come to a finding as to whether the 30 bags of Fenugreek seed 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. 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 seed referred to in the bill of lading, 20 40

bags of poppy seeds in place of 20 bags of Fenugreek seeds which were removed, and this was done by 2nd plaintiff. 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 first plaintiff which is contained in his statement to the Assistant Collector that a mistake had been made by Velautham Pillai and Company and that the exporter in India had made a mistake in shipping "20 bags white kasa kasa along with the Mathe seeds" - Vide D3.

In his book "The Proof of Guilt", Glanville Williams in discussing the question of proof in a criminal case states:-

"The evidence of crime against a person may be overwhelming, and yet it may be possible to conjecture a series of extraordinary circumstances that would be consistent with his innocence-as by supposing that some stranger, of whose existence there is no evidence, interposed at the crucial moment and actually committed the crime, when all the evidence points to the fact that the accused was alone on the spot, or by supposing on a charge of murder, that the deceased died of heart failure the moment before the bullet entered his body. The fact that these unlikely contingencies do sometimes occur, so that by neglecting them there is on rare occasions a miscarriage of justice, cannot be held against the administration of the law, which is compelled to run this risk". (The Proof of Guilt by Glanville Williams 1955 Edition page 134).

In a case like this direct evidence is not always possible to prove that an offence has been committed. The Court has to take a realistic view of the evidence that is led and accepted by Court and come to a conclusion. It is not necessary in my view in a case like this that there should be independent confirmation of every material particular to prove that the plaintiffs had planned to conceal 20 bags of poppy seeds in 30 bags of Fenugreek seeds. 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 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.

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. The Court need not conjecture the possibility of any substitution on board the Nooraniah because it was not the position of the plaintiffs or their agent before the Assistant Collector who held the inquiry or at the trial that any substitution had been effected on board the ship after Velautham Pillai and Company had handed the 50 bags to the Captain of the Nooraniah. Nor was it the position of the plaintiffs or their agent that, after the goods had been landed at the Customs, any substitution had been effected. On the contrary, the facts show that the agent of the plaintiffs namely Sabaratnam had actually seen the 50 bags after they were landed at Kayts warehouse and having taken a sample claimed the 50 bags as the consignment of 50 bags of Fenugreek seeds consigned by Velautham Pillai and Company to the plaintiffs.

I answer the issues as follows:-

1. Yes.
2. Does not arise.
3. Does not arise.
- 4, and 5. Ruled out.
6. In answering

this issue No. 6 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 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 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. 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 sec: 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.

No. 15
Judgment of
the
District Court-
11.3. 65
—Continued

In the result I dismiss plaintiff's action with costs.

10

Sgd.
Additional District Judge
11. 3. 1965.

No. 16
Decree of the District Court

No. 16
Decree of the
District Court
11. 3. 65.

IN THE DISTRICT COURT OF JAFFNA.

- 1. Velauthampillai Mandirampillai
- 2. Mandirampillai Velauthampillai, carrying on business in partnership under the name style and firm of "Sana Mana Rawanna & Co." at 212 Hospital Road, Jaffna. *Plaintiffs.*

20

No. M/1870

vs

The Attorney-General of Ceylon, Colombo *Defendant*

This action coming on for final disposal before G. C. Niles Esquire, Additional District Judge, Jaffna, on the 11th day of March 1965 in the presence of Mr. Advocate A. V. Kulasingham with Mr. Advocate Soorasangaran instructed by Messrs. Ratnasingham and Subramaniam Proctors on the part of the plaintiffs and of Mr. Advocate Muthusamippillai instructed by Mr. C. C. Somasegaram Proctor on the part of the defendant.

30

It is ordered and decreed that the plaintiffs' action be and the same is hereby dismissed.

It is further ordered that the plaintiffs do pay to the defendant his costs of this action as taxed by the Officer of this Court.

This 11th day of March 1965.

Sgd ..
Additional District Judge.

Drawn by,
Sgd. C. C. Somasegaram
Proctor for Defendant.

No. 17
Petition of
Appeal to the
Supreme Court
19. 3. 65

No. 17

Petition of Appeal to the Supreme Court

IN THE DISTRICT COURT OF JAFFNA.

1. Velauthampillai Mandirampillai
2. Mandirampillai Velauthampillai, carrying on business in partnership under the name, firm and style of "Sana Mana Rawanna & Co.," at 212 Hospital Road, Jaffna *Plaintiffs.*

No. 1870/M

vs.

The Attorney-General of Ceylon, Colombo ... *Defendant* 10

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

1. Velayuthampillai Mandirampillai
2. Mandirampillai Velayuthampillai, carrying on business in partnership under the name, firm and style of "Sana Mana Rawanna & Co." at 212, Hospital Road, Jaffna *Plaintiffs-Appellants*

vs

The Attorney-General of Ceylon, Colombo,
Defendant-Respondent.

To:

The Honourable the Chief Justice and the other Judges of the Honourable the Supreme Court.

This 19th day of March 1965. 20

The Petition of Appeal of the Plaintiffs-Appellants abovenamed appearing by their Proctors Messrs K. Ratnasingham and C. V. Subramaniam practising in partnership under the name, firm and style of "Ratnasingham & Subramaniam" states as follows:

1. The plaintiffs-appellants sued the defendant-respondent to obtain a declaration that plaintiffs-appellants are entitled to 30 bags of Mathe Seeds referred to in the Plaint and an order that the Collector of Customs, Jaffna, do restore the said goods to the plaintiffs-appellants or in the alternative to pay Rs. 3600/- being their value and for a refund of the sum of Rs. 5000/- furnished as security. The plaintiffs-appellants alleged that they are the owners of 30 bags of Mathe Seeds consigned to them and were entitled to delivery thereof and that the detention and/or the refusal to deliver to plaintiffs-appellants of the 30 bags of Mathe Seeds were illegal. 30

2. The defendant-respondent filed answer and alleged that the Master of the Boat Nooraniah of Tuticorin landed fifty bags consigned to plaintiffs-appellants at Kayts, that on examination 20 bags were found to contain white poppy seeds called Posthakai and that the entire consignment of 50 bags became forfeit by the Customs under

Sections 43 & 125 of the Customs Ordinance (Chapter 285) read with Sections 28 and 33 of the Poisons, Opium and Dangerous Drugs Ordinance.

No. 17
Petition of
Appeal to the
Supreme Court
19. 3. 65

—Continued

3. Thereafter the defendant-respondent filed amended answer in which he sought to introduce section 47 of the Customs Ordinance as one of the sections under which the goods were forfeit and by order dated issues based on the amendment were disallowed as that section was not relied when the order forfeiting the goods was made.

4. The parties went to trial on the following issues:-

- 10 i. 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?
- ii. If the above issue is answered in the negative-
- (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. 5000/- deposited as security by the plaintiff?
- 20 iii. 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.
- iv. (a) Did the plaintiff through his representative V. Sabaratnam submit to Mr. Manicavasagar, the Landing Waiter, Kayts, the entry marked No. 1 of 1.6.1961 for removing 50 bags said to contain Mathe seeds or Fenugreek seeds?
- (b) Did the said bags bear the marks "Mani" consigned to plaintiff to wit Sana Mana Rawanna & Co. ?
- (c) Did 20 bags out of the said 50 bags contain white poppy seeds ?
- 30 v. If issue 4(a) to (c) are answered in the affirmative was the forfeiture and detention of the said 50 bags lawful?
- vi. Was the forfeiture (a) of 20 bags of Poppy seeds and (b) 30 bags of Mathe seeds out of the consignment of 50 bags lawful as set out in para 9(d) of the original answer?

5. After trial the Learned District Judge by his Judgment dated 11.3.65, dismissed plaintiffs-appellants' action with costs.

6. Feeling dissatisfied with the said Judgment and order the plaintiffs-appellants beg to appeal therefrom to Your Lordships' Court on the following among other grounds that may be urged by Counsel at the hearing of this appeal:-

- 40 (a) The said judgment and order is contrary to law and the weight of evidence led in the case.

