

(1988) 01 SC CK 0027

In the Supreme Court Of India

Case No : Criminal Appeals No's. 642- 656 of 1987

Chern Taong Shang and Others

APPELLANT

Vs

Commander S.D. Baijal and Others

RESPONDENT

Date of Decision : 13-01-1988

Acts Referred:

Marine Zones of India (Regulations of Fishing by Foreign Vessels) Act, 1981 — Section 10, 11, 12, 13

Penal Code, 1860 (IPC) — Section 302

Citation : AIR 1988 SC 603 : (1988) 90 BOMLR 56 : (1988) CriLJ 855 : (1988) 1 Crimes 524 : (1988) 1 JT 202 : (1988) 1 SCALE 69 : (1988) 1 SCC 507 : (1988) 2 SCR 641

Hon'ble Judges : K. Jagannatha Shetty, J;B. C. Ray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.C. Ray, J.

Crl.A. Nos. 644-45/37 and Crl. A. Nos. 642-43/87

1. These appeals by special leave are against the judgment and order dated 24th April, 1987 passed by the High Court of Bombay dismissing criminal appeal No. 636 of 1986 filed by masters of two trawlers against their conviction and sentence and allowing appeal No. 496 of 1986 filed by Commander S.D. Baijal against the acquittal of accused Nos. 3 and 4, i.e. the charterer company and its Managing Director and also releasing the trawlers. The High Court convicted the accused Nos. 3 and 4 for contravention of Sub-section 6 of Section 5 of the Maritime Zones of India Act, 1981 read with Section 7 thereof and Rule 16 of Maritime Zones of India Rules, 1982. The High Court also ordered confiscation of the two trawlers and to vest the same in favour of Central Government u/s 13 of the Maritime Zones of India Act.

2. The trawlers in questions which are foreign vessel are chartered by respondent Nos. 4 and 5 of this appeal for the purpose of fishing in Maritime Zone of India

after obtaining permit u/s 5 of Maritime Zone of India Act, in short M.Z.I. Act. These two trawlers along with three other pairs of trawlers were apprehended and seized by Coast Guard Ship Vikram Commanded by Commander S.D.. Baijal for fishing operations in the exclusive economic zone of India in violation of the terms and conditions of permit and the letter of intent granted to that company by the Government of India u/s 5(4) of M.Z.I. Act and in violation of Maritime Zones of India Rules, in short M.Z.I. Rules, 1982 as amended. They were prosecuted by Additional Chief Metropolitan Magistrate, 8th Court Ballard Estate, Bombay on the complaint of Commander S.D. Baijal filed as authorised officer u/s 19 of the M.Z.I. Act. The masters of the two trawlers, the respondent Nos. 2 and 3 of this appeal were convicted and sentenced to pay fine of Rs. 60,000/- and Rs. 40,000/- respectively and the other accused respondents Nos. 4 and 5 were acquitted and the trawlers and the fishes thereon were ordered to be released on payment of the detention charges. Of the other three pairs of foreign trawlers chartered by Indian company for fishing in the maritime zone of India under permit granted under M.Z.I. Act which were seized and prosecuted, two pairs of trawlers were directed to be released. The masters of each pair of trawler were similarly convicted and sentenced to pay fine for violation of provisions of the said Act and the Rules Framed thereunder.

3. The masters of the pair of trawlers filed criminal appeal No. 636 of 1986 against their conviction and sentence while the complaining Commander S.D. Baijal filed criminal appeal No. 496 of 1986 against the order of acquittal of respondent Nos. 4 and 5 i.e. the Managing Director of the Company and the Company and also against the release of the pair of trawlers in spite of conviction of the masters u/s 12(b) of M.Z.I. Act by the Magistrate. These two appeals were heard together and disposed of by a common judgment by the High Court, Bombay whereby criminal appeal No. 636 of 1986 was allowed in part by modifying the sentence of the masters of the trawlers from R.I. for one year to S.I. for 9 months and from R.I. for 9 months to S.I. for 6 months. In criminal appeal No. 496 of 1986 the accused respondent Nos. 3 and 4 i.e. the Managing Director and the Company were convicted and sentenced to pay a fine of Rs. 30,000/- each and the trawlers were ordered to be confiscated with the fishes thereon or in case of sale of the same the proceeds thereof. The High Court also held the masters of trawlers guilty under Rule 8(1)(q) and they were convicted u/s 12(a) instead of Section 12(b) of the M.Z.I. Act but maintained the sentence of penalty.

