

(1970) 09 MAD CK 0022
In the Madras High Court

Assistant Director of Enforcement

APPELLANT

Vs

O.S. Ibrahim

RESPONDENT

Date of Decision : 28-09-1970

Acts Referred:

Citation : (1971) 1 MLJ 122

Hon'ble Judges : B.S. Somasundaram, J

Bench : Division Bench

Judgement

B.S. Somasundaram, J.—The appellant herein is an exporter and importer at Madras doing business under the name and style of "Crescent Traders." During January, 1969, he exported 35 kgs. of birds' nests to M/s. International Trading Company at Singapore. Sub-section (1) of Section 12 of the Foreign Exchange Regulation Act, 1947 (hereinafter called the Act) states that for these exports, the party should file a declaration in Form G.R. 1 to the prescribed authority stating that the amount representing the full export value of the goods have either been paid or will be paid within the prescribed period in the prescribed manner. Such a declaration was filed by the appellant as per Exhibit P-5, and in it he stated that the value of the goods was Rs. 700 and that he was exporting the same as a seller. Exhibit P-8, the invoice for this consignment in favour of the International Trading Company at Singapore, also gave the same value. The buyer company opened a letter of credit as per Exhibit P-9 for this amount and the export was made as per the shipping bill Exhibit P-10. Even in this bill the aforesaid value was given. There was a search of the house of this appellant by P.W. 1, the Chief Enforcement Officer on the 27th of January, 1969. During this search, Exhibit P-3, file was seized. Exhibit P-3 (a), the statement of accounts signed by the International Trading Company, disclosed that 30 kgs. of birds' nests were sold for 900 dollars. Deducting the amount already sent to Madras as per the letter of credit (viz., Rs. 700=291 dollars) and the other items of expenditure relating to the clearance, brokerage and sales commission, a balance of 531.61 dollars was shown as outstanding to the appellant. This was also affirmed by Exhibit P-3 (c), letter dated 22nd January, 1969. The Assistant

Director of Enforcement filed a complaint before the Chief Presidency Magistrate, Madras, u/s 22 of the Act, stating that this appellant had furnished false particulars in the declaration made by him under Sub-section (1) of Section 12 of the Act and thereby he has rendered himself liable u/s 22 of the Act. The learned Magistrate held that the export was not on the basis of an out and out sale and that the declaration to that effect in the G.O. 1 Form is false. But, he acquitted him on the ground that he had not wilfully furnished any such false information in the declaration. This is on the ground that he had obtained quotations from foreign buyers even before the export. This acquittal is now canvassed by the Director of Enforcements.

2. There is no dispute on the question that the appellant exported 35 kgs. of birds' nests after filing the declarations, Exhibits P-5 to P-7, in the prescribed G.R. 1 Form to the concerned authorities. This declaration has to be made u/s 12(1) of the Act, which states that such declarations, supported by such evidence as may be prescribed or so specified, shall be furnished by the exporter to the prescribed authority, stating that the amount representing the full export value of the goods have been or will within the prescribed period be paid in the prescribed manner. Sub-section (2) of this section relates to the repatriation and it prescribes certain restrictions on the sale by the exporter and confers certain powers on the Reserve Bank for scrutiny and verification of the value, etc. u/s 22 of the Act, when making these declarations to any authority or person for any purpose under the Act, the party should not give any information or make any statement, which he knows or has reasonable cause to believe to be false or not true in any material particulars. Contravention of Sub-section (2) of Section 12 or of any rule or order, is rendered liable to penalty that might be adjudged by the Director of Enforcement u/s 23(1)(a) of the Act. Clause (b) of Section 23(1) also provides for a prosecution. The provisions of the Sea Customs Act, 1879, are attracted for contraventions under Sub-section (1) of Section 12, by virtue of Section 23-A of the Act. Section 167 of the Sea Customs Act provides for confiscation of the articles and the levy of penalty by the Customs authorities for such contraventions. Section 23-D of the Act provides for an adjudication by the Director in matters which come under the purview of Clause (a) of Sub-section (1) of Section 23. Reasonable opportunity should be given to the concerned party in these enquiries and if on such enquiry, the Director is satisfied that the person has committed the contravention referred to above, he may impose such penalty as he thinks fit in accordance with the provisions of the said Section 23. Under the proviso, if at any stage of the enquiry, he is of the opinion that the penalty which he is empowered to impose would not be adequate, he may make a complaint in writing to the Court about the contravention. Section 23(1-A) of the Act provides for the punishments for the contravention of any of the provisions of the Act, or of any rule, for which no penalty is expressly provided in the Act. Rule 3 of the Rules framed under the Act, states that a declaration u/s 12 of the of the Act shall be in one of the forms set out in the First Schedule as the Reserve Bank may, by notification in the Gazette of India, specify as appropriate to the