- (b) The plaintiffs-appellants respectfully submit that on the evidence led in the case the Learned Judge could not have held that the order forfeiting the 30 bags of Mathe seeds under Sections 43 & 125 of the Customs Ordinance was lawful and should have held that the refusal to deliver the 30 bags and/or their detention was unlawful.
- (c) The plaintiffs-appellants respectfully submit that it has not been established that the 30 bags of Mathe seeds were used in the concealment of any prohibited or restricted goods and that in any event the defendant-respondent has not discharged the heavy burden on him of establishing beyond reasonable doubt that the 30 bags were used in the concealment of any restricted or prohibited goods. 10
- (d) The plaintiffs-appellants respectfully submit that on a correct evaluation of the evidence in the case it should have been held that no order forfeiting the goods could have been lawfully made under Sections 43 & 125 of the Customs Ordinance and Judgment should have been entered in favour of plaintiffs-appellants as prayed for in the plaint and that in any event the Learned Judge could not have held that the goods could have been forfeited under Section 47 of the Customs Ordinance as the goods were not forfeited under that Section and parties did not go to trial on any issues based on that section. 20
- (e) The plaintiffs-appellants respectfully submit that the findings of the Learned Judge are not justified by admissible evidence led in the case, that the heavy onus on the defendant-respondent has not been discharged at all and that in so far as the defendant-respondent has not established that the seizure under Sections 43 & 125 of the Customs Ordinance was lawful, Judgment should have been entered in favour of plaintiffs-appellants as prayed for in the plaint. 30
- (f) The plaintiffs-appellants respectfully submit that the findings of the Learned Judge that the plaintiffs "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", and the finding that plaintiffs had planned to conceal the poppy seeds in the consignment sent by 2nd plaintiff as sole proprietor of Velayuthampillai & Company are unreasonable and unjustified having regard to evidence adduced in the case. 40

The evidence adduced does not show:-

- (i) that the plaintiffs planned to introduce the 20 bags of Fenugreek seeds; or
- (ii) that the 2nd plaintiff removed 20 bags of Fenugreek seeds and introduced 20 bags of poppy seeds; or
- (iii) that the plaintiffs planned to conceal the 20 bags of poppy seeds in the consignment sent by the 2nd plaintiff as sole proprietor of V. M. Velauthampillai & Company.

No. 17
Petition of
Appeal to the
Supreme Court
19. 3. 65

—Continued

Wherefore the plaintiffs-appellants pray:-

- 10 i. that the said judgment and order be set aside;
- ii. that judgment be entered for plaintiffs-appellants as prayed for in the plaint;
- iii. for costs of appeal and of the Court below, and for such other and further relief as to Your Lordships' Court shall seem meet.

Sgd: Ratnasingham & Subramaniam
Proctors for Plaintiffs-Appellants.

List of documents produced by the plaintiffs

- 20 P1. A letter written by K. Thirunavukkarasu, Assistant Collector, to the 1st plaintiff.
- P2. Invoice dated 9.5.61.
- P2a. Invoice dated 9.5.61 bearing the seal of the Customs of Tuticorin Port.
- P3. Bill of lading.
- P4. Ship protest No. 3052 of 31.5.61
- P5. Certificate of Registration of the plaintiffs.
- P6. Indent dated 2nd May, 1961.
- P7. Export application.
- P8. Declaration made by the Importer to the Collector of Customs,
- 30 Kayts. P9. Security Bond granted to the Collector of Customs.

Sgd: Ratnasingham & Subramaniam
Proctors for Plaintiffs-Appellants.

List of documents produced by the Defendant

- D1. Entry No. 1 of 1.6.1961 of Kayts.
- D1a. Entry form produced by Sabaratnam.
- D2. Statement of Sabaratnam to Fernando, Sub-Collector, Kayts.
- D2a. A further statement of Sabaratnam

No. 17
Petition of
Appeal to the
Supreme Court
19. 3. 65
—Continued

- D3. Statement of 1st plaintiff made to the Sub-Collector, Fernando.
- D4. Certified copy of the order of confiscation.
- D5. Gazette notification appointing Fernando as Assistant Preventive Officer and Sub-Collector of Customs, Kayts.
- D6. Original of the Manifest.
- D7. The order made by the Collector of Customs, Jaffna, sent to Mr. Fernando to succeed Mr. De Niese.

Sgd: Ratnasingham & Subramaniam
Proctors for Plaintiffs-Appellants. 10

No. 18
Decree of the
Supreme Court
dismissing
appeal—
27. 11. 67.

No. 18
Decree of the Supreme Court dismissing Appeal
DECREE OF THE SUPREME COURT

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES,
HEAD OF THE COMMONWEALTH
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

Velayuthampillai Mandirampillai and another carrying on business in partnership under the name, style and firm of "Sana Mana Rawanna & Co." at 212, Hospital Road, Jaffna. *Plaintiffs.* 20

vs.

The Attorney-General of Ceylon, Colombo... *Defendant*

Velayuthampillai Mandirampillai and another carrying on business in partnership under the name, style and firm of "Sana Mana Rawanna & Co." at 212, Hospital Road, Jaffna.... *Plaintiffs-Appellants.*

against

The Attorney-General of Ceylon, Colombo... *Defendant-Respondent.* 30

Action No. 1870/M

DISTRICT COURT OF JAFFNA

This cause coming on for hearing and determination on the 27th day of November, 1967 and on this day, upon an appeal preferred by the Plaintiffs-Appellants before the Honourable Asoka Windra Hemantha Abeysundera, Q. C., Puisne Justice and the Honourable Vaitilingam Manicavasagar, Puisne Justice of this Court, in the presence of Counsel for the Plaintiffs-Appellants and the Defendant-Respondent.

It is considered and adjudged that this appeal be and the same is hereby dismissed.

It is ordered and decreed that the Plaintiffs-Appellants do pay to the Defendant-Respondent the taxed costs of this appeal.

Witness the Honourable Thusew Samuel Fernando, Q. C., Chief Justice (Acting) at Colombo the 30th day of November, in the year One thousand Nine hundred and sixty seven and of Our Reign the sixteenth.

Seal.

Sgd./B. F. Perera.

Deputy Registrar, Supreme Court.

No. 18
Decree of the
Supreme Court
dismissing
appeal-
27. 11. 67.
—Continued

10

No. 19
Application for Conditional Leave to appeal to the
Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

In the matter of an application for Conditional Leave to appeal to Her Majesty the Queen in Council under the Appeals (Privy Council) Ordinance (Cap. 100) and the Rules framed thereunder.

S.C. No.165F/65
20 D.C. Jaffna
No.1870/M

1. Velayuthampillai Mandirampillai,
2. Mandirampillai Velayuthampillai carrying on business in partnership under the name, firm and style of "Sana Mana Rawanna & Co" at 212, Hospital Road, Jaffna. ... *Plaintiffs-Appellants.*

vs.

Her Majesty's Attorney-General for Ceylon, Colombo
... ..*Defendant-Respondent.*

To.

The Honourable the Chief Justice and the other Justices of the Honourable the Supreme Court of the Island of Ceylon.

30 On this 10th day of December 1967.

The petition of the plaintiffs-appellants abovenamed appearing by Sabapathy Somasundaram and his assistant Sinnathambiapillai Thuraisingam their Proctors states as follows:-

1. Feeling aggrieved by the judgment and decree of Your Lordships' Court pronounced on the 27th day of November 1967, the plaintiffs-appellants are desirous of appealing therefrom to Her Majesty the Queen in Council.

No. 19
Application for
Conditional
Leave to
Appeal to the
Privy Council-
10. 12. 67.

No. 19
Application for
Conditional
Leave to
Appeal to the
Privy Council-
10. 12. 67.
—Continued

2. The said judgment is a final judgment.
3. The matter in dispute on the appeal amounts to or is of the value of over rupees five thousand (Rs. 5,000/-).
4. The plaintiffs-appellants have on the 3rd day of December 1967 through themselves and their Proctor, Mr. S. Somasundaram of Colombo, served on the defendant-respondent by delivery at his office in Colombo, and by registered post, notice of their intention to file the present application.

(In proof whereof the plaintiffs-appellants file herewith copy of the said notices marked "A" and "B" with postal registration receipts marked "C" and "D"). 10

WHEREFORE the plaintiffs-appellants pray:-

- (a) for conditional leave to appeal against the judgment of this Court dated the 27th day of November 1967 to Her Majesty the Queen in Council;
- (b) for costs; and
- (c) for such other and further relief as to this Honourable Court shall seem meet.

Sgd: S. Somasundaram
Proctor for plaintiffs-appellants. 20

No. 20
Minute of
Order Granting
Conditional
Leave to
Appeal to the
Privy Council-
1. 2. 68.

