

(1961) 08 CAL CK 0026
In the Calcutta High Court
Case No : In re A.F.O.O. No. 28 of 1959

Everett Orient Line, Incorporated, a Company	APPELLANT
Vs	
Jasjit Singh and Others	RESPONDENT

Date of Decision : 28-08-1961

Acts Referred:

Constitution of India, 1950 — Article 133, 14
Sea Customs Act, 1878 — Section 52A

Citation : AIR 1962 Cal 308

Hon'ble Judges : H.K. Bose, C.J.; Debabrata Mookerjee, J

Bench : Division Bench

Advocate : Ajit Roy Mukherjee, for the Appellant; G.P. Kar, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application under Article 133(1)(a) of the Constitution for a Certificate that the petitioner Company's proposed appeal to the Supreme Court involves substantial questions of law and is therefore fit for further consideration by that Court.

2. The petitioner Company Everett Orient Line Incorporated, owns several cargo vessels of which Noreverett is one. Those vessels usually ply between various ports in the Far East and Burma. The ship Noreverett in the course of one of her usual voyages reached Calcutta on August 31, 1957. On the following day a rummage party of the Calcutta Customs carried out a search of the vessel in the 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 top 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.

3. On September 3, 1957, the agents of the owners of the vessel were served with notice to show cause why proceedings in respect of the vessel should not be taken under the Sea Customs Act on the ground that the vessel had entered the port of Calcutta in breach of the provisions of Section 52A of the Sea Customs Act punishable u/s 167 (12A) of that Act.

4. The petitioner submitted an explanation that the owners had no knowledge of the existence of the hole or cavity, referred to in the notice, and had no means of knowing or detecting that it had ever been made. It was also stated that the cavity was found on board the ship at a place over which it was impossible for the officers or the master of the ship to maintain constant check. It was thus urged that the petitioner had no knowledge whatsoever that the ship had been so adapted or altered for the purpose of concealment of goods.

5. It appeared that another vessel belonging to the petitioner Company, had also been found to contain a recess in which about 2127 tolas of contraband gold were found.

6. After holding the enquiry prescribed under the Sea Customs Act, the Additional Collector of Customs made an order on September 19, 1956, directing confiscation of the vessel u/s 167(12A) of the Sea Customs Act; but in view of the circumstances of the case, mentioned in the order, he imposed u/s 183 a fine of Rupees one lakh in lieu of confiscation of the vessel. The master of the ship was directed to pay a penalty of Rs. 500/- u/s 167 (12A).

7. The petitioner Company then applied to this Court under Article 226 of the Constitution for appropriate writs- to quash the orders. A Rule Nisi was issued, but Sinha, J. eventually dismissed the application and declined to interfere.

8. An appeal was then taken against the order of the learned Judge, and the same was disposed of by a Division Bench of this Court on July 7, 1961. The learned Judges who heard the appeal held that there was no reason to interfere with the order of the learned Trial Judge, and in that view, dismissed the appeal.

9. This application for a Certificate is in respect of the appellate decision to which I have just referred. It has been urged that a Certificate ought to be issued inasmuch as the questions to be raised before the Supreme Court involve substantial questions of law although the judgment of the Appellate Court is a judgment of affirmance of the decision of the learned Trial Judge. There is no question that the amount or value of the subject matter of the dispute in the Court of First Instance and in dispute in appeal was and is not less than Rs. 20,000/-. Thus if the petitioner Company succeeds in establishing that the questions proposed to be raised before the Supreme Court involve substantial questions of law, then it will be entitled to a Certificate.

10. It has been argued that the Division Bench of this Court which disposed of the petitioner's appeal should have held that:

"a non-citizen is entitled to challenge the validity of a law on the ground of its

repugnancy to Article 19(1)(g) of the Constitution where such law is meant to apply to citizens and non-citizens alike and where the object of the law does not provide any rational basis for its application exclusively to non-citizens."

