

THE ATTORNEY-GENERAL *v.* GYANI DAS

[Appellate Jurisdiction (Hammett, A.C.J.) March 9th, 1956]

S. 38 Penal Code—Customs Offence—Offence where no mens rea needed—whether no intent to defraud extenuating circumstances.

The respondent pleaded guilty before the Acting Senior Magistrate, Suva, to the offence of wrongly entering goods contrary to section 62 of the Customs Ordinance.

The respondent imported printing paper from Australia whose value for duty was greater if cut to size by the supplier.

When the goods arrived documents were submitted by the respondent or his agent to the Customs Authorities. No mention was made in these documents that the paper had been supplied cut.

The crate in question was opened and the paper was found cut to a smaller size than shown on the invoice.

The Acting Senior Magistrate found there was no intent to defraud and therefore he discharged the respondent under the provisions of section 38 of the Penal Code.

The respondent appealed.

HELD.—Where fraudulent intent is not a necessary element of an offence, its absence cannot properly be regarded as being an extenuating circumstance.

[EDITOR'S NOTE.—

“ 38 (1)—Where in any trial before a Magistrate's Court, the Court thinks that the charge against the accused person is proved but is of the opinion that having regard to the character, antecedents, age, health or mental condition of the accused, or to the trivial nature of the offence or the extenuating circumstances in which the offence was committed . . . the Court may . . . make an order dismissing the charge.”]

Justin Lewis, Acting Solicitor-General, for the appellant.

A. I. N. Deoki, for the respondent.

HAMMETT, A.C.J.—The point for determination in this appeal is whether there are any extenuating circumstances in this case which would justify the case being dismissed under Penal Code section 38 even though the mistake was made innocently.

This type of Customs offence is difficult to detect as it is quite impossible for Customs Officers to open and inspect every package which is imported. Furthermore the Legislature has expressly created this offence and has provided that the absence of any fraudulent intent is no defence. The Ordinance deliberately places the sole responsibility of ensuring the correctness, under all circumstances, of Customs clearance documents on the importer.

In this case it is quite clear that the absence of any fraudulent intent in the opinion of the Magistrate, was largely the reason why he held that the circumstances were extenuating. In my opinion, he was incorrect in so holding, since where fraudulent intent is not a necessary element of an offence, its absence cannot properly be regarded as being an extenuating circumstance.

For this reason I am of the opinion that the learned trial Magistrate wrongly exercised his discretion to dismiss the charge under section 38 of the Penal Code and I set this order aside. The accused is convicted of this offence.

Accused convicted.