No. 20
Minute of Order granting Conditional Leave to
Appeal to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Conditional Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

- | | |
|---|--|
| <p>1. Velayuthampillai Mandirampillai,</p> | |
| <p>S.C.Application No. 479/67.
(Conditional Leave)
S.C.No.165(F)/65
D.C.Jaffna Case No. 1870/M.</p> | <p>2. Mandirampillai Velayuthampillai carrying on business in partnership under the name, firm and style of "Sana Mana Rawanna & Co." at 212 Hospital Road, Jaffna. <i>Plaintiffs-Appellants-Petitioners</i>

vs
Her Majesty's Attorney-General for Ceylon, Colombo.
. <i>Defendant-Respondent-Respondent.</i></p> |

No. 20
Minute of
Order Granting
Conditional
Leave to
Appeal to the
Privy Council-
1.2. 68.
—Continued

The application of Velayuthampillai Mandirampillai and Mandirampillai Velayuthampillai, carrying on business in partnership under the name, firm and style of "Sana Mana Rawanna & Co." at 212, Hospital Road, Jaffna for Conditional Leave to Appeal to Her Majesty the Queen in Council from the Judgment and Decree of the Supreme Court of the Island of Ceylon pronounced on the 27th day of November 1967 in S. C. 165 (F)/65 D. C. Jaffna Case No. 1870/M, having been listed for hearing and determination before the Honourable Thusew Samuel Fernando, Q.C., Puisne Justice and the Honourable Anthony Christopher Augustus Alles, Puisne Justice, in the presence of E. R. S. R. Coomaraswamy Esquire, with C. Chakradaran Esquire, Advocates for the Plaintiffs-Appellants-Petitioners and P. Naguleswaran Esquire, Crown Counsel for the Defendant-Respondent-Respondent, Order has been made by Their Lordships on the First day of February, 1968 allowing the aforementioned application for Conditional Leave to Appeal to Her Majesty the Queen in Council.

Sgd. N. Navaratnam
Registrar of the Supreme Court.

No. 21

No. 21
Application for
Final Leave to
Appeal to the
Privy Council
17. 2. 68

20 **Application for Final Leave to Appeal to the Privy Council**
IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for final leave to appeal to Her Majesty the Queen in Council under the Appeals (Privy Council) Ordinance (Cap. 100) and the Rules framed thereunder.

S.C.Application 1. Velayuthampillai Mandirampillai,
No. 80/68. S.C. 2. Mandirampillai Velayuthampillai carrying on busi-
No. 165 (Final) ness in partnership under the name firm and style
of 1965. D. C. of "Sana Mana Rawanna & Co" at 212 Hospital Road,
Jaffna Jaffna... .. Plaintiffs-Appellants.
30 No. 1870/M vs
Her Majesty's Attorney-General for Ceylon, Colombo.
..... Defendant Respondent.

To:

The Honourable the Chief Justice and the other Justices of the Honourable the Supreme Court of the Island of Ceylon.

No. 21
Application for
Final Leave to
Appeal to the
Privy Council
17. 2. 68
—Continued

On this 17th day of February 1968

The humble petition of the Plaintiffs-Appellants abovenamed appearing by Sabapathy Somasundaram and his assistant Sinnathambiapillai Thuraisingam their Proctors states as follows:-

1. That the appellants on the first day of February 1968 obtained Conditional Leave from this Honourable Court to appeal to the Queen in Council against the judgment and decree of this Court pronounced on the 27th day of November 1967.

2. That the appellants have in compliance with the conditions on which such leave was granted deposited with the Registrar of this Court a sum of Rupees three thousand (Rs. 3000/-) and hypothecated such sum by Bond dated the Sixteenth day of February 1968. 10

3. That the appellants have further deposited with the said Registrar a sum of Rupees three hundred in respect of fees.

WHEREFORE the appellants pray that they be granted final leave to appeal against the said judgment of this Court pronounced on the 27th day of November 1967 to Her Majesty the Queen in Council.

Sgd. S. Somasundaram.
Proctor for plaintiffs-appellants. 20

No. 22
Minute of
Order Granting
Final Leave to
Appeal to the
Privy Council-
21. 5. 68

No. 22

Minute of Order granting Final Leave to Appeal
to the Privy Council

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

In the matter of an application for Final Leave to Appeal to the Privy Council under the Rules set out in the Schedule to the Appeals (Privy Council) Ordinance.

S.C.Application No. 479/67. (Conditional Leave)	1. Velayuthampillai Mandirampillai,	30
S.C. No. 165 (F) 65. D.C. Jaffna Case No.1870/M.	2. Mandirampillai Velayuthampillai carrying on business in partnership under the name, firm and style of "Sana Mana Rawanna & Co." at 212, Hospital Road, Jaffna Plaintiffs-Appellants-Petitioners	
S.C.Application No. 80/68. (Final Leave)	vs. Her Majesty's Attorney-General for Ceylon, Colombo. Defendant-Respondent-Respondent.	

The application of Velayuthampillai Mandirampillai and Mandirampillai Velayuthampillai carrying on business in partnership under the name, firm and style of "Sana Mana Rawanna & Co" at 212, Hospital Road, Jaffna, for Final Leave to Appeal to Her Majesty the Queen in Council from the judgment and decree of the Supreme Court of the Island of Ceylon pronounced on the 27th day of November 1967 in S. C. No. 165 (F)/65-D. C. Jaffna Case No. 1870/M, having been listed for hearing and determination before the Honourable Albert Lionel Stanley Sirimane, Puisne Justice and the Honourable Victor Tennekoon, Q. C. Puisne Justice, in the presence of E. R. S. R. Coomaraswamy Esquire, with C. Chakradaran Esquire, Advocates for the Plaintiffs-Appellants-Petitioners and Mervyn Fernando Esquire, Crown Counsel, for the Defendant-Respondent-Respondent, Order has been made by Their Lordships on the Twenty-first day of May, 1968, allowing the aforementioned application for Final Leave to Appeal to Her Majesty the Queen in Council.

No. 22
Minute of
Order Granting
Final Leave to
Appeal to the
Privy Council-
21. 5 68
—Continued

10

Sgd. N. Navaratnam
Registrar of the Supreme Court.

**PRAT II
EXHIBITS**

D 5

**Order made by the Acting Minister of Finance
appointing K. P. W. Fernando as Assistant Preventive Officer.**

I, Mahabalage Don Henry Jayawardene, Acting Minister of Finance, in terms of Section 8(1) of the Customs Ordinance do hereby appoint

D5
Order made by
the Acting
Minister of
Finance
Appointing
K. P. W.
Fernando as
Assistant
Preventive
Officer—
17. 12. 53.

	Messrs. A. J. Smith	- Charges Officer	
	E. P. J. Stork	- Chief Assistant Charges Officer.	
	T. Nadarajah	- " " "	
10	C. H. Woutersz	- Assistant Charges Officer	
	A. N. V. Dharmarajah	- " " "	
	M. C. P. Keyt	- " " "	
	S. A. Sansoni	- " " "	
	C. O. L. Bandaratilleke	- " " "	
	M. Arlis	- " " "	
	G. D. E. Pereira	- " " "	
	R. D. P. Breckenridge	- " " "	
	S. Rasanayagam	- " " "	
	S. Sivayogam	- " " "	
20	L. Saverimuthu	- " " "	
	S. Eliyathamby	- " " "	
	S. Ponniah	- " " "	
	H. D. Aderson	- " " "	
	Q. F. Tennekoon	- " " "	
	G. P. Schoorman	- " " "	
	B. J. P. Rodrigo	- " " "	
	K. Somasunderam	- " " "	
	S. M. de Zilva	- " " "	
	K. S. L. T. Fernando	- " " "	
30	E. V. Williams	- " " "	
	L. J. C. F. de Silva	- " " "	
	H. E. V. Bartholomeusz	- " " "	
	P. E. Perkins	- Chief Preventive Officer.	
	W. H. Wambeek	- Chief Assistant Preventive Officer.	
	A. R. A. Pereira	- " " "	
	F. C. A. Speldewinde	- " " "	
	F. E. G. Van Buren	- Assistant Preventive Officer.	
	E. K. B. Aluvihare	- " " "	
40	A. R. N. Brohier	- " " "	
	D. D. B. Hepponstall	- " " "	

D5
Order made by
the Acting
Minister of
Finance
Appointing
K. P. W.
Fernando as
Assistant
Preventive
Officer-
17. 12. 53.
—Continued

K. L. E. Joseph	—	Assistant Preventive Officer.	
V. H. de Kretser	—	”	
K. P. W. Fernando	—	”	
J. J. A. de Niese	—	”	
S. M. Pathirane	—	”	
P. N. Gunasinghe	—	”	
P. L. Crozier	—	”	
S. Selvaratnam	—	”	
S. J. Outschoorn	—	”	
R. B. Thambiah	—	”	10
Anton Pereira	—	”	
R. M. Sansoni	—	”	Acting
M. Sunderarajah	—	”	”
M. E. Weerasinghe	—	”	”
G. Amirthalingam	—	”	”
C. Ramanathan	—	Temporary Asst. Prev. Officer.	
C. M. Raymond	—	”	
L. W. Sellayah	—	”	
M. W. Salgado	—	”	
P. E. Roberts	—	”	20
R. Shanmuganathan	—	”	

to be officers with powers to hold examinations and inquiries under the Customs Ordinance during the tenure of their aforesaid respective offices.