It has not been very easy for us to appreciate the full implications of this ground till it came to be supplemented by Counsel's argument on the point. The question sought to be raised before the Supreme Court was that in the case of a citizen Section 52A of the Sea Customs Act was likely to be declared invalid as constituting an unreasonable restriction on his fundamental right to carry on trade and commerce, but the petitioner being a foreigner would not be entitled to question the validity of the provision. That being so, there is bound to be discrimination between a foreigner and a citizen of this country, and such discrimination is forbidden by Article 14 of the Constitution.

11. Before the validity or even the plausibility of this argument can be examined it is necessary to set out Section 52-A of the Sea Customs Act and the corresponding provision relating to it u/s 167 (12A) of that Act :

"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". Section 167 (12A) provides that if a vessel constructed, adapted, altered or fitted, as mentioned in Section 52A, enters or is within the limits of any port in India or within the Indian Customs waters, such vessel shall be liable to confiscation and the master of such vessel shall be liable to a penalty not exceeding one thousand Rupees.

12. It has been argued that if the petitioner Company were a citizen of this Country, it might well be heard to complain of unreasonable restriction on its right to carry on trade and commerce by reason of the provision contained in Section 52A; but since the petitioner is a foreign Company, it is not open to it to challenge the vires of any legislative enactment on the ground that it amounts to unreasonable restriction upon its fundamental right to trade and commerce. This argument presupposes that upon an application made by a citizen complaining of restriction upon his right to trade and commerce the Court will at Once pronounce the provision of Section 52-A as constituting an unreasonable restriction upon his rights to trade and commerce.

13. It is impossible to accede to this argument. There can be no doubt that Section 52A has been widely worded. The reasons why such wide language has been employed are not far to seek. The provision, as it stands, makes no distinction between a citizen and a foreigner. It is quite wide to include within its ambit any vessel belonging to any one, if such vessel is found to have been constructed, altered, adapted or fitted in such a way as to show that the Purpose behind such construction or adaptation was to conceal goods. The prohibition is absolute that a vessel so constructed or adapted must not enter Indian Customs waters or the limits of any port in India. The section makes no distinction between a citizen and a non-citizen.

14. If that is the true position then it becomes extremely difficult to accept the argument which is more or less of a speculative character. For obvious reasons Parliament enacted Section 52A, and it intended deliberately to bring within the mischief of the Section every one who might contravene its provision. Thus the major premise of the petitioner's contention that in the event of a citizen complaining, Section 52A is likely to be struck down, on the ground that it constitutes an unreasonable restriction upon his right to carry on trade and commerce, has no basis at all. It is not permissible to assume that upon a citizen's application, the Court will at once pronounce Section 52A as constituting an infringement of his fundamental right to trade and commerce. That being the position it is not possible to entertain the objection that since the petitioner is a foreign Company, it suffers from the disability that he cannot challenge the vires of Section 52A. It is equally untenable that discrimination is introduced in a round-about or indirect manner between a foreigner and a citizen involving infringement of Article 14 of the Constitution.

15. As I have indicated, this argument proceeds upon the hypothesis that Section 52A is bound to fail at the instance of a citizen who questions its validity on the ground that it infringes his constitutional right to trade and commerce. We cannot make such an assumption and proceed on the basis that it involves indirectly a discrimination of which the petitioner can reasonably be heard to complain.

16. This is said to be a substantial point which is proposed to be raised before the Supreme Court. I am clearly of the view that the contention does not bear examination and cannot be pronounced to be substantial in any sense of the term.

17. In order to reinforce the argument noticed above, it was sought to be said that the other question relating to the alleged infringement of the provision of Article 14 of the Constitution is at any rate a substantial question fit to be agitated before the Supreme Court. The supposed infringement of Article 14 is inextricably bound up with the speculative argument that Section 52A of the Sea Customs Act is bound to be declared ultra vires if the attack upon it came from a citizen of the country. For the reasons already given, I do not think that the contention as regards Article 14 is at all substantial or at any rate, such as can be held fit to be agitated before the Supreme Court.

