

(1956) 06 CAL CK 0025
In the Calcutta High Court
Case No : Civil Revn. No. 1207 of 1955

Annada Prasanna Majumdar

APPELLANT

Vs

T.C. Seth, Collector of Central Excise and Land Customs

RESPONDENT

Date of Decision : 11-06-1956

Acts Referred:

Lands Customs Act, 1924 — Section 7, 7(1), 9
Sea Customs Act, 1878 — Section 168

Citation : AIR 1956 Cal 553 : (1956) 1 CALLT 233 : 60 CWN 898

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Nihar Ranjan Majumdar, for the Appellant; Binayak Nath Banerjee and Amiya Kumar Mukherjee, for the Respondent

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in this case are shortly as follows: The petitioner is the owner of a Taxi Cab No. WET-1099 and holds a permit No. P. Co. P. 1871 in respect of the same. He employed a driver of the name of Md. Ibrahim, The Central Preventive Circle, Land Customs, Calcutta, received information that contraband betel nuts would be transported by Taxi Cab No. 1099 from Bongaon to Calcutta via the Jessore Road. Officers of the Central "Preventive Circle, Land Customs, kept watch at Gate No. 2 of the Habra Railway Level Crossing. On 30-12-1954 at about 2 A.M. in the night, they found a taxi coming from the direction of Bongaon, They closed the Railway gate when the taxi was near the gate, and although the driver made an attempt, to turn round, the taxi was apprehended. It was found to bear the registered number WBT-1099 and upon check, 7 bags of betel-nut were found inside the taxi. Apart from the driver named Ibrahim, there were two persons Sarkar and Haldar, who claimed the goods but could not produce any document to show their right to the goods. A writ-ten-statement was taken and these two persons said that they had purchased the betel nuts at Bongaon Railbazar but that they did not know whether the goods were Brought from Pakistan or not. The driver Md. Ibrahim

said that he was waiting in the Sealdah Taxi Stand for passengers when these two persons approached him and engaged his taxi for carrying betelnuts from Bongaon to Calcutta for the remuneration of Rs. 45/-. He had no grounds for suspecting, that the betelnuts were smuggled goods. The contraband goods as well as the taxi were seized and taken into custody. On or about 11-1-1955 a show-cause notice was issued upon the petitioner by the Superintendent of Central Excise, Land Customs Central Preventive Circle, Calcutta, stating that there were reasons to believe that 7 bags of betelnuts of Pakistan origin weighing 12 maunds were being unlawfully imported to India from Pakistan without a valid land custom permit or any other permit. The goods were liable to confiscation under Sections 5 and 7 of the Land Customs Act. It was further stated that the petitioner had aided and abetted in this smuggling of the goods. He was asked to show cause why penal action should not be taken u/s 7, Land Customs Act, and as to why the taxi cab should not be confiscated for being engaged in the act of removal of the contraband betelnuts. The petitioner submitted a written explanation. He stated that the petitioner did not have anything to do with the alleged smuggling. That he employed the driver Md. Ibrahim, and the taxi cab was taken out as usual to ply on hire. He urged that it was impossible for him to know where and how passengers were being carried on hire, and that he had given clear directions to the driver not to carry any contraband goods. On 4-3-1955 there was a personal hearing. At that hearing the driver said that he did not know what was being carried in the bags. This was of course inconsistent with what he had stated in the first instance, namely, that two persons had engaged his taxi at Sealdah for the purpose of transporting a quantity of betelnuts from Bongaon to Calcutta. The Collector of Central Excise and Land Customs considered the matter and passed an order on 20-3-1955, A copy of the Order is annexed to the petition. He has referred to the impossibility of believing that 12 maunds of betelnuts could be carried inside the taxi cab at dead of night from Bongaon to Calcutta without the driver suspecting that there was anything illegal in it. The Collector did not come to any definite finding that the petitioner had actual knowledge of the smuggling or that he expressly permitted it or took any part in it. On the facts, however, he passed an order confiscating the taxi cab u/s 168, Sea Customs Act, 1878 (hereinafter referred to as "the Act"). In terms of Section 183 of the Act, he gave the petitioner an option to pay a fine of Rs. 2000/- in lieu of confiscation. The option was to be exercised within three months of the date of the order. The petitioner also had to pay, the incidental charges as mentioned in the order.

2. This Rule is directed towards this order of confiscation, and the fine imposed. Section 1C8 of the Act states that every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under the Act, shall in like manner be liable to confiscation. The idea is to confiscate the vehicle, irrespective of its ownership or the participation of the owner in the actual transport of the contraband goods. It is what is called a provision of law to condemn the vehicle". In other words,

because the vehicle carried the contraband goods, it had become tainted, and is therefore liable to be impounded. Section 183 of the Act provides that whenever confiscation is authorised by the Act, the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. It is under this provision of law that the Collector has imposed a fine of Rs. 2000/- in lieu of confiscation. According to the Authorities the vehicle is valued at Rs. 13000/-. This value has nowhere been challenged. Mr. Chatterjee on behalf of the petitioner has taken three points. The first point is that the notice to show cause was on the ground that the petitioner was guilty of aiding and abetting the smuggling. He argues that when the Collector came to the conclusion that the petitioner had no knowledge of and did not participate in this smuggling, he was bound to hold in favour of the petitioner and not to impose any fine at all. Secondly he said that the petitioner was entitled to appear through counsel and although the notice gave him that right, he was subsequently informed that there would be a "personal hearing by which the petitioner understood that he would be heard personally and not through lawyers. The third point is that the offence of smuggling, if any, was a criminal offence and there being an absence of mens rea, there should not be any punishment. In all these points there is a common defect. As I have said above, confiscation of this description u/s 168 of the Act is a proceeding against the vehicle, irrespective of the ownership. Therefore, there is no question of the petitioner aiding or abetting the smuggling, or of having any mens rea. This is a point which has been brought out in the case *De Keyser v. British Railway Traffic and Electric Company, Limited* (1936) 1 KB 224 (A). The facts of that case are shortly as follows: One Joseph Harris was in possession of a certain motor tank wagon. One of his employees Bertie Dumbleton, took the tank wagon, filled it with 750 gallons of petrol, returned to the premises of Joseph Harris, removed 75 gallons of petrol from the vehicle & replaced it by Kerosene. He was found guilty of an offence u/s 4, Sub-section (1) of the Finance Act (No. 2) of 1931, under which, a mixture of kerosene with petrol was liable to forfeiture, and therefore the tank wagon which was used for the conveyance of goods was also liable to forfeiture under the Customs Act. Joseph Harris knew nothing of the mixing of Petrol with the kerosene or the carriage by the vehicle of the offending goods. Lord Hewart, C. J., said as follows :