Sgd. M. D. H. Jayawardane
Acting Minister of Finance.

Colombo 17th December 1953.

Certified true copy
Sgd.
for Principal Collector.
27. 8. 63.

D 7

**Letter of Appointment of K. P. W. Fernando as Sub-Collector,
Kayts and Chief Assistant Preventive Officer, Northern Province**

D7
Letter of
Appointment of
K. P. W.
Fernando as
Sub-collector,
Kayts, and
Chief Assistant
Preventive
Officer,
Northern
Province-
26. 5. 59.

(Copy)
C. C., N. P.,

My No. E. 271

Transfer-Sub-Collector Kayts & C.A.P.O. N.P.

Mr. K. P. W. Fernando will succeed Mr. J. J. A. de Niese
as Sub-Collector, Kayts and C. A. P. O., N. P., with effect from 1.7.59.

Sgd. A. Ratnam
for Principal Collector.

10

H. M. Customs,
Colombo. May 26, 1959.
Copy to: S. C., Kayts.

Acct,
C. P. O.
S. C.
Mr. K. P. W. Fernando
P. F.

True Copy.

20 Certified correct.

Sgd

Assistant Collector of Customs.

Jaffna

13th Oct. 1964.

P 6
Indent
2. 5. 61.

109

P 6
Indent

From

Sana Mana Rawanna & Co.
58, Fourth Cross Street,
Colombo 11.

To

2nd May, 1961.

M/s. V. M. Velautham Pillai
47, Beach Road,
Tuticorin.

10

Dear Sir/s

INDENT

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

Article: Fenugreek Seed

Quantity: 50 (Fifty) bags.

Price: Rs. 58/- per Gross Cwt, CIF, Jaffna.

Shipment: Earliest: per boat direct to Jaffna.

Terms: (1) Payment will be made in Colombo against bills drawn for collection, through any bank.

20

(2) Other particulars as usual to this market.

Yours faithfully,
Sana Mana Rawanna & Co.
Sgd. Illegibly
Partner.

Confirmed:

V. M. Velauthampillai

Sgd.

Sole Proprietor.

P 7
Export Application

P 7
Export
Application-
9.5.61

To: The Secretary, Port Trust, Tuticorin
Sir, Please pass the undermentioned goods to be shipped.

(SEAL) }
Port Trust Office }
TUTICORIN }
9 May 1961 }

V. M. VELAYUTHAMPILLAI
Exporter & Importer
TUTICORIN.
Register No. 2081

1. Name of the Vessel* Boat Nooraniah.
2. Name of the Agent or Charterer* R. Fernando.
3. Nationality of the Flag: Indian.
4. Name of the Shipping Line: Country Craft.
5. Line in IG Manifest:

(SEAL) }
Port. TUTICORIN. }
Deck Chalan No. }
Shipping order No. }
Tuticorin Port }
Intld. 9/5 }

Customs Collector }
Date. }
Tuticorin Port }
Date. }

Name of Shipper or Agent 1	Serial number of the consignment 2	Number of Packages 3	Marks and numbers of the consignment 4	Description of the Commodities 5	Schedule No. 6	Gross Weight of the consignment (Dead Weight tons) 7	Measurement or Gallonage 8	Rate of Shipping Dues Rs. nP. 9	Amount of shipping dues Rs. nP. 10	Port 11	Country 12	Country to which consigned 13
V.M. Velayuthampillai	1	50 bags (50 bags only)	MANI	Fenu greek seed		Ton Cwt. lb. 4. 17. 36	k. g. 4944, 150	1	50	50	Jaffna	Ceylon
									7	50		5534/43 Ceylon

Date 14	Mode of Receipt 15	Particulars of daily dock receipt granted for goods received		Customs Allow Order				Shipment Particulars				Remarks 27	
		Quantity 16	Running Total 17	Shipping Bill No. and date of guarantee 19	Quantity allowed 20	Signature of Customs Officer 21	Date 22	Marks 23	Description 24	Quantity to be stated in words 25	Running Total 26		

TUTICORIN PORT } Received the sum of (Rs.7/50 nP) I/We hereby declare that the particulars entered above are true and correct.
Date 9.5.61 } Rupees Seven, 50. Duly authorised to act on behalf of

Initials of Shroff:

Initials of Clerk:

Sgd:

Secretary Port Trust

Date

V M. Velayuthampillai
Sgd

Sole Proprietor.

Signature

* Please specify whether it is a steamer, a sailing vessel, a tanker or a dry cargo vessel.

** Please indicate clearly whether the party is private or Government (including Central Govt., State Govt., Local Bodies, Public undertakings and the like.)

(Reverse) (Seal) TUTICORIN PORT TRUST
FORE SHORE
VERIFIED

S. L. No. 2233

Date: 10/5 Intld Piermaster

P2

Invoice for 50 packages Fenugreek Seed.

P2
 Invoice for 50
 Packages
 Fenugreek
 Seed-
 9. 5. 61.

V. M. Velayuthampillai
 Exporter & Importer,
 TUTICORIN

Beach Road

Tuticorin, 9. 5. 1961.

No. 1/61-62.

Invoice for 50 packages Fenugreek Seed shipped per Boat
 'Nooraniah' of Tuticorin to Jaffna on account and risk of Messrs Sana
 Mana Rawanna & Co., Jaffna.

Marks	No of packages	Description of goods	Weight			Rate per Cwt. CIF	Amount	
			Cwt.	Qrs.	lbs.		Rs.	nPs.
MANI	50	Bags Fenugreek Seed Gross Cwt. 97-1-8 Tare'' 1-3-4 Nett'' 95-2-4	97	1	8	58/-	5644	65

Indian currency, Rupees, Five Thousand Six Hundred & Forty Four & naye Paise sixty five only.

(SEAL)

V. M. Velayuthampillai
 Sgd/
 Sole Proprietor

E. & O. E.

Shipment proceeds to be received through National & Grindlays Bank Ltd., Tuticorin.

GRI. Form No. Ma.B. 845379

CEYLON

IMPERIAL PREFERENCE-CERTIFICATE OF ORIGIN A.

P 2
 Invoice for 50
 Packages
 Fenugreek Seed
 9. 5. 61
 —Continued

For goods grown, produced or manufactured in Indian Union and consigned therefrom to CEYLON.

I, M. Velayutham, sole proprietor of the exporter of the merchandise specified overleaf hereby certify:-

1. That I have the means of knowing and am duly authorised to make and sign this certificate.
2. That the merchandise designated overleaf is of Indian Union (country of manufacture) growth, produce or manufacture. 10
3. That of the value of each and every article covered by this certificate not less than 75% is derived from materials grown or produced within part of the Indian Union.
4. That this merchandise is to be shipped per Boat 'Nooraniah' of Tuticorin from Tuticorin to Jaffna and consigned to M/s. Sana Mana Rawanna & Co., Jaffna.

Dated at Tuticorin this 9th day of May 1961.

V. M. Velayuthampillai

Sgd 20

Sole Proprietor.

P2A
Invoice for 50 packages Fenugreek Seed
(with Custom seal)

P2A
 Invoice for 50
 Packages
 Fenugreek Seed
 (with Customs
 Seals)-
 9. 5. 61.

V. M. Velayuthampillai,
 Exporter & Importer,
 TUTICORIN.

(SEAL-
 CUSTOMS COLLECTOR
 TUTICORIN PORT)

No. 1/61-62

Beach Road,
 Tuticorin 9. 5. 1961.