requirements of a case. Rule 5 enables the authorities to insist upon proof about the truth of the declaration, for satisfying themselves that the invoice value stated in the declaration is the full export value of the goods.

3. Form G.R. 1, which is prescribed for the declaration, is as below:

"Form G.R. 1

ORIGINAL

Serial No.

(To be submitted to Customs)

EXCHANGE CONTROL.

(Declaration to be furnished by exporters before shipping commodities from India to territories outside India other than Pakistan, Afghanistan, Nepal and Bhutan).

Name of Steamer/Aircraft No. :

Shipping Bill No. & Date:

Rupee Value:

Port of shipment:

1. Exporters' Name:

2. Country of destination of goods:

3. Short description and quantity of goods:

4. Value of the goods (stating currency):

F.O.B. Value:

Freight:

Insurance:

Total Invoice Value:

(a) Discount/Commission, if any payable to the Overseas buyer or other party/agent (rate, amount).

(b) Details of over-price, if any, payable:

4-A. Date of actual shipment:

Total:

5. Method by which payment is to be received in India:

(a) In foreign currency (State currency)

(b) In rupees:

The exporter should give the value of the goods and declare as to whether he is sending the goods as a "seller" or as a "consignor." He should further declare that the invoice value declared is the full export value of the goods and that it is the same as that contracted with the buyer. He has to strike out the clauses which are not relevant for the case, in this form. Thus, G.R. 1 Form is part of the mandatory procedure, and it certainly requires the intending exporter to declare the full export value and not merely this, to give an assurance that this is the same as that contracted with the buyer. When particulars which are not true are given in this declaration, it would become a false one, attracting the penal provisions of Section 22 of the Act.

4. Exhibit P-5 is the Form filed by the appellant in this case. He has given the value of the goods as Rs. 700 in it. This is the value given in the invoice Exhibit P-9 and also in the shipping document Exhibit P-10. He has declared in it that he is a "seller" of the goods and that the particulars given by him in this Form are true. He has scored out the words "consignor" in the Form. He has also received the amount of Rs. 700 mentioned in Exhibit P-5, through the mercantile bank, where, a letter of credit was opened by the International Trading Company. Exhibit P-3 (a), the statement of account kept in the file Exhibit P-3, which was seized during the search of the appellant's house by P.W. 1 on 27th January, 1969, establishes beyond all doubt, that the statements made by him in Exhibit P-5 are false and untrue. This document, which is dated 22nd January, 1969, is from the International Trading Company, and it shows that the goods were received by them on 17th November, 1969. They have sold 30 kgs. for 900 dollars. Deducting 291.39 dollars already sent as per the letter of credit to Madras and also the expenses for the clearance, brokerage and sale commission, they have shown a balance of 531.61 dollars as due to the appellant. Exhibit P-3 (c) dated 22nd January, 1969, is the letter written by them. By this letter, they informed the appellant that they were able to fetch a price of only 30 dollars per k.g., because the goods received were not fully dried. They further informed him that dried goods, white in colour, would fetch a good price in the market. Thus, these documents establish beyond all doubt that the transaction in question was not an out and out sale, as contended by the appellant, but that it was an export only on consignment basis, title to the goods vesting with the exporter till the end. Obviously, the International Trading Company has dealt with the goods as commission agents for the appellant. They have charged commission for it. The declaration that these goods were exported by him as a "seller", is obviously false. Exports on consignment basis require careful scanning and scrutiny by the concerned authorities, because there is scope for malpractices and deception. When the declaration states that it is on consignment basis, as contradistinguished from a sale, the Reserve Bank, will be put on guard and will make a further probe and keep a watchful eye, over such transactions in order to ensure that the export is a genuine one, not violating the foreign exchange regulations. Obviously, this is the object of these clauses in the G.R. 1 form. 35 Kgs. were