18. The other main contention has been rested on the language of Section 52A of the Sea Customs Act. The contention is that the wide words of the section have to be read in a reasonable manner, and if the language used is to receive full effect, it is bound to result in untold hardship to all who have commercial relations with this country. It has been suggested that in the absence of any material to indicate that the petitioner or the master of the vessel had anything to do, even indirectly Or remotely, or had any means of knowing that the ship's construction had been so adapted or altered as to conceal goods, it would be unreasonable in the extreme to punish the petitioner Company or the master of

the vessel. The argument on this head has largely been that intention or knowledge in a case of this kind must be considered an essential ingredient for the purpose of fixing liability; and in the absence of any material to suggest that the petitioner Company had even knowledge of the existence of the cavity discovered on the vessel, the Order complained of is wholly unsustainable. It is this question which is sought to be raised before the Supreme Court.

19. In order that it may be regarded as a substantial question of law, there must be some justification for the contention that the view taken of the section is, at least, such as can be taken on the language in which the provision has been couched. The object of the enactment is quite clear; and looking at the language, there can be no doubt whatever that the question of intention or knowledge was not considered by Parliament as being in any way material to the section. It is true that ordinarily the element of knowledge or of intention, that is, mens rea, is an element in the consideration; but in a case of this kind where the statute by express words absolute and peremptory in this import, rules out intention or knowledge, it is impossible to say that the view contended for and proposed to be agitated before the Supreme Court really involves a substantial question of law.

20. If two view of the section were possible on a plain reading of it, then it might well be argued that the view which has found favour with this Court may not be the correct view; but where, as in this case, the only reasonable view that can be taken is the view expressed by the Division Bench of this Court, it is difficult to see how it can still be said that the question proposed to be raised before the Supreme Court is a question involving substantial question of law.

21. On a similar occasion the Supreme Court itself laid down the principle which ought to guide us in cases of this kind. Reference may be made to the case of *Ravula Hariprasada Rao Vs. The State*, where it was held that ordinarily a principal is not to be made criminally responsible for the acts of his servant, yet the Legislature may prohibit an act or enforce a duty in such words as to make the prohibition or the duty absolute, in which case the principal is liable if the act is in fact done by the servant To ascertain whether a particular Act of Parliament has that effect or not, regard must be had to the object of the statute, and the words actually used. Their Lordships approvingly referred in this decision to the case of *Mousell Brothers v. London and North-Western Rly. Co* (1917) 2 K. B. 836, and set Out the observations of Viscount Reading, C. J., at page 844 of the report :

"Under the Food and Drugs Act there are again instances well known in these Courts where the master is made responsible, even though he knows nothing of the act done by his servant, and he may be fined or rendered amenable to the penalty enjoined by the law. In those cases the Legislature absolutely forbids the act and makes the principal liable without a mens rea".

The observations of Atkin, J. in the same case were also cited with approval that

in such cases the object of the Statute and the words actually used have to be taken into consideration.

22. Turning to Section 52A of the Sea Customs Act, there can be no doubt that the object was to prevent the entry of vessels so constructed or adapted as to provide for concealing goods. The provision seems more to be directed against the offending vessel than against its owner or master. The protection of the country's economic resources was obviously the prime consideration with Parliament in enacting Section 52A, and the purpose can well be appreciated even on a casual reference to the wide words deliberately chosen. It seems, therefore, that the view taken of Section 52A by the Appeal Court is the only reasonable view, and it is not easy to see how any other view may be taken of it. Accordingly I hold that this is not a substantial question of law which may be allowed on a certificate to be raised before the Supreme Court.

23. The Certificate asked for is therefore refused. The application is dismissed. There will be no order as to costs of this application.

Bose, C.J.

24. I agree.