"What is it that is open to the claimant on such proceedings? In my opinion, nothing more is open to him than to contend, and, if need be, to offer evidence to prove, that, on a true view of the facts, the conveyance in question does not come within the class of things which, by Section 202, are forfeited. He may contend with success, for instance, that through error or otherwise, a conveyance not liable to be forfeited has been seized. He may say in whatever form is" suitable to the relevant facts that the conveyance does not come within the class of things forfeited. But once it is established that the conveyance does come within that class this undoubtedly rigorous statute gives the claimant no opportunity of asking the Court to take into consideration mitigating

circumstances with the effect of removing the conveyance from that class. There is no opportunity for mercy with regard to a conveyance which has been forfeited, although there may be grounds for contending that the conveyance does not come within the class of forfeited property. In the present case, no such contention was advanced. All that was argued on behalf of the respondents was that they did not know of the wrongful use for which the lorry was being employed. That circumstance was wholly irrelevant to the proceedings before the justices. It did not affect the purpose for which the lorry had been used. If that sort of argument were to be open to the owner of the conveyance in such a case as the present, the result might be, in the case of two partners, where one was aware of the wrongful use to which the vehicle was being put and the other was not, that the vehicle might be excused from condemnation because of the innocent mind of one of the partners, that result enduring for the benefit of the guilty partner. In the present case the argument adduced before the justices, which was really an argument in mercy, that the owner of the vehicle was not aware of the illegal use to which it was being put, was wholly irrelevant to the only question which the justice had to consider.

That question was : On the facts is it true to say that this conveyance falls within the category of things which are forfeited by reason of the operation of Section 202?"

Singleton J., in the case said as follows:

"Clearly the question of hardship might arise if the user of the vehicle was without the knowledge of the owner, but it is to be observed that in "Lord - Advocate v. Crookshanks", 15 R 995 (B), it was decided by the Court of Session that knowledge on the part of the owner of the vehicle is irrelevant in such a proceeding as this and that the mere use of the vehicle for the unlawful purpose indicated by Section 202 of the Act of 1873 infers a statutory forfeiture of the vehicle irrespective of the knowledge or consent of the owner thereof".

3. In the present case, it may well be that the petitioner had no knowledge of the smuggling, but that is no reason why the offending vehicle, or in other words the vehicle transporting the offending goods, should not be the subject-matter of confiscation u/s 168. Mr. Chatterjee has relied on a Madras case " Collector of Customs, Madras Vs. Lala Gopikissen Gokuldass, (C). There, it was held that the Courts had jurisdiction to entertain suits and afford relief against the acts and orders of the Customs Authorities, made in contravention of the provisions of the Sea Customs Act. What had happened there was that certain consignments of goods which were imported were found to be in contravention of the provisions of the Sea Customs and allied acts and fines were levied in respect of them. The goods were all of the same kind and could not be differentiated. Yet, varying fines were inflicted. It was held that such arbitrary imposition of fine u/s 183 of the Sea Customs Act was incapable of any rational explanation and was no exercise of discretion at all. There is, however, no analogy between the facts of the Madras case and the present case. Mr. Chatterjee has argued that the Court

cannot allow an unreasonable exercise of discretion. Whether the Court can do so or not, it is clear to me that on the facts of this case, the exercise is perfectly reasonable. The value of the vehicle is placed at about Rs. 13000/- and the fine imposed is only Rs. 2000/-. It appears to be perfectly reasonable. It is not necessary to come to any conclusion as to whether the petitioner took part in the smuggling, but the facts are certainly very curious and require a great deal of consideration. Taking all the facts and circumstances of this case, I do not think that the fine imposed is at all unreasonable or in excess.

4. With regard to the employment of counsel, there is nothing to show that the petitioner was prevented from being represented by a lawyer. He was given notice that he could employ a lawyer, and it is not stated that he Attempted, to do so but was prevented from being represented in any manner that he wished. The words "personal hearing" do not mean that he cannot be represented by lawyers. In fact Mr. Banerjee appearing on behalf of the respondents tells me that lawyers usually do appear before the Customs Authorities and there was no intention of making any exception in the present case. The fact is that the petitioner never attempted to be represented by lawyers but conducted his own case himself. It is therefore too late now to raise this point Finally, Mr. Chatterjee on behalf of the petitioner tried to argue that the rights conferred u/s 182 or 183 of the Act to impose penalties without limit, or fines as the officer thinks fit, without any indication as to the method or mode of exercising such discretion, was ultra vires Article 19 of the Constitution. This is a point that has not been taken in the petition. I cannot, therefore, allow this point to be taken in this application.

5. For the reasons aforesaid, this application must fail and the Rule must be discharged. Interim order, if any, is vacated. There will be no order as to costs.