

1946

Present : Howard C.J.

AMIRTHARETNAM, Appellant, and COLLECTOR OF CUSTOMS,
Respondent.

1,207—M. C. Jaffna, A 156/45.

Confiscation of property—Gold suspected of being smuggled from India—Found in deceased person's stomach—Power of Court to order confiscation—Criminal Procedure Code, s. 413—Customs Ordinance (Cap. 185), s. 154.

Thirty-two balls of gold which were suspected of having been smuggled from India were found in the intestines of a deceased person as the result of a post mortem examination. On a report from the Police the Magistrate, after inquiry, ordered the gold to be delivered to the Customs authorities.

Held, that the Magistrate had no jurisdiction to make the order under section 413 (1) of the Criminal Procedure Code as no offence had been committed which formed the subject-matter of inquiry or trial in Court within the meaning of the section.

Held, further, that section 154 of the Customs Ordinance had no application as there had been no seizure or condemnation of the gold for a breach of the Customs Ordinance.

A PPEAL from an order of the Magistrate of Jaffna.

H. W. Thambiah, for the appellant in the appeal and the petitioner in the application.

J. G. T. Weeraratne, C.C., for the Attorney-General.

Cur. adv. vult.

February 12, 1946. HOWARD C.J.—

The petitioner appeals from an order of the Jaffna Magistrate directing that thirty-two balls of gold found as the result of a post mortem examination in the intestines of the petitioner's deceased husband should be handed over to the Collector of Customs for disposal. The facts leading up to the holding of this post-mortem examination are as follows:—On May 4, 1945, Ponnampalam Mylvaganam, the husband of the petitioner, arrived in Ceylon from India. He was suspected of smuggling gold by the Customs authorities and was detained until the morning of the 5th when he was released. On May 8, 1945, he died. At 11 A.M. on May 9, 1945, the Coroner, S. F. X. Annasampillai, held an inquest. After recording the evidence of the petitioner and the brother of the deceased, the Coroner received in evidence three medical certificates. In view of the evidence the Coroner decided that no post mortem examination was necessary. As, however, the Police pressed for one the matter was referred by the Coroner to the Magistrate who directed that a post mortem should be held. The post mortem was held on May 10, 1945, by Dr. S. Ponniah, the Judicial Medical Officer. He found that the cause of death was gangrene of the small intestines caused by the swallowing of 32 balls of gold the weight of which had dragged over the small intestines forming a kink in it which blocked the arteries. Dr. Ponniah apparently held the post mortem at 9 A.M. and brought the

gold to the Magistrate at 11 A.M. whilst the latter was sitting on the Bench. Thereafter the Magistrate recorded the evidence of the Coroner, Dr. Ponniah and a man called Karthigesu. On May 14, 1945, the Magistrate received a letter from the petitioner claiming the gold as the legitimate widow of Ponnampalam Mylvaganam and the natural guardian of his children. The Magistrate fixed the matter for enquiry on June 2, 1945. In view of an allegation in the Police Report that this gold was probably smuggled, he directed that notice of the inquiry should be served on the Police and the Customs authorities. On June 2, 1945, the Sub-Collector of Customs filed a motion that the gold be delivered to the Customs for disposal under section 154 of the Customs Ordinance. The Police supported this motion. On June 24, 1945, the inquiry was held and on August 14, 1945, the Magistrate directed that the gold be sent for disposal to the Customs authorities.

On behalf of the petitioner Mr. Tambiah has contended that the Magistrate had no power to make the order directing the handing over of the gold to the Customs authorities for disposal. In this connection he invited my attention to section 413 (1) of the Criminal Procedure Code which is worded as follows :—

“ When an inquiry or trial in any criminal Court is concluded the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence.”

Mr. Tambiah maintains that the Magistrate had no power to make the order of confiscation inasmuch as “ no trial or inquiry ” had been held into “ any offence ” with regard to the gold. No trial, moreover, had been instituted before the Magistrate as no compliance had been made with section 148 of the code. The Magistrate appears to have thought that the offence of smuggling gold had been committed. The offender in such a case would have been Ponnampalam Mylvaganam. But such an offence was not the subject matter of the inquiry that the Magistrate held. The perpetrator of such an offence was dead and hence he could not be tried. Nor were proceedings instituted under section 148 of the Code. The provisions of section 413 were considered by Bertram C.J. in *Silva v. Hamid*¹ and in my opinion his decision in that case is very relevant to the facts of the present case. At page 416 the learned Chief Justice stated that the words “ any offence ” in section 413 must mean any offence which was either directly or indirectly the subject of the inquiry or trial. The trial of the offence of smuggling gold was not properly instituted before the Magistrate. The gold was brought to him by the Judicial Medical Officer and he, thereupon, instituted an inquiry to determine its ownership. The case of *Martin Silva v. Kanapathypillai*² is another authority for the proposition that no order under section 413 can be made unless a Magistrate has before him a proper complaint as required by section 148 of the Criminal Procedure Code that an offence has been committed. In that case Abrahams C.J. also held that a criminal Court is not to be employed as a tribunal to investigate rival

¹ 20 N. L. R. 414.

² 14 C. L. W. 41.

claims to property. This seems to be exactly what happened in this case, the rival claimants being the petitioner and the Collector of Customs.

Crown Counsel has argued that the Magistrate was holding an inquiry under section 362 (4) of the Code and therefore the subsequent order made under section 413 was in order. I do not think there is any substance in this argument inasmuch as there is nothing to show that the Magistrate was in fact holding an inquiry as contemplated by section 362 (4).

The Collector of Customs apparently claimed the gold under section 154 of the Customs Ordinance. On a perusal of this section it is obvious that as there has been no seizure and condemnation of the gold for a breach of the Ordinance, the section can have no application.

For the reasons I have given the order of the Magistrate is set aside and I direct that the gold be handed over to the petitioner.

Order set aside.