4. It is against this judgment and order the instant appeals on special leave have been filed.

5. Crl. A. Nos. 646-47/87 and Crl.A.Nos. 650-51 of 1987 arise out of a common judgment made by the High Court of Bombay on April 24, 1987 modifying in part the judgment and order made by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Estate, Bombay in Criminal Case No. 28 of 1984 passed in Criminal Appeal Nos. 497 and 637 of 1986. The Additional Chief Metropolitan

Magistrate convicted the masters of the trawlers i.e. accused Nos. 1 and 2 for contravening Rule 8(1)(q) read with Rule 16 and Section 20(b) of M.Z.I. Act and sentenced them to pay a fine of Rs. 60,000/- and Rs. 40,000/- respectively; in default of payment of fine to suffer R.I. for 1 year and 9 months respectively. The Magistrate also made an order confiscating the trawlers JIANN TAI No. 301 and JIANN TAI No. 302 along with the fishing gear, equipments, stores, cargo and fish and directed that the same shall vest with the Central Government together with the proceeds of the sale of fish, if any, under order of the Court. The Magistrate however, acquitted accused Nos. 3 and 4, i.e. the Charterer Company and its Managing Director. Crl. A. No. 497 of 1986 filed by Cdr. S.D. Baijal against the order acquitting accused Nos. 3 and 4, i.e. Charterer Company and its Managing Director was allowed by the High Court of Bombay and they were convicted and sentenced to pay a fine of Rs. 30,000/- each; in default to suffer S.I. for 4 months. The order of confiscation of the two trawlers was also maintained. Crl.A.No. 637/86 filed by the masters of the trawlers was dismissed with the modification that the conviction made u/s 12(b) was altered to 12(a) of M.Z.I. Act and the sentence of R.I. for 1 year and 9 months respectively in default payment of fine were modified as S.I. for 6 months and 5 months respectively.

6. Crl.A.Nos. 648-49 and Crl. A.Nos. 652-53 of 1987 arise out of a common judgment passed in Criminal Appeal Nos. 495 and 634 of 1986 by the High Court of Bombay on 24th April, 1987 dismissing the appeals of the masters of the vessels and allowing the appeals filed on behalf of the prosecution. All these aforesaid appeals were filed against the judgment and order passed by the Additional Chief Metropolitan Magistrate in Criminal Case No. 27 of 1984 wherein the Magistrate convicted and sentenced the masters of the trawlers with the imposition of fine of Rs. 60,000/- the Rs. 40,000/- on accused Nos. 1 and 2 respectively for contravening Rule 8(1)(q) and Rule 16 of the M.Z.I. Rules and also of the offence u/s 5 of the Act and imposing penalty u/s 12(b) of the M.Z.I. Act. The Magistrate, however, acquitted the accused Nos. 3 and 4 i.e. the Charterer Company and its Managing Director and directed the release of the trawlers in favour of the masters of these trawlers. The Crl. A. No. 634 of 1986 filed by the masters of the vessels was dismissed by the High Court of Bombay and the conviction and sentence u/s 12(b) of M.Z.I. Act was altered to one u/s 12(a) of the said Act. Crl.A. No. 495 of 1986 filed on behalf of the prosecution was allowed and the accused Nos. 3 and 4 i.e. the Charterer Company as well as the Managing Director of the Company were convicted and sentenced to pay a fine of Rs. 30,000/-. The vessel as well as the fishing equipment were confiscated and the same were directed to vest in favour of the Central Government.

7. Crl.A. Nos. 654-55/87 and Crl.A. No. 656 of 1987 arise out of a common judgment and order passed by the High Court of Bombay in Crl.Appeal Nos. 660 and 635 of 1986. These criminal appeals were filed against the judgment and order passed in criminal case No. 26 of 1984 made on 21st May, 1986 by the

Additional Chief Metropolitan Magistrate, 38th Court, Ballard Estate. The Magistrate convicted and sentenced the accused Nos. 1 and 2 i.e. the masters of the vessel to pay a fine of Rs. 60,000/- and Rs. 40,000/- respectively; in default to undergo R.I. for 1 year and 9 months respectively. The Magistrate also made an order confiscating the trawlers BWA Sheng No. 21 and HQA Sheng No. 22 together with fishing gear, equipment, stores, cargo and fish therein. Crl.A.No. 660/86 was filed by the Charterers and Crl.A. No. 635 of 1986 was filed by the masters of the trawlers. Crl.A.No. 635 of 1986 was dismissed with the modification that conviction and sentence passed u/s 12(b) of the M.Z.I. Act was altered to one u/s 12(a) of the said Act and Crl. A. No. 660 of 1986 was dismissed with the modification that the imprisonment awarded in default of payment of fine imposed on the appellant was altered to S.I. for 4 months instead of R.I. for 6 months. The order of confiscation of trawlers passed by the Magistrate was also confirmed.

