

(1961) 07 CAL CK 0018
In the Calcutta High Court
Case No : A.F.O.O. No. 28 of 1959

Everett Orient Line

APPELLANT

Vs

Jasjit Singh and Others

RESPONDENT

Date of Decision : 07-07-1961

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Sea Customs Act, 1878 — Section 52A

Citation : AIR 1962 Cal 303 : (1962) 2 ILR (Cal) 261

Hon'ble Judges : H.K. Bose, C.J.; G.K. Mitter, J

Bench : Division Bench

Advocate : E.R. Meyer and A.K. Mukherji, for the Appellant; G.P. Kar and Debi Pal, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Mitter, J.—This is an appeal from an order of refusal to issue a writ of certiorari to quash an order made by the Additional Collector of Customs on September 14, 1957 for confiscation of a vessel u/s 52-A read with Section 167 (12A) of the Sea Customs Act on the ground that the said vessel had entered the Indian Customs Waters with a recess or a hole under the floor of the fireman's cabin, aft, port side, constructed solely for the purpose of concealing goods. The applicant is a company incorporated at Monrovia in the Republic of Liberia in West Africa called the Everett Orient Line Incorporated and it carries on business in Calcutta through its agents Everett Steamship Corporation, The respondents are Jasjit Singh, Additional Collector of Customs, and several other Customs Officers and the Union of India through the Secretary, Ministry of Finance.

2. Section 52A which was incorporated in the Sea Customs Act under chapter VI-A headed "Prohibition of entry of vessels constructed etc. for concealing goods" for the first time in the year 1957 provides as follows :

"52A. No vessel constructed, adapted, altered or fitted for the purpose of concealing goods shall enter, or be within, the limits of any port in India, or the

Indian Customs waters."

3. Section 167 specifies the offences under the Act in the first column of the schedule thereto and provides that the same shall be punishable to the extent mentioned in the third column of the same. The second column sets out the sections of the Act crating the offences. The relevant portion of the schedule is as follows :

Offences Section of this Act to which offence has reference. Penalties.

12. If a vessel constructed, adapted, altered or fitted for the purpose of concealing within the limits of any port in India or within the Indian Customs waters.

52A

Such a vessel shall he liable to confiscation and the master of such vessel shall be liable to a penalty not exceeding one thousand rupees.

It is also necessary to note Section 183 of the Act! under which the owner of the goods liable to confiscation must be given an option to pay a fine in lieu thereof. The said section runs as follows :

"183. Whenever confiscation is authorised by this 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."

4. The facts leading to the order of confiscation are as follows :

5. The appellant is the owner of several cargo vessels namely, Noreyarett, Rebeverett, Bradeverett, and Lenewrett which ply regularly between various ports of Japan and Calcutta via various ports in the Far East and Burma.

The vessel Noreverett on its voyage No. 40 arrived at Calcutta on or about August 31, 1957 and lay at No. 5 Calcutta Moorings. On the following day, a rummage party of the Customs authorities at Calcutta carried out a search Of the vessel in course of which they discovered a circular hole about 4 inches in diameter in the floor of the fireman's cabin, aft, port side. The hole was kept closed by a circular plug of cement, the toy of the plug having been smoothed off and painted so as to prevent detection of the opening which led to a recess below the cabin and into the insulation of the reefer hatch underneath. The recess was found to contain a wooden platform suspended on two wire-loops and had obviously been made by the removal of a portion of the glass fibre insulation material over the reefer box. On September 3, 1957 a show cause notice was served on the agents of the owners of the vessel by the customs authorities a copy whereof is to be found at page 19 of the paper book. In this notice mention is made of the finding of the above recess with the comment that it was reasonable to presume that the space and the hole, leading into it, were constructed for the purpose of concealing goods and that the existence of such a space on the vessel when she entered the port was a breach Of the provisions of