Invoice for 50 packages Fenugreek Seed shipped per
 Boat Nooraniah to Jaffna on account and risk of
 Messrs Sana Mana Rawanna & Co. Jaffna.

Marks	No. of packages	Description of goods.	Weight			Rate per cwt. CIF.	Amount	
			Cwt.	Qrs.	lbs.		Rs.	nPs
MANI	50	Bags Fenugreek Seed Gross 97.1.8 Tare 1.3.4 Nett 95.2.4	97	1	8	58/-	5644	65

Indian currency, Rupees, Five thousand
 six hundred & forty four & naye Paise
 sixty five only.

V. M. Velayuthampillai
 Sgd.....
Sole Proprietor.

E. & O. E.

Shipment proceeds to be received through the Indian Overseas
 Bank Limited. Tuticorin.
 GRI. Form No. Ma. B. 845379

(SEAL)

Her Majesty's Customs Kayts E. No. 1/1. 6, 61 1 Jun. 1961 Intld 1/6/61
--

(SEAL)

Central Bank of Ceylon Exchange Control Department 18 Nov. 1961 Exchange Approved
--

CEYLON

IMPERIAL PREFERENCE-CERTIFICATE OF ORIGIN A.

P2A
 Invoice for 50
 Packages
 Fenugreek Seed
 (with Customs
 Seals)-
 9. 5. 61.
 —Continued

For goods grown, produced or manufactured in Indian Union and consigned therefrom to CEYLON.

I, M. Velayutham, Partner of the exporter of the merchandise specified overleaf hereby certify:-

1. That I have the means of knowing and am duly authorised to make and sign this certificate
2. That the merchandise designated overleaf is of Indian Union (country of manufacture) growth, produce or manufacture. 10
3. That of the value of each and every article covered by this certificate not less than 75% is derived from materials grown or produced within part of the Indian Union.
4. That this merchandise is to be shipped per Boat 'Nooraniah' from Tuticorin to Jaffna and consigned to M/s. Sana Mana Rawanna & Co., Jaffna.

Dated at Tuticorin this 9th day of May 1961.

V. M. Velayuthampillai
 Sgd
Sole Proprietor.

Bill of Lading

P 3
Bill of Lading
10. 5. 61.

BILL OF LADING

Shipped in apparent good order and condition by V. M. Velautham Pillai in and upon the good vessel called the Boat No. Nooraniah of Tuticorin belonging to Mrs. Mary Chrisanthus Mel the master for the present voyage Mr. Rosario Fernando now riding Anchor at the port of Tuticorin, and bound for Jaffna.

Marks	No. of Packages	Description	Freight		Weight		
			Rs.	nPs	T.	cwt.	qr.
MANI	50	BAGS FENNUGREEK	75	00			
	Number (of packages in words)		fifty	bags	only		

10 Being marked and numbered as above (weight, quantity, brand, contents, condition, quality and value as declared by the shipper but unknown to the carrier) and are to be delivered in the like good order and condition at the aforesaid Port of Jaffna the act of God, the State's enemies, Fire, all and every other dangers and accidents by the Seas, Rivers and Navigation of whatever nature of kind soever excepted unto M/s. Sana Mana Rawanna & Co. 212 Hospital Road, Jaffna or to his or their Assigns.

20 Notwithstanding to anything admitted stated and/or endorsed herein, the carrier's liability ceases as soon as the goods covered under this bill of lading are lifted from the boat at her berth or anchorage and landing certificate obtained at the port of discharge and thereafter the goods shall be at the risk for all purposes and in every respect of the shipper and/or consignee and neither the shipowner nor the master of the vessel could in any way be held liable in respect of non delivery or mis-delivery or on any account of loss or damage suffered by virtue of any malpractice or any other cause whatsoever.

P 3
Bill of Lading
10. 5. 61.
—Continued

IN WITNESS whereof the Master/purser of the said vessel hath affirmed to one BILLS OF LADING, of this tenor and date, one which being accomplished, the other to stand void.

NOTIFY: If consigned to shipper's }
order without liability to } M/s. Sana Mana Rawanna & Co.
carrier } 212, Hospital Road, Jaffna.

FREIGHT PAID at Tuticorin per Total Rs. 75.00

Dated at Tuticorin this 10th day of May, 1961.

Sgd. Illegibly.
Master of Vessel. 10

(Reverse)

V. M. VELAYUTHAMPILLAI
Sgd. Illegibly.
Sole Proprietor.

On payment of all your charges deliver to
the order of Sana Mana Rawanna & Co.

FOR THE INDIAN OVERSEAS BANK LTD.
Sgd.
Accountant.

D 6
Export General Manifest
EXPORT GENERAL MANIFEST

D6
Export General
Manifest
15. 5. 61

E. M. No. 190 Tuticorin. Dated 15. 5. 61 Bound for Jaffna.

Manifest of all goods exported per Boat No. Nooraniah of 135 tons Rosario Fernando Commander under Indian Colours.

Marks and numbers on Packages		Numbers and Kind of Packages		Description of goods	By whom shipped	To whom consigned	Index No. of Shipping Bill	Remarks
Marks	No.	No.	Kind					
Sandler Brand Portland Cement		2000	Paper bags	Portland cement } Empty paper bags }	The Indian Cements Ltd	Ms. Jafferjee Bros.	317	No opium or drugs containing opium on board
-do-	1		Bdl					
Brothers P. K. Sri & Co.		204	Bags	do } do }	R. M. Letchimanan Chettiar	do	440	The receipt of E. M. in respect of Rice & Paddy landed may be acknowledged.
-do-	226		"					
-do-	40		"	Red dry Ginger } Coriander }	do	do	629	Customs Collector.
-do-	10		"					
-do-	52		"	Corriander Seeds } Vilamicham }	S. Subramaniam & Bros.	do	624	Arms & ammunition nil. Has regulation lights.
-do-	25		"					
S. V. S. P. }		56	"	Karuvupillai } Cheeyakkai }	Sana Mana Rawanna & Co.	do	543	Tindal & Crew. 12
S. M. R. }		10	"					
-do-		8	"	Fengreek Seeds } Athi Vidayam }	V. M. Velayuthampillai & Co.	do	488	
-do-		24	"					
MANI		50	"	Sooratamerai } Pappadupul }	V. M. Velayuthampillai	do	461	
S. M. R.		2	"					
-do-		8	"	Kandangatheri } Semmemeringu }	Sana Mana Rawanna & Co.	do	503	
-do-		20	"					
-do-		25	Bdls.	Karuvu Pillai }	Sana Mana Rawanna & Co.	do		
-do-		3	"					
-do-		12	Bags	Two Thousand Seven Hundred & Seventy six.				
-do-		2776						

Cleared outward on the 15. 5. 61 I do hereby declare that the contents of the above manifest are truly stated.
Checked by Sgd/ Sgd/ Rosario Fernando
Customs Collector. Tuticorin. Commander.

Countersigned
Customs Collector Dated 15. 5. 1961

P 4
Deed of Protest No. 3052 attested by
N. T. Sivagnanam, Notary Public.

P 4
 Deed of Protest
 No. 3052 attested
 by N. T.
 Sivagnanam
 Notary Public-
 31. 5. 61

SHIP PROTEST

No. 3052

10 BY THIS PUBLIC INSTRUMENT OF PROTEST be it known and made manifest that on the 31st day of May One thousand nine hundred and sixty one personally came and appeared before Nagalingam Thambiah Sivagnanam, Notary Public by authority duly admitted and sworn and practising in Kayts in the District of Jaffna in the Island of Ceylon.

20 Rozario Fernando, Master of the good vessel "Nooraniah" who did duly and solemnly declare and state as follows, that is to say, that this Appearer and the rest of the crew of the said vessel set sail in her from Tuticorin on the 21st day of May 1961 bound on a voyage from thence to Kayts laden with cargo of cement and sundry goods the vessel being then tight staunch and strong and well manned victualled and sound and in every respect fit to perform her said intended voyage. That they arrived at Pamban on the 23rd day of May 1961 as the weather was bad. That as the weather cleared about midnight on the 28th May 1961, they left Pamban on the 29th May 1961 at 1 a.m.

That at about 3.15 in the morning of 29th May 1961 they encountered heavy blowing and rough seas and at that time they were seven miles off Kachchaitivu in the westerly direction. The main sail got torn, the cross mast broke and the rear mast cross beam also broke. The blowing was strong and the sea continued to be running heavy and water was beating on to the deck.

