(1959) 11 BOM CK 0003

In the Bombay High Court

Case No : Misc. No. 168 of 1959

Gopal Mayaji Prab and Another APPELLANT

Vs

T.C. Seth and Another RESPONDENT

Date of Decision : 06-11-1959

Acts Referred:

Foreign Exchange Regulation Act, 1947 — Section 8(1)
Sea Customs Act, 1878 — Section 167(8)

Citation : AIR 1960 Bom 478 : (1960) 62 BOMLR 486

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : Ishwarlal C. Dalal and H. Bapna, for the Appellant; R.J. Joshi, for the Respondent

Judgement

(1) This is a petition under Article 226 of the Constitution challenging the validity of an order dated April 20th, 1959 whereunder the respondent No. 1 inter alia directed the petitioner No. 1 to pay penalty of Rs. 10.000/- and petitioner No. 2 to pay penalty of Rs. 1,000/- under the provisions of sub-section (8) of Section 167 of the Sea Customs Act.

(2) Though there are several allegations in the petition at the trial the petitioner has proceeded on the footing that he admits the correctness of findings as to facts as mentioned in the impugned decision. those facts are as follows:

(3) Prior to April 10, 1958 one Shankarlal was in possession of two slabs f gold which were smuggled into India. It was arranged on behalf of Shankarlal that these to slabs of gold wshould be melted at the shop of the 1st petitioner who carries on business of running a metal melting workshop near Mumbadevi Post Office at Bombay. It was arranged that the 1st petitioner should send his employee to take delivery of these two slabs of gold at the shop of Messrs. B. Mohanlal and Co. at Jambli Moholla. In accordance with the arrangement the 1st petitioner deputed the 2nd petitioner to receive these two slabs of gold. One Shivlal who is know to both Shankrlal and the petitioners at the shop of Messrs.

B. Mohanlal and Co. delivered these two slabs of gold to the 2nd petitioner who brought the same to the shop of the 1st petitioner. Whilst these two slabs were about to be melted in the shop of the 1st petitioner, under a search warrant the same were seized. Both the petitioners thereafter made certain statements to the nvestigating officers.

In his statement the 1st petitioner divulged the aforesaid facts and also stated that Shankarlal through his two associates (1) Shivlal and (2) Jamnadas Bhikabhai used to send smuggled gold for melting at the shop of the 1st petitioner. On receiving information, the 1st petitioner in accordance with the arrangement made used to depute the 2nd petitioner for receiving delivery of the smuggled gold at the shop of Messrs. B. Mohanlal and Co. The gold used to be delivered to the 2nd petitioner by Shivlal or Jamnadas. The gold was melted in the shop of the 1st petitioner and returned to Shivlal or Jamnadas at the shop of Messrs. B. Mohanlal and Co. for being delivered to Shankarlal. He admitted that he used to do this work of melting for Shankarlal since after Divali 1957 nd that he had done it for Shankarlal for about 20 occasions He also admitted that in respect of moneys received by him for these services rendered and the gold received he never made any entries in his books of account. The 2nd petitioner also admitted these facts and that he had been several times deputed for the purpose of receiving and returning delivery of the smuggled gold and that for each such trip he was being paid Rs. 10/- by Shankrlal or by Shivlal. He also admitted that he was aware that the gold in question used to be smuggled gold.

(4) On these facts the respondent No. 1 has made a finding that the petitioners were liable to pay penalty of fine as mentioned in Section 167(8) of the Sea Customs Act.

(5) In the petition the petitioners have raised several contentions but Mr. Dalal for the petitioners informed me that he was raising only two contentions at the hearing, viz., that on the facts as found by the 1st respondent in his decision he had no jurisdiction to levy any penalty against the petitioners and that accordingly the order was altogether without jurisdiction. For that contention he has placed reliance on the phraseology of Section 167(8) of the Act.

(6) His second contention was that the investigation was under the Land Customs Act, 9 of 1924 and that the restrictions as imposed u/s 19 of the Sea Customs Act were not applicable to any proceedings under the Land Customs Act and therefore also the 1st respondent had no jurisdiction to levy the penalty as he had done. On hearing arguments of Mr. Dalal in support of his first contention I intimated to him that I was inclined in his favour and accordingly he has not pressed this second contention before me though the same is kept openfor arguments if it becomes necessary to do so.

