

1960

*Present: Weerasooriya, J.*

WILBERT, Appellant, and VANDEN DRIESEN (Inspector of Police, Crimes), Respondent

*S. C. 575—J. M. C. Colombo, 16,097*

*Evidence—Confession made to an officer of the Customs—Admissibility—Customs Ordinance, s. 158 (1)—Evidence Ordinance, ss. 17 (2), 25 (1).*

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.

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

*S. Sharvananda*, for the Accused-Appellant.

*R. Abeyesuriya*, Crown Counsel, for the Attorney-General.

*Cur. adv. vult.*

August 30, 1960. WEERASOORIYA, J.—

The accused-appellant was charged with the commission of an offence punishable under Section 158 (1) of the Customs Ordinance in that he did have in his possession on the 29th March, 1959, a 12-volt motor car battery bearing No. E.N.F.O. 57/206E valued at Rs. 175/-, being property reasonably suspected to have been stolen from a ship, boat, quay, wharf or warehouse in the Port of Colombo. After trial he was convicted of this offence and sentenced to three months' rigorous imprisonment.

The evidence shows that the accused was driving a motor car which came out of the Delft Quay when it was halted by the Customs authorities at one of the exit gates and searched. Inside the bonnet was found the battery which forms the subject matter of the charge. It has been conclusively established that the battery came from one of six new lorries which had been unloaded from a ship on to the Delft Quay on the day of the alleged offence.

The accused was taken before an assistant preventive officer of the Customs to whom he made a statement which the prosecution produced at the trial through the officer who recorded it. The evidence of the officer that the accused made such a statement to him has been accepted by the Magistrate. In this statement the accused claimed to be the owner of the battery, that he had got it "rebuilt" and intended to re-charge and use it as an extra battery. At the trial, however, he gave

evidence denying that he made such a statement. His defence was that he was a supplier of meals to ships calling at the Port of Colombo, that on the 29th March, 1959, he went to the Delft Quay in his car in order to ascertain whether a particular ship which he was expecting had arrived, and that when leaving the Quay his car was halted at the gate and searched and the battery, which he saw for the first time, was found inside the bonnet. He disclaimed all knowledge as to how the battery came to be there.

It seems to me that this defence was rightly rejected by the Magistrate, particularly in view of the accused's statement to the assistant preventive officer. But Mr. Sharvananda for the accused took objection to that statement on the ground that it amounted to a confession and was made to a "police officer" within the meaning of that term in Section 25 (1) of the Evidence Ordinance.

There is nothing in the proceedings to show what the duties of an assistant preventive officer are, but on an examination of the Customs Ordinance it would appear that he has certain limited powers of stopping vessels or vehicles and searching them for smuggled goods and of arresting or searching persons suspected of being concerned in the commission of offences against the Customs Ordinance. I do not think that merely because he is vested with these powers he can be regarded as a "police officer" for the purposes of Section 25 (1) of the Evidence Ordinance. No express authority was cited by Mr. Sharvananda for the submission that an assistant preventive officer of the Customs should be so regarded. As observed by Fisher, C.J., in *Rose v Fernando*,<sup>1</sup> the "established practice of the Courts based on the opinion of many learned Judges has been to construe the section (Section 25 as it then was) as applying to statements made to those who are authorised to exercise powers which constitute them police officers in all but in name, such persons for instance, as Police Headmen, who are directly authorised and required to concern themselves with the same range of crimes as that with which the police force themselves are concerned." In that case, which is a decision of a Divisional Bench of this Court, an Excise Inspector was held not to be a police officer within the meaning of Section 25 of the Evidence Ordinance even though in respect of offences under the Excise Ordinance he is vested with certain powers corresponding to those of a police officer.

It was after this decision that the Legislature took action to amend Section 25 of the Evidence Ordinance by the addition of the present sub-section (2) which provides that no confession made to a forest officer with respect to an act made punishable under the Forest Ordinance, or to an excise officer with respect to an act made punishable under the Excise Ordinance shall be proved as against any person making such confession. In consequence of this amendment the position with regard to a confession to an excise officer has changed from that stated in

<sup>1</sup> (1927) 29 N. L. R. 46.

*Rose v. Fernando (supra)*, but the *ratio decidendi* of that case would apply to the question whether an officer of the Customs is a “police officer” for the purposes of Section 25 (1) of the Evidence Ordinance. That question I would, therefore, answer in the negative. In view of this answer it is unnecessary to decide the further point whether the statement made by the accused to the assistant preventive officer amounts to a confession as defined in Section 17 (2) of the Evidence Ordinance. Even if the statement amounts to a confession the reception of it in evidence is not contrary to the provisions of Section 25 (1) of the Evidence Ordinance.

The conviction of the accused and the sentence passed on him are affirmed and the appeal is dismissed.

*Appeal dismissed.*

---