8. The facts and issues involved in all these appeals being similar we dispose of these appeals by a common judgment.

9. It has been first contended on behalf of the appellant that at the time of apprehension of the trawlers no fish was found on board and the net was not wet. There was no evidence that fish on board was seized nor there was any evidence to show what has happened to fish or who put the fish in the hold of the trawlers. It has, therefore, been submitted that no presumption u/s 22 of the said Act can be drawn that the trawlers were engaged in fishing within the exclusive economic zone of India in contravention of the provisions of the Act and the Rules framed thereunder. This contention cannot be considered in this appeal under special leave as there has been concurrent findings by the Chief Metropolitan Magistrate as well as by the High Court that there was fish on board which includes the hold of the trawlers. The learned single Judge observed:

I am, however, unable to accept that for a minor omission to make entry of finding of the fish or the net in the officers' diary can by itself negative the evidence of actual finding of the fish and the wet net on the deck and in my view the Authority quoted will have no application to the facts of this case.

10. The High Court further held on a consideration of the evidence that the fishing trawlers were fishing in a depth within 40 fathoms and the Eroding of the Magistrate on this score is unassailable. There has been violation of amended Rule 8(1)(q) of M.Z.I. Rules. Condition 2(5) of the permit provides that any condition could be imposed which would be binding on the charterers, masters of the trawlers. Rule 8(1)(q) requires the trawlers to fish at a depth of more than 40 fathoms. This condition in the permit has been violated. The masters and the charterers have been accordingly convicted u/s 12(a) by the High Court as the violation is with regard to the area of operation specified in the permit and the penalty provided for the same is not exceeding Rs. 5 lakhs. As the Magistrate has exercised his discretion in sentencing the masters to pay lesser amount as penalty the High Court did not consider it proper to interfere with the same.

11. The main argument on behalf of the appellant was focussed on the vital question as to whether the words used in Section 13 of the M.Z.I. Act "shall also be liable to confiscation" mandate that the foreign vessel used in connection with the commission of the offence as soon as the masters have been convicted u/s 10 or 11 or 12 of the said Act, shall be confiscated or it is the discretion of the Court to order either for release of the vessel or for confiscation of the vessel together with the fish and other equipment, cargo and fishing gear considering the graveness of the offence. It has been strenuously urged before us that the object of the M.Z.I. Act is to prevent poaching of fishes in the exclusive economic zone of India by foreign vessels without any licence or permit as required under the said Act. Section 10 provides that where a vessel contravenes the provisions of Section 3, the owner or master of the vessel shall be punishable for imprisonment for a term not exceeding 3 years or with a fine not exceeding Rs. 15 lakhs; where the contravention takes place in an area within the exclusive economic zone of India, the punishment of fine will not exceed rupees ten lakhs. Similarly for contravention of licence the punishment of fine will not exceed rupees ten lakhs whereas in case of contravention of the provisions of the permit in respect of the area of operation or method of fishing, the punishment of fine will not exceed rupees five lakhs and in any other case the punishment of fine will not exceed rupees fifty thousand. Referring to these provisions providing for different kinds of penalty, it has been urged that the confiscation of the vessel for contravention of the permit is not warranted in as much as the punishment provided for such contravention u/s 12 is much less than the punishment provided for in respect of contravention of licence as well as contravention of Section 3 of the said Act. It has, therefore, been submitted that the provisions of Section 13 of the said Act are not mandatory but directory. This leaves option to the Court to use its discretion to pass an order of confiscation of vessel in the facts and circumstances of the case. The trawlers in question were chartered by the company and the company duly obtained permit u/s 5 of M.Z.I. Act, 1981 for fishing in economic zones of India at a depth of not less than 40 fathoms. It had been submitted that it is not possible to fish at the said depth as depth varies from place to place and for such a minor infringement the penalty of confiscation of the vessel i.e. the fishing trawlers should not be awarded as the trawlers are fishing in the maritime zone of India under permit granted by the Government of India in favour of the Indian company which chartered those trawlers. Moreover, different penalties are prescribed for different offences committed under Sections 10, 11 and 12 of M.Z.I. Act according to the graveness of the offence. The penalty of confiscation of the vessel u/s 13 if found to be imperative, the provisions will be arbitrary. The words "shall also be liable to confiscation" in Section 13 of the said Act have to be interpreted as not mandatory in the context they have been used but discretionary. It is left to the discretion of the Court to award this sentence of confiscation in case of commission of grave offences. In support of this submission the decisions in *State of Madhya Pradesh v. Azad Bharat Finance Co. and Anr.* 1966 Su SCR 473, *Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others*, and