Section 52A of the Sea Customs Act punishable u/s 167 (12-A) of the Act. The owners' agents were called upon to explain why the vessel should not be confiscated and a date for hearing was fixed. On September 16, 1957 the applicant appellant submitted an explanation to the effect that the owners had no prior knowledge of the existence of the circular hole referred to in the notice and had no means of knowing of its existence or of its having been made, it was stated further that as the hole was in the crew's quarters neither the owners nor the master or officers of the ship could keep a constant check on what was being done, in the said quarters. An effort was made to show that in spite of their best efforts it was not possible on the part of the owners of the vessel to prevent such recess or hole being made and consequently the owners of the vessel ought not to be punished and the ship ought not to be confiscated. On September 19, 1957 the respondent No. 1, the Additional Collector of Customs passed the order already mentioned. Reference was made in the order to the fact that a similar recess was found in another vessel of the same company namely Rebeverett at or about this time and 2117 tolas of contraband gold had been recovered from the said recess. The cavity in the Rebeverett had been made into the Insulation through the reefer box while in the case of Noreverett it was done through the floor of the cabin on top of the said box. The order shows clearly that the officer's mind was influenced to a very large extent by the Rebeverett incident, and indeed it expressly says so. Taking into consideration the circumstances mentioned by the master of the vessel at the hearing to the effect that there was no sufficient time to check up on any cavities that might be existing On board their vessels, the customs officer held that a fine of Rs. 1,00,000/- should be imposed in lieu of confiscation of the vessel.

6. A petition for the issue of a writ was affirmed on December 11, 1957 and a Rule was obtained, for this court which was however discharged after hearing. The present appeal is directed against the said discharge.

7. According to the appellants they were quite alive to the fact that contraband goods were finding their way into India through vessels plying between this country and the Far East and it had taken steps to prevent the smuggling of contraband. Even before the enactment of Section 52A the Assistant Vice President of the Everett Orient Line had issued written instructions to the masters of the four vessels, Rebeverett, Bradeverett, Noreverett and Leneverett on August 14, 1956 that breaches of law and regulations should appear in the Log books entries (Deck and engine) of every search made during voyage. A copy of this document is to be found at page 10 of the Paper book which shows that the masters were instructed to institute searches for stowage and contraband in all parts of the vessel under the supervision of the heads of the different departments and to carry on additional searches during navigation especially before arrival at Calcutta and after departure from that port and record proper entries in the Log books. Even prior thereto, i.e., on November 19, 1953 a similar notice had been given to the masters of the said vessels to take all possible precaution against smuggling of foreign currency particularly in Calcutta.

Another notice On the same lines had been given on June 22, 1955. Entries from the Deck Log book of Noreverett on voyage No. 40 regarding the searches made between July 13, 1957 after departure of the vessel from Kobe until her arrival at Sandheads on the mouth of the river Hooghly on August 29, 1957 appear at pages 16 and 17 of the paper book. These show that searches had been made in different parts of the ship no less than on eight occasions. Further entries with regard to searches made in the intermediate ports are to be found in page 18 of the paper book showing that nothing was found either at Singapore or at Rangoon Or Chittagong but the Customs rummage party discovered the hole while the vessel was in the Calcutta moorings on September 1, 1957. It should be noted that no contraband goods were found on the vessel. The search was followed by the show cause notice already mentioned and the explanation of the master on September 18, 1957. In this explanation the master pointed out (1) that the owners had no prior knowledge of the existence of the hole and had no means of knowing of its existence; (2) neither the owners nor the masters or officers of the ship could keep a constant check on what was being done in the crews' quarters; (3) that the hole was presumably made by the removal of a portion of the floor in the fireman's cabin and blocking the same up by cement and painting it over; (4) that cement and paint were freely accessible in a ship; (5) the work which would have caused some noise could go undetected on account of the other noises on the vessel especially that due to the chipping off of rust which went on continuously; (6) that the hole might have been constructed for purposes other than concealment of goods; (7) that the numerous coats of paint on the plug went to show that the hole could not have come into existence during the three months before its detection; (8) that quite by an accident and without any suspicion of smuggling entering any body's mind, the previous occupants of the cabin where the hole was found were at the beginning of the journey from Kobe moved to different cabins and the motormen who were occupants of the cabin on September 1, 1957 knew nothing about the existence of the hole; (9) that the owners had been taking all possible precaution against smuggling and had ordered searches which had been duly carried out and in the result they should not be punished for the doing of something over which they had no control and which they could not possibly prevent. This explanation was supported by a letter dated September 7, 1957 from four motormen who were the occupants of the cabin to the effect that the bole was covered over by a carpet and none of them had any idea as to the existence of the cavity underneath. The master of the vessel also wrote a letter to the Assistant Collector of Customs on September 9, 1957 to say that he had no knowledge of the existence of the hole and had no suspicion in the matter.