exported and there is account only for the sale of 30 kgs. What happened to the balance of 5 kgs., remains unexplained. On these materials, the learned Chief Presidency Magistrate has correctly held that the export in this case was not by an outright sale, as contended by the appellant, but that, it was only on consignment basis and that the declaration in Exhibit P-5 to the effect that it was on a sale basis is obviously false.

5. On behalf of the respondent, it is argued, on the authority of the decision in Union of India (UOI) and Others Vs. Rai Bahadur Shreeram Durga Prasad (P) Ltd. and Others, , that Section 12 merely contemplates the filing of a declaration, that this declaration need not contain true particulars, that there will be a compliance with the statutory requirements the moment the declaration is filed in the statutory form to the prescribed authority, and that thereafter the authorities cannot resort to proceedings under Sub-section (1) of Section 12. In other words, it is contended that the declaration contemplated by Sub-section (1) of Section 12 relates only to the repatriation of the full export value and that the concerned authorities can resort to proceedings only if the party fails to bring this value into India within the prescribed period. There is no substance in this contention. G.R. 1 form is the form prescribed under Rule 3 of the Rules and it is part of the mandatory procedure which requires the intending exporter to declare the full export value in it. The exporter gives an assurance that this is the same as that contracted with the buyer. Where false averments are made, Section 22 comes into play. Under this section, when making a declaration, the exporter should not give any information or make any statement, which he knows or has reasonable cause to believe to be false or not true, in any material particulars. The Division Bench of this Court in Durga Prasad's case¹ came to the conclusion that as the declarations were made u/s 12(1) and as they were scrutinised by the authorities, it was not possible to contend that these goods were either exported or attempted to be exported in violation of the prohibitions or restrictions imposed by law, and were, therefore, liable to be confiscated u/s 167(8) of the Sea Customs Act. The alleged fraud on the part of the petitioner did not make any difference. They further observed that if the petitioner had misled the authorities by false representations or failed thereby to repatriate foreign exchange by virtue of his obligation u/s 12(2), these were different offences, for which separate and specific penalties could be imposed. In that case, the party had exported manganese ore in large quantities, after ostensibly complying with the formalities of law, but under-invoicing the various consignments. He had also failed to repatriate foreign exchange of the value of about three crores of rupees obtained by him as the price of the ore thus exported. Show cause notices were issued by the Deputy Collector of Customs at Vizagpatam, and the Department contended that the export, in view of the under-invoicing, should be construed as an export without a declaration, attracting Section 167(8) of the Sea Customs Act for purposes of confiscation etc. Their Lordships of the Supreme Court held that there are two facets in every export, one relating to the goods exported and the other relating to the foreign exchange