Superintendent and Legal Remembrancer of Legal Affairs to Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, have been cited at the bar wherein similar words "shall also be liable to confiscation" have been used.

12. It is convenient to ascertain the legal position before deciding the question raised. In the Statement of Objects and Reasons of The Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981 it is stated:

There has been an increase in poaching activities of foreign fishing vessels in our exclusive economic zone. There have also been instances of foreign fishing vessels chartered by Indian parties indulging in such activities. To prevent such activities and to protect our fishermen from the hardship caused by poaching vessels, it is necessary to regulate fishing activities by foreign fishing vessels and to provide for deterrent punishment by way of heavy fines and confiscation of foreign fishing vessels engaged in such activities.

13. Section 23(a) defines "exclusive economic zone of India as meaning the exclusive zone of India in accordance with the provisions of Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

14. According to Section 2(i) "owner" of a vessel includes any association of persons whether incorporated or not by whom the vessel is owned or chartered.

15. Section 2(j) defines "permit" meaning a permit granted or deemed to have been granted u/s 5.

16. Section the provisions of the Act, no foreign vessel shall, except under and in accordance with:

(a) a licence granted u/s 4; or

(b) a permit granted u/s 5,

by the Central Government, be used for fishing within any maritime zone of India.

17. Section 4 provides for procedure for making application for licence by the owner of a foreign vessel for fishing within any maritime zone of India and grant of licence by Central Government.

18. Section 5 prohibits fishing by Indian citizens using foreign vessels within any maritime zone of India without obtaining permit and the procedure for grant of permit to charterer has been specified therein.

19. Sub-section (6) of Section 5 of the Act provides:

A person holding a permit under this section shall ensure that every person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and the conditions of such permit.

20. Section 10 says that for contravention of provisions of Section 3, the owner of master of the vessel:

(a) in case of contravention of territorial waters of India shall be punishable with imprisonment for a term not exceeding three years or with fine not exceeding rupees fifteen lakh or with both; and

(b) in a case where contravention takes place in any area within the exclusive economic zone of India, shall be punishable with fine not exceeding rupees ten lakhs.

21. Section 11 prescribes punishment of fine not exceeding rupees ten lakhs in case of 'con advent lot.

22. Section 12(a) prescribes punishment of fine not exceeding rupees five lakhs where the contravention relates to the area of operation or method of fishing specified in the permit and; Section 12(b) in any other case with fine not exceeding rupees fifty thousand.

23. Section 13 which is relevant for deciding these appeals is as under:

Confiscation of vessels, etc. - (1) where any person is convicted of an offence u/s 10 or Section 11 or Section 12, the foreign vessel used in or in connection with the commission of the said offence, together with its fishing gear, equipment, stores and cargo and any fish on board such ship or the proceed of the sale of any fish ordered to be sold under the second proviso to Clause (a) of Sub-section (4) of Section 9 shall also be liable to confiscation.

(2) the foreign vessel or other things confiscated under Sub-section (1) shall vest in the Central Government.

24. Other provisions of the said Act are not necessary for our purpose and as such they are not stated herein.

25. Thus, it is crystal clear that the M.Z.I. Act has been enacted with the object of preventing illegal poaching of fishes by foreign vessels including foreign vessels chartered by Indian parties by providing deterrent punishment to protect Indian fishermen. The objects and reasons of the Act are to be taken into consideration in interpreting the provisions of the Statute and not the debates in Parliament on the Bill. This has been observed by this Court in K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another, as under:

Now it is true that the" speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in Western countries but also in India that interpretation of a

statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible....