8. The Additional Collector of Customs who considered the show cause notice and the explanation thereto recorded his finding on September 19, 1957. This is to the effect that the situation of the hole and the obvious way in which it had been made could only lead to the inference that it had been constructed solely for the purpose of concealing goods and as such there was a breach of the provisions of

Section 52-A of the Act, punishable u/s 167 (12A). It was further noted that the cavity did not form part of the ship's official plan and could only have been built in by the removal of the glass fibre insulation over the reefer box. The Additional Collector of Customs referred to the contemporaneous discovery of contraband gold on board the vessel Rebeverett of the same line from a secret recess in the roof of the reefer box of that vessel made by similar removal of glass fibre insulation. The comment of the Officer was that the *modus operandi* in both cases was the same and consequently the irresistible conclusion was that the cavity in Noreverett was deliberately constructed for the purpose of concealing goods. The contention of the owners that it would be impossible to confiscate the vessel or impose a fine on the ship in lieu of confiscation as the owners were not concerned with the construction or adaptation or fitting of the vessel so as to make the secret cavity was rejected on the ground that u/s 167 (12A) of the Act it was the vessel which became an offending vessel and once such secret cavities meant for concealing goods were found on the vessel it was not necessary to examine further whether the owners were directly implicated in the matter before making an order of confiscation. In making his order the Additional Collector, of Customs took into consideration the representation of the agents representative the the agents had not had sufficient time to check up on any cavities that might be existing on their vessels as a mitigating circumstance and imposed a fine of Rs. 1,00,000/- in lieu of confiscation.

9. The solicitors for the owner's agents wrote to the Assistant Collector of Customs on September 16, 1957 to say that their events protested against the imposition of the penalty but in order to minimise heavy damages which would be suffered by the vessel remaining idle they were paying Rs. 1,00,000/- under protest.

10. On December 11, 1957 a petition of Everett Orient Line's agent was presented to this court with a separate affidavit of Herbert Olav West, Manager of Everett Steamship Corporation. It is pointed out in this affidavit (a) that the crew of the ship consisted of an average 29 men (excluding officers) who were respectively the Master, the Chief mate, the second and third mates, radio operator, four engineers and two Purser, (b) that when in port, Stevedore's labour came on board to discharge the cargo and load new cargo and this labour could not be controlled, (c) and that it was humanly impossible to discover a cavity like the one found on Noreverett in view of the fact that the ship had an overall length of 338 ft. a width of 50 ft. and a depth of 29 ft. with four cargo holds of the capacity of 5300 tons and 73 compartments in the superstructure from the captain's office to the chain locker, including fireman's cabin above the reefer room.

11. It was further stated in this affidavit (i) that in order to carry out a systematic search through the length and breadth of the vessel it would be necessary to clear all storage places of all stores which would involve shifting of at least 20 tons of goods and it would take a party of 8 men at least two days to

search the reefer room alone; (ii) that to make a thorough search each inch of the floor and all walls would have "to be carefully tapped from one end of the vessel to the other and (iii) that such a search would occupy a gang of eight men and officers, about 40 days of eight hours each, at the end whereof the whole ship would need repairing and re-decorating. Even this however could not prevent smugglers from making a cavity in a part of the ship which had already been searched.

12. The demand for justice was made on October 31, 1957. The petitioner appellant also relied on a declaration of the President of the Everett Orient Line, affirmed on December 6, 1957 to the effect that the Company was not aware of the existence of any unauthorised compartment or cavity in either of the vessels Rebeverett or Noreverett and that the vessels of this line were regularly inspected and searched by officers of the vessels before leaving various ports at which they called.

13. The affidavit-in-opposition to the petition was affirmed by One Nanak Singh, an Assistant Collector of Customs and Superintendent, Preventive Services. In this, reference is made to the search conducted on September 1, 1957 leading to the discovery of the cavity which was not shown in the official plan of the ship and to a sister ship being found with contraband gold in a cavity similarly made in a similar position. The similarity in the method of making the hole and the location thereof is relied on as a circumstance to show that it was done under a well-conceived and pre-arranged plan. A photograph of the place where the cavity was found is annexed to the affidavit. An affidavit in reply was affirmed on April 24, 1958.