30 At this stage they were obliged in order to lighten the vessel and for the safety and preservation of the vessel crew and the cargo to throw overboard a portion of the cargo consisting of about 150 bags of cement which accordingly was done at about 3.15 in the morning on the twenty-ninth day of May 1961.

I, Rozario Fernando do hereby make oath and declare that the foregoing instrument is correct and contains a true account of the facts and circumstances and I make this solemn declaration conscientiously believing the same to be true.

Sgd. Rozario Fernando

Witnesses:

- 40 1. Sgd. S. Sivasingarajah
 2. Sgd. V. Kugathanan

P 4
Deed of Protest
No. 3052 attested
by N. T.
Sivagnanam
Notary Public-
31. 5. 61
—Continued

Declared and protested in due form of law at Kayts aforesaid this Thirty first day of May 1961 One thousand nine hundred and sixty one.

Sgd. N. T. Sivagnanam
Notary Public

I. Nagalingam Thambiah Sivagnanam, Notary Public of Kayts do hereby certify and attest that the foregoing instrument having been read over and explained by me the said Notary to the said Rozario Fernando who signed in English and who is not known to me in the presence of Sivasambu Sivasingarajah of Thoppukadu, Karainagar and Vinasitamby Kugathasan of Saravanai, the subscribing witnesses hereto both of whom are known to me and who know the said Rozario Fernando the same was signed by the said Rozario Fernando and also by the said witnesses in my presence and in the presence of one another, all being present at the same time on the 31st day of May 1961 at Kayts. 10

And I further certify and attest that in the original in page 1 line 10 the word "from" was interpolated in ink in the original and duplicate in page 1 line 30 the figure "15" was written in ink before the foregoing instrument was read over and explained as aforesaid by me the said Notary to the said Rozario Fernando and that the original of this instrument bears one stamp of the value of Re.1/- and the duplicate one stamp of the value of Rs. 20/- 20

Date of Attestation:
31st May 1961.

Sgd. N. T. Sivagnanam
Notary Public.

True Copy.
Certified correct.

Sgd. 30
for Collector of Customs, N.P.

H. M. Customs,
Jaffna 11. 4. 62

P8
Name & Address of Importers Furnished by Sana Mana Rawanna & Co.
to the Collector of Customs, Kayts.

P 8
 Name &
 Address of
 Importers
 furnished by
 Sana Mana
 Rawanna & Co.
 to the Collector
 of Customs
 Kayts-
 1. 6. 61

NAME & ADDRESS OF IMPORTERS: SANA MANA RAWANNA & CO. 58. Fourth Cross Street, Colombo.
 In the Boat Nooraniah from Tuticorin of 30.5.61. No. 1/1.6.61

Marks & Numbers	Tariff No.	Class & Group	Description of goods	Quantity	Country of Production	C. I. F. Value	Value for Duty	Rate of duty Prefer- ential	Duty Rs Cts.	First Rent			
										Size	Rate	Amount Rs.	Ch.
MANI	075	02.04	Other goods 50 Bags Fenugreek seeds (mathe seeds)	95.2.04	Indian 045	5644.65			Free	Under 2 Cwt	cts. 50	2	50
										Increase @ 61%	05	1	53
										Rent		4	03
												4	03

I/we hereby declare that I am / we are the Importer of goods contained in this Entry and that I/we have entered the same at the respective sums, or value mentioned opposite to the said articles and amounting to the sum of Rs. 5644 65.

I/we claim that the goods against which preferential rates of duty have been entered be admitted at these rates. The necessary certificate and documents in proof of origin are annexed.

Witness my / our hand this 1st day of June 1961.

Sgd/F. X. Christopher.

Entry Clerk.

Sgd/

(Signature of importer or his authorised Agents)
 for Sana Mana Rawanna & Co.

**D1
Bill of Entry (Carbon Copy)**

Name & Address of Importers: SANA. MANA. RAWANNA & CO. 58, FOURTH CROSS STREET, COLOMBO 11.

In The Vessel: Bt. Nooraniah of 30. 5. 61 B/L No from Tuticorin... ..Entry No. 1/1. 6. 61.

1 Marks and Numbers	5 Classification			6 Quantity	7 Country of production India 045	8 Invoice Value C. I. F.	9 Rate of exchange	10 Value for duty		11 Rate of Duty		13 Duty Rs. Cts.	14 First Rent and Harbour Dues			
	2 Class	3 Group	4 Tarriff item					Rs. cts.	Rs. cts.	11 Preferential	12 General		14 Dimensions or other Details	15 Whether Details appear on B/L Invoices or L/W's Record No. and Date.	16 Amount Rs. Cts.	
MANI	075.	02	04	95 2 4	S	5644 65						Free	Under 2 cts. Cwts—05 Increase @ 61%		2. 50 1. 53 4. 03 4. 03	
																(Seal: Received Rs. 4. 03 cts. H. M. Customs Sgd Kayts. Shroff 1. 6. 61)

I/We hereby declare that We are the Importers of the goods contained in this Entry, and that I/We enter the same at the respective sums or 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 (Rs. 5644. Cts. 65) only.

For Sana Mana Rawanna & Co.
Sgd/ Illegibly.

Signature of Importers or their Authorised Agents.

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.
WITNESS our hand at kayts this 1st day of June 1961.

1. Correctly classified.....
Rent and Dues checked B/L Record.....
Duty checked.....
Manifested, Title Valid.....
Entered in Cash Book.....
Received Payments.....
Warranted.....

2. Documents filed
DATE T.W.
Time.
3. Invoices Checked
Checking Officer.
4. A/Sample required
5. Samples herewith
L. W.

6. (This space to be left blank for Customs purposes)

7. Correct per Invoice, Certificate of Origin and samples.
Value fair b/iaJ...g & exam. Sgd. Illegibly
Time Appraiser. S. C. Kayts 1/6
8.

Name & Address of Importers: SANA. MANA. RAWANNA & CO. 58, FOURTH CROSS STREET, COLOMBO 11.

In The Vessel: Bt. Noorajah of 30. 5. 61 B/L No Entry No. 1/1. 6. 61.

.....from Tuticorin.....

1 Marks and Numbers	Classification			5 Description of goods	6 Quantity	7 Country of production	8 Invoice Value C. I. F.	9 Rate of exchange	10 Value for duty		13 Duty	First Rent and Harbour Dues				
	2 Class	3 Group	4 Tarriff item						11 Preferential	12 General		14 Demensions or other Details	15 Whether Details appear on B/L Invoices or L/W's Record No. and Date.	16 Amount	Rs.	Cts.
MANI	075.	02	04	Other Goods 50 Bags Fenugreek Seeds (Mathe seeds)	95 2 4	India 045	5444 65				Free	Under 2 cts. Cwis-05 Increase @ 61%	(Seal: Received Rs. H. M. Customs Sgd Kayts.) Rent 4. 03 cts.	2. 50 1. 53 4. 03 4. 03		

I/We hereby declare that We are the Importers of the goods contained in this Entry, and that I/We enter the same at the respective sums or 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 (Rs. 5644. Cts. 65) only.

For Sana Mana Rawanna & Co.
Sgd/ Illegibly.

Signature of Importers or their Authorised Agents.

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.

WITNESS our hand at kayts this 1st day of June 1961.

E/C.

1. Correctly classified.....	
Rent and Dues checked B/L Record.....	
Duty checked.....	
Manifested, Title Valid.....	
Entered in Cash Book.....	
Received Payments.....	
Warranted.....	

2. Documents filed DATE Time.	T. W.
3. Invoices Checked	Checking Officer.
4. A/Sample required	
5. Samples herewith	L. W.

6. (This space to be left blank for Customs purposes)

7. Correct per Invoice, Certificate of Origin and samples.
Value fair b/lading & exam. Sgd. Illegibly
Time Appraiser. S. C. Kayts 1/6

8.

D2

**Statement of V. Sabaratnam to K. P. W. Fernando,
Sub-collector of Customs, Kayts.**

D2
Statement of
V. Sabaratnam
to
K. P. W.
Fernando,
Sub-collector
of Custom,
Kayts,
2. 6. 61

2nd June, 1961.