26. It is pertinent to mention that in interpreting a statute the Court has to ascertain the will and policy of the legislature as discernible from the object and scheme of the enactment and the language used therein. Viewed in this context it is apparent that the said Act has been made with the sole purpose of preventing poaching of fishes by foreign vessels chartered by Indian citizens within the exclusive economic zone of India as specified in Rule 8(1)(q) of Maritime Zone of India Rules as amended in 19 82 as well as in breach of the provisions of the said Act and the terms and conditions of permit issued u/s 5 of the said Act.

27. Section 3 under the heading "Prohibition of fishing in Maritime Zone of India by foreign vessels" expressly prohibits foreign vessels from fishing in maritime zone of India except under and in accordance with a licence or permit granted by Central Government and breach of the same has been made punishable u/s 10 of the said Act. Similarly violation of the terms and conditions of licence and permit granted under Sections 4 or 5 is punishable under Sections 11 or 12 respectively of the said Act.

28. Section 13 of the said Act expressly says that besides conviction and sentence of the masters of the vessels and charterers, the vessel is liable to be confiscated with fishes therein.

29. The contention on behalf of the appellants is that the words "shall also be liable to confiscation" as used in Section 13 of the said Act do not mean that it is mandatory to confiscate the vessel, i.e. the trawlers as the masters of the vessel have been convicted and sentenced to pay penalty u/s 12 of the Act. As various punishments have been provided for different types of offences, it is left to the discretion of the court to order confiscation of the vessel or to release the vessel.

30. In the case of Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others, the foreign vessel 'Eastern Sage' arrived at Calcutta from the Far East carrying a legitimate cargo. On its arrival at the port the Customs Officers on search found a hole in sailors' accommodation which was covered with a piece of wood and over-painted. From the hole the Customs Officers found out a large quantity of gold in bars valued at about Rs. 23 lakhs. The Additional Collector of Customs found that the vessel had clearly rendered itself liable to confiscation u/s 167(12A) of Sea Customs Act, 1878 because it had infringed the provisions of Section 52A of the said Act. He also confiscated the gold bars u/s 167(8) read with Section 23A of the Foreign Exchange Regulations Act. He also directed that 'Eastern Sage' be confiscated u/s 167(12A) of the said Act and in lieu of confiscation he gave the owners of the ship an opportunity to pay a fine of Rs. 25 lakhs within a period of 30 days of the despatch of the order. This order was challenged in an appeal under special leave before this Court. Section 167(12A) provides that if a vessel contravenes Section

52A it "shall be liable to confiscation". It was held:

...The context seems to require that it is not open to the Customs to refuse to confiscate the vessel on the ground that there are any extenuating circumstances surrounding the contravention of Section 52A in a given case and that it would be unfair to impose the penalty of confiscation. Two penalties are prescribed, one is the confiscation of the ship, and the other is a fine against the master. In regard to the latter penalty it is within the discretion of the Customs Authority to decide what amount of penalty should be imposed; just as in the case of the first penalty it is not open to it to say that it would not impose the penalty of confiscation against the offending ship, so in the case of the second penalty it is not open to it to say that it will not levy any penalty against the master....It must be regarded as an elementary requirement of Clause 12A that as soon as the offence referred to in column I of the said clause is proved, some penalty has to be imposed and Clause 12A indicates that two penalties have to be imposed and not one, there being discretion in regard to the penalty imposable against the master as regards the amount of the said penalty. Therefore, we do not think it would be possible to take the view that if there are extenuating circumstances attending the contravention of Section 52A in a given case the Customs Authority can refrain from confiscating the vessel. Confiscation of the vessel is the immediate statutory consequence of the finding that an offence under Clause 12A is established, just as the imposition of some penalty against the master is another statutory consequence of the same contravention.

Section 183 lays down that whenever an order of confiscation is made the Adjudicating Authority has to give the owner of the goods which includes the vessel, an opportunity to pay fine in lieu of confiscation. Section 183 confers discretion on the Authority to determine what amount of fine should be imposed.