earned as a result of the export." Broadly speaking, the former aspect is dealt with by the Customs authorities and the latter either by the Reserve Bank or by the Director of Enforcement. The price of goods exported had to be mentioned in the invoice. But, the Reserve Bank has power to examine whether the price mentioned in the invoice is correct. Under Clause (5) of Section 12, the Reserve Bank may issue an order requiring the person holding the shipping documents, to retain possession thereof until such time as the exporter of the goods has made arrangements for the Reserve Bank to receive, on behalf of the exporter, payment in the prescribed manner of an amount which represents, in the opinion of the Bank, the full export value of the goods. Under Clause (6), the Bank may also require the production of the contracts with the foreign buyer or other evidence to show that the full amount payable by the said buyer in respect of the goods has been or will, within the prescribed period, be paid in the prescribed manner. Thus, the provisions go to indicate that so far as the value of the goods exported is concerned, the matter is left primarily in the hands of the Reserve Bank, and the Customs authorities are not burdened with the work. This aspect becomes relevant in ascertaining the true scope of Section 12(1). If this scheme of the Act is borne in mind, it is clear that so far as the Customs authorities are concerned, all that they have to see is that no goods are exported without furnishing the declaration prescribed u/s 12(1). Once that stage has passed, the rest of the matter is left in the hands of the Reserve Bank and the Director of Enforcement. Thus, in that case it was held:

What all Section 12(1) states is that before exporting goods, a declaration, should be filed by the exporter. The moment such a declaration is furnished, the matter stops there and such declarations cannot be considered as non est. The requirement of the section is satisfied if the stipulated declaration supported by the evidence, prescribed or specified, is furnished.

The contravention complained of in that case was really a contravention of Sub-section (2) of Section 12 and Rule 5. "The former is punishable u/s 23 and the latter u/s 23 read with Section 22." Thus, the validity of the export does not depend upon the truth or otherwise of the declaration. In other words, the falsity of the declaration does, not invalidate the export. But, in a case where false particulars are furnished in this declaration, Section 22 will come into operation and it will be open to the Director of Enforcement to launch a prosecution against him. What all has been laid down in the decision cited is that when once a declaration is given, even if it is false, the export is valid, but he is punishable under the provisions of the Act for having made the false statement.

6. In *Becker Grey & Co. Limited v. Union of India* (1970) 2 S.C.J. 571 : (1970) S.C.W.R. 303, it was held that for furnishing incorrect information, in contravention of the Rules or the forms prescribed under the Rules, in any such declaration, one may be penalised u/s 23 of the Act, even though it will not attract the provisions of the Sea Customs Act. Thus, there is no substance in the contention that there can be no prosecution of the appellant for furnishing false

particulars in the G.R. 1 form.

7. The learned Chief Presidency Magistrate has acquitted the appellant, stating that the prosecution has not established that he has made any false declaration, knowing or having reasonable cause to believe that it is false or not true in any material particulars. This is on the basis that he has invited prior quotations about the market value as per Exhibits D-3 and D-4 and made the export only thereafter. In other words, he observes that there is nothing in the case to show that the appellant had the mens rea when he described himself as a "seller" in Exhibit P-5. Exhibit D-3 quotation is dated 15th June, 1968 and Exhibit P-4 is of the date 2nd November, 1968. The export in this case was on 8th January, 1969. The value given in Exhibit P-5 is Rs. 700, which is equivalent to 291 dollars. But, 30 kgs. have been sold for 900 dollars. Deducting 50 dollars for the expenses, the net value comes to 850 dollars. This is the full export value of the goods. Thus, it is obvious that he has made a false declaration in the G.R. 1 form to the effect that he was a "seller" of the goods for Rs. 700. The prosecution is not for under-invoicing the goods, but is for having obtained clearance for the export, by making a false declaration in the G.R. 1 form to the effect that he is a seller. What happened to the remaining 5 kgs. remains unexplained. Exhibit D-7 draft has come into existence after the seizure of the file Exhibit P-3. But for the prompt detection, this excess value would not have seen the light of the day. Mens rea is a matter which will have to be inferred from all the surrounding circumstances. No question of the appellant having any reasonable cause would arise in this case, because even at the time when he made the declaration, he had done it with knowledge that what he was declaring was not true. This aspect of the matter stands proved by the events that happened subsequently and from the materials disclosed by the statement of account Exhibit P-3 (a).

8. The acquittal of the accused is, therefore, not correct. He is convicted u/s 22 read with Section 23(1-A) of the Foreign Exchange Regulation Act, and sentenced to pay a fine of Rs. 500, in default to suffer simple imprisonment for two months. Time for payment one month.

9. The appeal is allowed.