Vythilingam Sabaratnam: Age 28 years, residing at No. 81/8 Hospital Road, Jaffna, present, Hindu, affirmed, states as follows:-

I am employed as a Clerk at M/s. V. Mandiram & Co., 210 Hospital Road, Jaffna. I have been in the employ of this firm for the past four years. Mr. V. Mandiram is a partner of M/s. 10 Sana Mana Rawanna & Co. of No. 58, Fourth Cross St., Colombo. M/s. Sana Mana Rawanna & Co. are general importers of newsbales, dhall, corriander etc. As far as I am aware there is no branch of M/s. Sana Mana Rawanna & Co. in Jaffna. M/s. V. Mandiram & Co. of Jaffna clear goods imported by M/s. Sana Mana Rawanna & Co. of Colombo through the Jaffna Ports. On 31st May 1961, the Manager of M/s. V Mandiram & Co. Mr. V. Hariharaputhirapulle gave me the necessary documents to frame an entry for the importation and delivery of 50 bags Fenu Greek seed with marks "Mani" which he said was being imported by the firm 20 in Boat Nooraniah which had arrived at the Port of Kayts. As I did not fully well known what these Fenu Greek seed was I asked him how they were to be entered in the Customs entry for passing of the necessary entries. He said they were "Mathe seeds" and were duty free. I came to the Customs House, Kayts yesterday 1st June 1961 along with the invoice, bill of lading and the necessary Customs entries and requested the entry clerk to frame the entry. The entry clerk asked me what these "Fenu Greek seed" was and I told him they were "Mathe seed" and requested him to enter, "Mathe Seed" on the body of the entry within brackets. I 30 annexed the invoice for Fenu Greek seed, the bill of lading and signed the copies of entries as the representative of the importer viz. M/s. Sana Mana Rawanna & Co. I signed all copies of the entries. I submitted the set of entries to the Shroff and paid Rs. 4.03 cts. only representing the rent on the 50 bags of "Mathe seed" marked "Mani" as Mathe seed is duty free. After the payment of the rent, all the entries were submitted to the Sub Collector of Customs, Kayts. The Sub Collector then wanted me to bring samples of the so called "Fenu Greek Seed" for his perusal and inspection. I went to the place where the bags were being unloaded and

D2
Statement of
V. Sabaratnam
to
K. P. W.
Fernando,
Sub-collector
of Custom,
Kayts,
2. 6. 61
—Continued

brought a sample of "Mathe Seed" and produced before him. After submitting the entries and sample I remained in the premises to transact other business. Meanwhile I saw the Sub Collector getting down some samples through his officers and those samples were something other than the sample produced by me earlier. I saw the sample which was produced by the Customs officer at the Sub Collector's order but I cannot say what this was. These samples were not "Mathe seeds" I went outside and telephoned my shop in Jaffna and told them that there were in this consignment of 50 bags mathe seed something else besides mathe seed and that the Customs had held up the delivery. The person who replied my telephone call could not say anything in reply. I went back to the shop at about 5.30 p.m. yesterday and the Manager informed that the Proprietor Mr. Mandiram had left to Kayts Customs. I then went home after informing the Manager that there were some bags containing white seeds known as Wella Kasa Kasa. I thereafter went home and came this morning as I have other entries to be submitted on behalf of the same firm. I am now informed that there are about 20 bags of Wella Kasa Kasa in the consignment of 50 bags mathe seed with marks "Mani" imported by M/s. S. M. Rawanna & Co. which firm I represent and landed ex Boat Nooraniah of 30. 5. 61 at the Port of Kayts. I am not aware that white poppy seeds or Wella Kasa Kasa is a prohibited import under the Customs Ordinance and is an offence under the Customs and Poisons & Dangerous Drugs Ordinance. As far as I know M/s. Sana Mana Rawanna & Co. have been in the importing business for the last 15 to 20 years. During the period I was employed by this firm. I do not remember this firm importing "Mathe seeds" through the Jaffna Ports. According to the entry submitted by me I have entered the C. I. F. value of the 50 bags "Mathe seed" as Rs. 5,644.65.

Read over above and admitted as correct.

Sgd. V. S. Ratnam
2. 6. 61.

Recorded by me:

Sgd: K. P. W. Fernando
S.C. C.A.P.O., N. P. Kayts.

D 2 A**Further Statement of V. Sabaratnam to K. P. W. Fernando,
Sub-collector of Customs Kayts.**

D2A
 Further
 Statment of
 V. Sabaratnam
 to K. P. W.
 Fernando,
 Sub-collector
 of Custom,
 Kayts-
 2. 6. 61.

Vaithilingam Sabaratnam: present further states:-

10 I have now been shown the 50 bags with marks "Mani" lying in Customs custody and I find that the bags containing mathe seeds in addition to its shipping marks "Mani" bears the following marks too in Green ink "218X". The bags containing the white poppy seeds do not have these marks. I cannot explain why such separate marks have been made by the shippers for the two different commodities.

Admitted as correct.

Sgd. V. S. Ratnam - 2. 6. 61

Recorded by me.

Sgd. K. P. W. Fernando
 2. 6. 61

S. C. & C. A. P. O., N.P. Kayts.

D 3

**Statement of V. Mandirampillai to K. P. W. Fernando
Sub-collector of Customs, Kayts.**

D3
Statement of
V. Mandiram-
pillai to
Sub-collector of
Customs,
Kayts-
2. 6. 61

Velauthampillai Mandirampillai: Age 51 years residing at 212, Hospital Road, Jaffna present (Hindu) affirmed states as follows:-

I am one of the partners of M/s. Sana Mana Rawanna & Co. of No. 58, Fourth Cross St., Colombo 11 and I also have a branch firm in Jaffna at No. 212, Hospital Road, Jaffna. I am also the Director of M/s. Mandiram & Co. Ltd., Jaffna and I have no connection with the firm V. Mandiram & Co., Jaffna. I am not a citizen of Ceylon and hold a residential visa in Ceylon. I received an invoice for 50 bags Fenu Greek seed along with a bill of lading for a shipment sent by the firm in Tuticorin ex Boat Nooraniah which called over at the Port of Kayts on 30.5.61. I placed an indent with the suppliers in India for 50 bags Fenu Greek seed in the early part of May 1961. I have been importing from Colombo these Fenu Greek seed popularly known as "Mathe seed" regularly but I cannot remember whether any importations were made through the Northern Ports. The invoice and bill of lading referring to the consignment of 50 bags Fenu Greek seed was delivered at my office by the tindal of Boat Nooraniah. I handed these documents to Clerk Mr. V. Sabaratnam who works at M/s. V. Mandiram & Co. to frame the necessary entries and take delivery of these good at Customs House, Kayts. I told Clerk Mr. Sabaratnam that Fenu Greek seeds referred to "Mathe seed" which were entered duty free for Customs purposes and requested him to frame the Customs entries as mathe seeds for purposes of duty etc. I gave Mr. Sabaratnam full authority to act as the representative of the firm of importers. Yesterday at about 5.30 p.m. Mr. Sabaratnam telephoned me at my Jaffna office and told me that the Customs officers had found some other bags besides "Mathe seeds" and thereby held up the consignment. I then motored to Kayts Customs and found out that there were about 20 bags of "Wella Kasa Kasa" or white poppy seeds, in the consignment of 50 bags Fenu Greek Seeds intended and imported by my firm. I am satisfied now that 20 out of the 50 bags contain the white poppy seeds is a prohibited import under the Customs and Opium & Dangerous Drugs Ordinance in Ceylon. In my opinion I feel that the exporter in India has made a mistake in shipping 20 bags "White Kasa Kasa" along with the Mathe seed bags as there is no restriction in India regarding these white poppy seeds. This shipment was done by M/s. V. M. Velauthampillai of Beach Road, Tuticorin.

D3
Statement of
V. Mandiram-
pilla to
Sub-collector of
Customs,
Kayts-
2. 6. 61
—Continued

My firm normally deals in the importation of all curry stuffs and country medicines and held Import Control Licences for licenced goods. This is the first time that my firm got involved in any importation contrary to the law of the land. I had no intention of importing these restricted and prohibited goods viz. white poppy seeds. I cannot explain for the separate marking placed on the "Mathe Seeds" namely "218X" as I am not aware of these markings. According to my documents all the marks bear marks "Mani". I also wish to state that the exporter deals in white poppy seeds which is a common curry ingredient in India. I feel that some of these bags which had been in his stores may have been erroneously shipped. This is all I have to state.

Read over above and admitted as correct.

Sgd. V. Mandiram
2. 6. 61

Recorded by me.

