

(1961) 01 KL CK 0016
In the High Court Of Kerala
Case No : A.S. No. 26 of 1960

Bernardo Steenholf Ultrich

APPELLANT

Vs

Collector of Customs, Cochin

RESPONDENT

Date of Decision : 11-01-1961

Acts Referred:

Sea Customs Act, 1878 — Section 167

Citation : AIR 1962 Ker 147 : (1960) CriLJ 600

Hon'ble Judges : M.A. Ansari, C.J;T.C. Raghavan, J

Bench : Division Bench

Advocate : K.P. Abraham and P.P. John, for the Appellant; K.V. Surianarayana Iyer and C.M. Devan, for the Respondent

Final Decision : Dismissed

Judgement

Ansari, C.J.—The appellant, who is a Bolivian national, had embarked for Genoa from Colombo on an Italian passenger ship, and also booked, as part of his baggage, a car in the same ship. On December 5, 1958, the ship called at Fort Cochin, and a Customs Officer, having earlier information, went on board. The appellant, his wife and their cabin were searched; but nothing incriminating was found there. The Customs Officer was not satisfied: and, as the ship was about to leave, disembarked the appellant and his car. On December 6, 1958, the car was again searched; and then a secret receptacle was discovered where large quantity of Indian and American currency been concealed. Thereafter, the Customs Collector, on January 15, 1959 made the following Order:

"I confiscate the currency viz., Indian Rs. 3,22,000/- and U. S. A. Dollars 44,900/- u/s 167, Clauses 8, 34, 35 and 73 of the Sea Customs Act. I also confiscate the motor car (Volke-wagon) No. OFR. 770 u/s 168 of the Sea Customs Act. In lieu of confiscation, I fix a fine of Rs. 5,46,000/- (Rupees five lakhs, fourty six thousand only) for the currency notes and Rs. 10,000/- (Rupees ten thousand only) for the motor car u/s 183 of the Sea Customs Act I also impose a penalty of Rs. 6000/- (Rupees six thousand only) on Mr. Bernardo u/s

167, Clauses 8 and 73 of the Sea Customs Act as the person concerned in the offence. The option should be exercised within one month or such extended period as may be allowed by the undersigned on good cause being shown."

2 The appellant then filed a writ petition in this Court, challenging the legality of the aforesaid order; and our learned brother Raman Nayar, J. rejected the petition, holding that the petitioner had no cause of action for relief, because he had at all times disowned the currency notes and had, therefore, not suffered any loss. The learned Judge further held that the confiscation of the currency notes was justified, because taking or sending currency out of the country, having been prohibited by notification u/s 8(1) of the Foreign Exchange Regulation Act, the restriction would, u/s 19 of the Sea Customs Act, be deemed to have been imposed and, therefore could be confiscated under the latter Act. Raman Nayar, J. also relied on the Explanation to Section 8(1) of the Foreign Exchange Regulation Act, and held that booking things on a ship, that entered the harbour, amounted to bringing into India the things so booked, the appellant thus being guilty of having contravened, the provisions of the Sea Customs Act. The learned Judge further held that the confiscation order under fine was justified u/s 167, item 73 of the Sea Customs Act as the amount need not be limited to Rs. 1000/-. The appellant has come in appeal against the judgment, and his learned advocate has urged the following two arguments before us, that

(1) The Sea Customs Act, having distinguish-ed prohibition from restriction, Section 167, item 73 is attracted where the import or export be prohibited; and as bringing In currency Is only restricted, the appellant could not be fined tinder Section 167, item 8, there being several observations of the Supreme Court that the fine, under the aforesaid item in no circumstances should exceed Rs. 1000/-; and that

(2) The last part of the order of the Customs authorities is beyond jurisdiction, as has been observed by the Supreme Court in *Sewpujanrai Indrasan Raj Ltd. v. Collector of Customs*, AIR 1953 SC 845 at p. 854.

(3) Before dealing with the aforesaid arguments, it would be advantageous to have the relevant extracts from the third column of item 8 of Section 167 of the Sea Customs Act, which read as follows:

"Such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding Rs. 1000/-."

The argument pressed before us, if accepted, would mean addition of the words "whichever is less" in the aforesaid column, and it is obvious that any interpretation permitting such an addition to the language would not be justified. It is true that there are observations by the Supreme Court in support of the argument; but we respectfully agree with the reasonings in *M. Shaikh Dawood Vs. Collector of Central Excise, Madras*, , where they been held not to justify the amount of fine being so limited. In that case, the Collector of Central Excise

directed confiscation of 84 wrist watches, imposed a penalty amounting to Rs. 5000/-; and, in these circumstances, it was urged that the maximum being only Rs. 1000/-, the penalty of Rs. 5000/- was contrary to law. Ramachandra Iyer, J., has held the observations of the Supreme Court relied in support of the contention to be obiter, and the observation referred to before us are the same. In this connection, the learned Judge has at page 6 observed as follows:

".....When a statute provides for alternative punishments, a choice between the two punishments must naturally be made. But we do not suppose that it was never intended that the choice of the punishment should be left to the person, who has been found guilty of having transgressed the law. That option must naturally vest in the person administering the law. That goes without saying. The freedom of choice would even without the words in question have remained with the Commissioners. The omission of corresponding words in the Indian Statute is, therefore, of no consequence."

The learned Judge later observes:

"It is perfectly clear that when the Legislature prescribed that the penalty shall not exceed three times the value of the goods, it was making a deliberate effort to make the penalty proportionate to the value of the goods involved. To fix the ceiling at Rs. 1000/- would be to defeat this effort of the Legislature."

We feel no useful purpose would be served in repeating here the reasonings, on which the learned Judges have reached this conclusion, as we respectfully adopt them. In none of the cases relied before us the decision on the question whether the words "Rs. 1000" in the last part of item 8 could be treated as controlling the penalty in the earlier alternative, was necessary; and we, therefore, hold that the penalty of Rs. 6000/- levied by the order against the appellant is not in contravention of any rule.

(4) The next argument is that the last part of the direction in the order is not supported by the provisions of the Sea Customs Act. We feel that the appellant, having failed to exercise the option given to him under the earlier order and not having asked for extension of time, had clearly incurred the forfeiture; and the further limitation upon the use of his car by last part of the order, in the context of this case, does not amount to such substantial miscarriage of justice as to justify exercise of our extraordinary powers under Article 226 of the Constitution. We, therefore, feel that no useful purpose would be served in adjudicating on the second argument; with the result that the appeal is dismissed with costs, which we fix at Rs. 200/-.