14. Sinha, J. who rejected the application relied on his judgment in the case of the Rebeverett, disposed of on the same day. According to the learned Judge even a very small hole made by a sailor underneath his bunk for concealing a watch for smuggling the same would make the vessel an offending or tainted vessel on a strict interpretation of Section 52A but this did not mean that the whole ship worth many lakhs of rupees should by reason of this alone be automatically confiscated. His lordship held that it was for the customs authorities to consider every kind of mitigating circumstance including a plea on behalf of the owners as to their absence of knowledge and complicity in the commission of the offence before imposing a penalty u/s 167 (12A) read with Section 183.

15. Mr. Meyer, learned counsel for the appellant argued (1) that Section 52A of the Act had not been properly construed by the learned Judge, (-2) that the construction put upon the section would violate Article 14 of the Constitution and as such should be declared void and (3) the order of the Additional Collector of Customs in this case should be quashed because he did not apply his mind: to the mitigating circumstances before imposing the penalty.

16. Section 52A of the Sea Customs Act forms an independent chapter by itself

with the caption "prohibition of entry of vessels constructed etc. for concealing goods." It was brought on the statute book in the year 1957 along with Section 167 (12A) of the said Act so as to create an offence and provide for punishment of the same. It should be noted that the sections were introduced with the object of checking the smuggling of contraband goods mainly gold, bullion and diamonds which had been going on through different ports in India for some years prior to 1957.

17. It was strenuously urged by Mr. Meyer, that in construing the section "the purpose of the vessel" must be borne in mind and that only when it was found that the concealment of goods formed the keynote to certain "construction, adaptation, alteration or fitting of the vessel" it could be said that such construction etc. was for the above mentioned purpose making the vessel liable to confiscation. Learned counsel further argued that it would be beyond the powers of any shipowner to prevent even a solitary miscreant from making a secret cavity in a vessel wherein diamonds worth lakhs of rupees could be easily put away and it would be unjust and unfair to hold the ship owner liable for such a misdeed which he would be powerless to stop and which it would be almost impossible to detect. Mr. Meyer contended that it should not be reasonable to hold that the Legislature intended to punish an innocent but vigilant ship owner and that that construction of the section should commend itself to the court which would not lead to such a harsh result. While recognising the force of the submission one cannot lose sight of the fact that such a construction might render the section wholly useless and destructive of the very object for which it was enacted viz., to make it difficult to bring contraband goods into India- Again in construing a provision like Section 52A of the Sea Customs Act no question of determination of anything like mens rea on the part of the owner of the offending goods ordinarily arises. A perusal of the section shows that the determination of the purpose of the vessel is made dependent upon an objective standard, viz., whether the vessel is one whose design, appearance or get-up can be said to serve the purpose of concealing goods. Such a purpose, however, need not be the sole purpose of the vessel. If the vessel or any part of it is such that it can be said of it that its construction or alteration included the object of concealing goods it would be sufficient to bring the vessel within the mischief of the section. Normally, no doubt the construction, adaptation or fitting of a vessel would be done by the owners or the charterers. But an alteration can be made by anybody. It was argued on behalf of the appellant that any alteration or fitting or construction or adaptation of the vessel made without the authority or consent or knowledge of the owner or charterer should not make the vessel liable to confiscation. As has been said already such a construction might frustrate the object of the section itself as it would be quite impossible for any Customs, authority to establish that any alteration, adaptation or fitting of the vessel with the object of concealing good was made to the knowledge of or with the consent of the owners. No indication of making the intention or knowledge of the owner a relevant consideration is afforded by the terms of the statute. On a plain reading

of the section a vessel answering the description therein given becomes liable to confiscation irrespective of the question as to how the construction etc. was done. The object of the section seems to be to punish the offending vessel and not the owner of it although the owner would be affected thereby. Such a literal construction, no doubt, brings in an element of unreasonableness and hardship and it is beyond dispute that an innocent owner may be made to suffer even if the alteration or fitting etc. is done wholly without his knowledge or consent or even against his direction and in spite of all his diligent efforts to check and prevent the same. The Customs authorities, however, are not called upon to impose a heavy fine wholly disproportionate to the enormity of the offence merely because of the liability of the vessel to confiscation. It would be the duty of the said authorities to take into consideration all the various aspects of the case, namely, the size of the cavity or the recess, the place where it was made, the opportunities for making the same without detection and the means adopted by the owners of the vessel or those in charge of it to prevent the same as mitigating circumstances before making up their minds about the gravity of the offence and the punishment called for.