31. Section 11 of the M.P. Opium Act as amended where the words "shall be liable to confiscation" occurred came up for consideration before this Court in the case of *State of Madhya Pradesh v. Azad Bharat Finance Co. and Anr.* 1966 Su SCR 473 a truck hired by one Harbhajan Singh from the respondent company was found on search to have contained contraband opium. Harbhajan Singh was tried for offences u/s 9A and 9B of the Opium Act (10 of 1979). The Magistrate while acquitting him on the ground that he had no knowledge, ordered for confiscation of the truck as the word "shall" occurring in Section 11 of the Act make it mandatory to confiscate. Sessions Judge on revision affirmed the order of the Magistrate. High Court on revision held that the words "shall be liable to confiscation" in Section 11 did not mean that it was mandatory to confiscate. It is the discretion of the Court whether to make an order for confiscation of the conveyance or not according to the facts and circumstances of the case. This Court had observed that provisions of Section 11 of the Madhya Bharat Act are permissive and not obligatory. Three factors were taken into consideration in construing Section 11. "First, it would be unjust to confiscate the truck of a person if he has no knowledge whatsoever that the truck was being used for

transporting the opium. Secondly, it is a penal statute and it should if possible be construed in such a way that a person who has not committed or abetted any offence should not be visited with a penalty. Thirdly, if confiscation was obligatory under the section, the section may have to be struck down as imposing an unreasonable restriction under Article 19 of the Constitution.

Section 11 of the Madhya Bharat Act is not therefore to be construed as obligatory and it is for the court to consider in each case whether the articles in which the contraband opium is found or it being transported should be confiscated or not having regard to all the circumstances of the case."

32. The earlier decision of this Court has not been referred to in this case. Moreover what appears to have weighed with this Court was that unless the owner of the truck knew that hirer used the truck in transporting contraband opium it would be unjust to confiscate the conveyance. In the instant case the owner of the vessel has been defined in Section 2(i) of M.Z.I. Act as including any association of persons, whether incorporated or not, by whom the vessel is owned or chartered. The charterer company and its Managing Director, have been convicted for contravention of Section 5 of the Act and Rule 8(1)(q) of the Rules framed thereunder and penalty has been awarded. So the charterer who is deemed to be the owner of the trawler was held guilty of the offence of breach of terms of the permit.

33. In the case of Superintendent and Legal Remembrancer of Legal Affairs to Superintendent and Remembrancer of Legal Affairs to Government of West Bengal Vs. Abani Maity, the car belonging to Abani Maity was searched and contraband ganja was found concealed in the car owned by Abani Maity. The Magistrate passed order of conviction and sentence against him but he did not make any order for confiscation of the car used for transporting the contraband article. This matter ultimately came up before this Court in an appeal by special leave. This Court held on an interpretation of Section 63(1) of the Bengal Excise Act, 1909 that the words "shall be liable to confiscation" as used in the context convey an absolute imperative to confiscate the vehicle used for transport of the contraband goods. It was further held that it is incumbent on the Magistrate to pass, at the conclusion of the trial, in addition to the conviction and sentence, an order of confiscation of the car by which such offence has been committed. The word "liable" occurring in many statutes, has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty even where this word is used along with the words "shall be". Thus, where an American Revenue Statute declared that commission of a certain act, a vessel "shall be liable to forfeiture", it has held that "these words do not effect a present absolute forfeiture but only give a right to have the vessel forfeited under due process of law. Similarly, it has been held that in Section 302, Indian Penal Code, the phrase, "shall also be liable to fine" does not convey a mandate but leave it to the discretion of the Court convicting an accused of the offence of murder to impose or not to impose fine in addition

to the sentence of death or transportation for life."

34. In the case of F.N. Roy Vs. Collector of Customs, Calcutta, , the petitioner on the basis of a notification dated March 16, 1953 issued by the Government of India giving general permission to all persons to import into India from certain countries any goods of any of the description specified in the schedule annexed to the notification had placed an order with a company in Japan for supply of certain goods called in the trade Zip Chains. The goods on arrival in Calcutta Port could not be cleared from the Port as a notice was issued by the Collector of Customs for Appraisement stating that the petitioner did not possess valid import licence for the goods and asked him to show cause why the same should not be confiscated and action taken against the petitioner u/s 167(8) of the Sea Customs Act. The petitioner submitted a written answer stating that the zip Chains imported by him were chains of the kind free import of which has been permitted and as such no licence to import them was necessary. The petitioner was again asked by the Customs Authorities whether he wanted a personal hearing. The petitioner did not reply to the same. The Collector of Customs made an order confiscated the goods and imposing a penalty of Rs. 1,000/- on the petitioner. The petitioner thereafter filed an appeal which was dismissed on the ground that it was barred by limitation. The petitioner thereafter made an application for quashing the order of confiscation of goods and imposing penalty on him. This application was dismissed. The petitioner thereafter filed an application under Article 32 of the Constitution challenging the validity of the order made against him. The order of confiscation was questioned on the ground that it did not give the petitioner an option to pay a fine in lieu of confiscation, as provided in Section 183 of the Sea Customs Act. The Imports and Exports (Control) Act, 1947 by Section 3(1) empowers the Central Government to make provisions for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, the import, export, carriage coastwise or shipment as ships' stores of goods of any specified description. Subsection (2) of that Section provided that all goods to which any order under Sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted u/s 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that Section 183 thereof shall have effect as if for the word "shall" therein the word "may" was substituted.