Sgd. K. P. W. Fernando
S.C. & C. A. P. O. N. P. Kayts
2. 6. 61

D4

D4
Order made by
K. Thirunava-
karasu
Assistant
Collector of
Customs, Jaffna
3. 6. 61

**Order made by K. Thirunavukarasu,
Assistant Collector of Customs, Jaffna.**

I order the confiscation of the 20 bags Poppy Seed under Section 45 of the Customs Ordinance Chapter 185 read with Section 27 of the Poisons and Opium & Dangerous Drugs Ordinance Chapter 172. Under Section 123 of the Customs Ordinance, I order the confiscation of the 30 bags Mathe seed. I impose a penalty of Rs. 45,000/- on Mr. V. Mandirampillai of Messrs. Sana Mana Rawanna & Co. under Section 127 of the Customs Ordinance Chapter 185. 10

I mitigate the penalty of Rs. 45,000/- to Rs. 15,000/- under Section 155 of the Customs Ordinance.

In view of the fact that the Master of the Boat has taken the sample and given to the Tide Waiter on board it is difficult to prove "Knowingly concerned".

Sgd. K. Thirunavukarasu
A. C. C. 3.6.61

P1

Letter sent to V. Mandirampillai by the
Assistant Collector of Customs Northern Province.

My No. NPEPW 12/61
H. M. Customs,
Jaffna. 5.6.61

P 1
Letter sent to
V. Mandiram-
pillai by the
Assistant
Collector of
Customs,
Northern
Province-
5. 6. 61

Mr. V. Mandirampillai,
Sana Mana Rawanna & Co.,
Jaffna.

10 Sir,

ENTRY NO. 1 OF 1.6.61 FOR 50 BAGS MATHE SEEDS.

With reference to the consignment of 50 bags mathe seeds I have the honour to inform you that 20 bags poppy seeds are confiscated under Sec. 45 of the Customs Ordinance Chap. 185 read with Sec. 27 of the Poisons, Opium and Dangerous Drugs Ordinance. The 30 bags Mathe Seeds are confiscated under Sec. 123 of the Customs Ordinance.

20 I have also imposed a penalty of Rs. 45,000/- on you under Sec. 127 of the Customs Ordinance. However acting under Sec. 155, I am prepared to mitigate the penalty of Rs. 45,000/- to Rs. 15,000/- which amount please remit to this office within one week from this date.

I am, Sir,
Your obedient servant,
Sgd: K. Thirunavukarasu
Assistant Collector of Customs, N.P.

Sgd
Sub-Collector.

P 9
Security Bond
for Rs. 5,000/-
entered into by
the Plaintiffs-
1. 8. 61.

Security Bond for Rs. 5,000/- entered into by the Plaintiffs

KNOW ALL MEN BY THESE PRESENTS THAT Velauthampillai Manthirampillai of Sana Mana Rawanna & Co. Jaffna, as Obligor (hereinafter referred to as the Obligor) is held and firmly bound unto HER MAJESTY ELIZABETH THE SECOND, HER HEIRS AND SUCCESSORS, according to law for and on behalf of the Government of Ceylon, in the sum of Rupees five thousand only (Rs. 5,000/-) lawful money of Ceylon to be paid to the Crown in respect of the Government of Ceylon for which payment to be well and truly made, the said Obligor doth hereby binds himself, his heirs, Executors, Administrators assigns and legal representatives jointly and severally and every of them firmly by these presents: 10

AND for further and better securing to the Crown in respect of the Government of Ceylon the payment of all moneys due and payable under these presents and for the due performance and fulfilment of the conditions hereinafter contained the said Obligor doth hereby specially mortgage and hypothecate, assign and set over, to and with the Crown in respect of the Government of Ceylon all that sum of Rupees Five Thousand only (Rs. 5,000/-) deposited by the said Obligor with the Collector of Customs, Northern Province, for and on behalf of the Crown on the first day of August One thousand nine hundred and sixty one. 20

WHEREAS thirty bags of Mathe seeds were seized as forfeit by the Collector of Customs, Northern Province acting as an Officer of the Customs on the fifth day of June, one thousand nine hundred and sixty one under the Provisions of Section 45 of the Customs Ordinance (Chapter 185) and has been retained by the Collector of Customs, Northern Province.

AND whereas the said Obligor claiming to be the owner of the said thirty bags of Mathe seeds has within one month of the date of seizure of the same namely on the third day of July one thousand nine hundred and sixty one given notice in writing to the said Collector of Customs, Northern Province under the Provisions of Section 146 of the Customs Ordinance (Chapter 185) that the said Obligor intends to enter a claim to the said thirty bags of Mathe seeds seized as aforesaid. 30

AND whereas the said Obligor acting under the Provisions of the said Section 146 of the said Ordinance (Chapter 185) has agreed with the said Collector of Customs, Northern Province, to execute this bond in the sum of Rupees Five Thousand only (Rs. 5,000/-) in favour of the Crown and to mortgage and hypothecate the said sum of Rupees five thousand (Rs. 5,000/-) which has been deposited with the said Collector of Customs, Northern Province, for and on behalf of the Crown as Security to prosecute such claim to the said thirty bags of Mathe seeds before the Court having jurisdiction to entertain the same and to restore the said thirty bags Mathe seeds or pay its value and otherwise to satisfy the judgment of the Court and to pay costs.

P 9
Security Bond
for Rs. 5,000/-
entered into by
the Plaintiffs-
I. 8. 61.

—Continued

AND whereas the said Collector of Customs, Northern Province considers that the security tendered as aforesaid that is to say Rupees three thousand (Rs. 3,000/-) as representing the value of the said thirty bags of Mathe seeds and rupees two thousand (Rs. 2,000/-) as representing the approximate legal costs is sufficient.

AND whereas in consideration of the premises, the said thirty bags of Mathe seeds have been delivered up to the said Obligor.

AND whereas it is further provided in Section 146 of the said Ordinance (Chapter 185) that if proceedings for the recovery of the said thirty bags of Mathe seeds so claimed be not instituted in the proper Court within thirty days from the date of notice and security as aforesaid, the said thirty bags of mathe seeds so seized shall be deemed to be forfeited and shall be dealt with accordingly by the Collector or other proper officer of customs.

NOW the condition of the abovewritten bond or obligation is such that if the said Obligor shall institute proceedings for the recovery of the said thirty bags of mathe seeds so claimed in the proper Court within thirty days from the date of notice and security as aforesaid and shall in due course of Law prosecute and establish his claim to the satisfaction of the Court, and in the event of the said Obligor becoming nonsuited, or discontinuing the action, or if judgment be given against him, if the said Obligor shall restore the said thirty bags of Mathe seeds or its value to the said Collector of Customs, Northern Province and shall otherwise satisfy the judgment of Court and pay the costs of the said action, then this bond shall be null and void but otherwise the same shall be and remain in full force and virtue.

P 9
Security Bond
for Rs. 5,000/-
entered into by
the Plaintiffs-
1. 8. 61.
—Continued

PROVIDED however and it is hereby expressly covenanted and agreed

- (1) in the event of the said Obligor failing to institute proceedings for the recovery of the said thirty bags of Mathe seeds as hereinbefore provided, or
- (2) having instituted such proceedings in the event of judgment being given against the said Obligor.

that if in either of the aforesaid events the said Obligor fails to restore the said thirty bags of Mathe seeds or pay its value to the said Collector of Customs, Northern Province and otherwise satisfy the judgment of Court and pay costs of the said action then the said Collector of Customs, Northern Province acting herein for and on behalf of the Crown shall be entitled to appropriate the said sum of Rupees five thousand only (Rs. 5,000/-) deposited with him as aforesaid without being bound or obliged to sue upon this bond. 10

IN WITNESS whereof the said Obligor Velauthampillai Manthirampillai of Sana Mana Rawanna & Co. Jaffna has signed these presents at the place and on the date specified below.

Sgd
Signature of Obligo 20

Signed and delivered by the above named Velauthampillai Manthirampillai of Sana Mana Rawanna & Co., Jaffna on this first day of August One thousand Nine Hundred and Sixty one in the presence of

1. Name: K. Thirunavukkarasu
Address: H. M. Customs, Jaffna.
Occupation: Asst. Collector of Customs
Signature: Sgd. K. Thirunavukkarasu
2. Name: K. Thuraisingham
Address: H. M. Customs, Jaffna
Occupation: Sub-Collector
Signature: Sgd. K. Thuraisingham

30

True Copy

Sgd.....
for Collector of Customs, N. P.

H. M. Customs.
Jaffna. 28.3.62.

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