18. The master of the vessel runs an additional risk of a penalty up to Rs. 1000/- but the legislature thought that the master or those responsible for engaging him would see that Section 52A was not infringed. The liability of the master of the vessel is quite separate from the offence committed by the vessel itself.

19. It cannot, therefore, be said that Section 52A of the Sea Customs Act had not been properly construed by the learned Judge.

20. Mr. Meyer's second point seems to be without any substance. He argued that if the appellants were Indian citizens they could successfully urge that Section 52A as construed by the learned trial Judge was violative of the provisions of Article 19(1)(g) of the Constitution. It was contended that the restriction on carrying on a shipping business by the confiscation of a ship merely because it contained a secret cavity made without the knowledge or the authority of her owners for the purpose of concealing goods would be an unreasonable restriction in the way of citizens carrying on their occupation, trade or business guaranteed by the Constitution and as such struck down. Consequently if Section 52A could not be applied to the case of a citizen a non-citizen prosecuted thereunder could lawfully complain that the State was making a discrimination as between him and a citizen in disregard of Article 14 of the Constitution. It was argued that equal protection of law would then be denied to a non-citizen. In my opinion, the argument is fallacious. A citizen of India has the rights given by Article 19(1) of the Constitution. The State may, for reasons of safety or other considerations, restrict the movement of non-citizens or prevent them from forming associations or unions or may impose a limit as to their acquiring and holding property and may even direct that they are not to carry on certain professions, occupations, trades or businesses. Such law would not necessarily be struck down as making a discrimination under Article 14 of the Constitution.

Article 14 no doubt lays down that all persons should be treated as equal before the law, but this does not mean that no law can be made to operate against non-citizens only. Deliberately the framers of the Constitution have not used the word "citizens" in this article. It is Open to the Legislature of India to enact laws prohibiting non-citizens from carrying on shipping business in this country. In the interest of the country such a law will probably never be brought on the statute book but it is certainly not beyond the competency of the Legislature to enact such a law and if and when enacted it could not be struck down under Article 14. I see no reason however to hold why Section 52A should not be enforced against citizens of India. If it be the intention of the Legislature to prevent the export out of India of certain commodities, Section 52-A would certainly be justified as a step towards that end and be used as much against a citizen as a non-citizen.

21. On the third point Mr. Meyer argued that the imposition of a penalty of one lakh of rupees for the discovery of a cavity made in a way which the owners could not possibly prevent and in a place where it would easily escape detection, showed that the Additional Collector of Customs had failed to take all the circumstances of the case into consideration and his order should therefore be quashed. If the offence of the vessel *Noreverett* were to be considered by itself one would normally take the view that the authority imposing the fine did not apply his mind to the circumstances of the case but one cannot ignore the fact that about the time of the discovery of the cavity on *Noreverett* a sister vessel of the same line had been found carrying contraband gold worth lakhs of rupees in a cavity similarly made in a similar place, the only difference in the making thereof lying in the fact that whereas one was made from the floor of the fireman's cabin, downwards the other was made from the roof of the place below the cabin upwards. This undoubtedly seems to suggest that it was done by persons working under a pre-arranged and well conceived plan. The Owners of the vessel may be quite innocent of the whole affair but the selection of the crew who run the vessel is certainly within their means. It goes without saying that the mind of the Additional Collector of Customs was largely influenced by the acts done on *Rebeverett* within a matter of weeks before the order of confiscation of the *Noreverett*. Considering the case in all its aspects it is not possible to say that the Additional Collector of Customs had not acted in good faith in imposing the penalty so as to make his order liable to be quashed.

22. In the result, the appeal fails. It is accordingly dismissed. No order as to costs.

23. Certified for 2 Counsel.

Bose, C.J.

24. I agree.