35. It was held that the goods imported into India contrary to the prohibition or restriction shall be liable to confiscation and any person concerned in such importation shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees. u/s 167(8) of the Sea Customs Act the provisions of confiscation of goods illegally imported are mandatory. The only question adjudicated before this Court was that as no option was given to pay fine in lieu of confiscation u/s 183 of the Sea Customs Act, the order should be held bad. It was held that in view of the substitution of the word 'may' in place of 'shall' in Section 183 of the Sea Customs Act, it has been left to the discretion of the Customs Authorities to give or not to give the option to pay fine. It was held

that it was obligatory on the part of the Customs Authorities to make an order confiscating the goods illegally imported in violation of the provisions of the Act.

36. The objects and reasons of the M.Z.I. Act are to prevent illegal poaching of fishes by foreign vessels chartered by Indian citizens in the exclusive economic zone of India at a depth less than 40 fathoms by providing deterrent punishment for contravention of the provisions of the Act in order to protect and safeguard the interests of Indian fishermen.

37. Chapter II of the Act deals with Regulation of fishing by foreign vessels. The heading of Section 3 is "Prohibiting of Fishing in Maritime Zones of India by Foreign Vessels". Thus Section 3 prohibits the use of foreign vessels for fishing within any maritime zone of India without licence or permit granted by the Central Government and also in accordance with the terms mentioned in the licence or permit. Section 5 under the caption 'prohibition of Fishing by Indian Citizens using foreign vessels clearly enjoins in Sub-section 6 that a person holding permit shall ensure that every person employed by him complies, in the course of such employment with the provisions of the Act or any rule or order made thereunder and the conditions of such permit. Rule 9(1)(q) inserted by M.Z.I. Rules as amended in 1982 expressly prohibits fishing by foreign vessels chartered by Indian citizens in a depth less than 40 fathoms in any exclusive economic zone of India. Infringement of this rule as well as violation of the provisions of Section 5 of the Act and the conditions of permit will make the masters of the vessel as well as the company and the managing Director of Secretary of the Company chartering the vessel liable to conviction and sentence of penalty expressly provided in Section 12 of the said Act. Section 13 also in clear and unambiguous terms says that on the conviction of the person i.e. the master and the charterer of an offence under Sections 10 or 11 or 12 the vessel used in connection with the offence together with the fish on board such ship or the sale proceeds of the sale of such fish, stores, cargo shall also be liable to confiscation. Viewed in the context the words "shall also be liable to confiscation" do not leave any discretion to the Magistrate or the court to make no order of confiscation of the vessel as soon as the masters of the vessel are convicted u/s 10 or 11 or 12 of the said Act. The Legislative intent in making this provision is to provide deterrent punishment to prohibit fishing in exclusive economic zone of India by foreign vessels in infringement of the Act and the rules framed thereunder and the conditions of permit or licence. Viewed in this context Section 13 mandates that on conviction of the master and charterer of an offence u/s 12 not only penalty of fine shall be imposed but the vessel used in or in connection with the commission of such offence has to be confiscated. It is not open to the Court to consider the graveness of the offence and other extenuating circumstances and to make no order for confiscation of the offending vessel concerned. Confiscation of the vessel is the immediate statutory consequence of the finding that an offence either u/s 10 or 11 or 12 has been proved and its master has been convicted. Section 13 is thus mandatory and it is not open to the court as soon as the masters of the vessel is convicted of an offence u/s 12

and is awarded penalty to refrain from making an order confiscating the offending vessel.

38. For the reasons aforesaid we dismiss all these appeals and affirm the judgments and orders of the High Court. The vessels have been detained in Bombay Port after apprehending them on July 26, 1984 and a huge amount has to be paid as port charges. Considering the facts and circumstances of the case the Port Authorities at Bombay may consider if an application is made by the parties for exemption or partial exemption of the same favourably in view of the order of confiscation of the trawlers. There will be no order for costs.