(7) Now, as regards the first contention the relevant provisions are to be found in the notification dated August 25, 1949 made under the Foreign Exchange Regulation Act, 1947 and Section 167(8) of the Sea Customs Act. The charge

which arose against the petitioners and the issue which was to be decided by the 1st respondent was that in respect f two gold slabs in question there was prohibition and restriction on importation thereof by reason of the notification dated August 25, 1948 issued u/s 8(10 of the Foreign Exchange Regulation Act 1947 read in conjunction with Section 19 of the Sea Customs Act and that each petitioner as "the person concerned" in the offence of importation of these two slabs of gold contrary to the prohibition and restriction as imposed under that notification.

(8) The question is whether this decision that the petitioners were the persons concerned in such an offence is in accordance with the provisions of Section 167(8). The relevant parts of the otification and the provisions of Section 167(8) run as follows: Notification:

"xx xx The Central Government is pleased to direct that except with the general or special permission of the Reserve Bank, no person shall bring or send into India from any place outside India-

(a) any gold coin, gold bullion, gold sheets or gold ingot, whether refined or not; or

xxxxx"

"167

8. If any goods, the importation x x x x x of which is for the timebeingprohibited or restricted xx xx xx be imported into xx xx xx India contrary to such prohibition or restiction; or

If any attempt be made so to import xx xx xx any such goods; or

If any such goods, xx xx xx xx be found either before or after landing xx xx xx to have been concealed in any manner on board of any vessel within the limits of any port xx xx xx"

The penaty leviable is stated 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 one thousand rupees."

(9) Reliance has been placed by Mr. Dalal on the language and phraseology of the notification and Section 167(8) of the Act in support of the contention that on the facts as found against the petiioners they could not be stated to have been concerned in any offence as mentioned in S. 167 (8) of the Act. It is apparent on the reading of the notification that the restrictions relate to bringing or sending into India. Whoever therefore brought or sent inot India the two gold slabs in question was obviously acting contrary to the restriction and prohibition as mentioned in the notification. ON the facts as already mentioned above, it could not be argued on behalf of the respondent that the petitioners were directly

bringing into or sending into India these two gold slabs. The offence as mentioned in the first column of clause (8) of S. 167 has several different items. The first item directly relates to importation into India contrary to the the prohibition or restriction imposed. The second item relates to attempts for doing the same. The fourth item relates to such restricted and prohibited goods being found before or after landing concealed on board of any vessel within the limits of the Port. That item is indicative of the fact that the offence relates to the time before completion of importation of the goods into India. It is apparent to me that the act of importation would be completed at the period of time when the goods cross the customs barrier. The act of importation contrary to restrictions and prohibitions would be complete once the customs barriers are crossed. It is at that moment of time that the restriction and prohibition are violated. Whatever is transacted with reference to the goods subsequent to that period of time would be dealing with smuggled goods and/or goods imported contrary to prohibition and restriction. That dealing cannot be an act of importation into India contrary to prohibition and restriction. That appears to be the direct effect of the language of S. 167 (8).

(10) The question however is as to the true construction of the words of the penalty as prescribed in the 3rd column of S. 167(8). The words are "any person concerned in any such offence".The offence involved in this case is obviously of importation contrary to prohibition and restriction and also as mentioned in several items of clause (8). It is certainly difficult to define the exact meaning of the words "any person concerned in any such offence" as contained in the 3rd column. It may be that a person may be concerned as being in conspiacy to have the smuggled goods imported for purchasing the same from a date prior to the importation thereof. It may be tha such a purchaser may be penalised as a person concerned in any such offence. This wider question is unnecessary for me to decide on the facts as appearing in this petition. The only fact against the petitioners in this petition is that they have in respect or smuggled gold helped in having the same melted. It is implied in the argument of the respondents that the melting was found necesary by Shankarlal to have all evidence of the goods being smuggled destroyed. Accordingly to the respondents the act of smuggling is complete when the melting is complete. That in my view cannot be the true construction of this penal provision. The provision of S. 167(8) is a provision in respect of a charge of criminal nature and such provision in a Statute must be construed strictly. Apart from all other considerations I cannot take the view that acts and attempts to destroy evidence that the smuggled goods are smuggled should be considered as part and parcel of the trans action of smuggling. In my view the offence is complete as I have already mentioned at the period of time when the goods cross the customs barrier contrary to the restriction and prohibition imposed. Whatever is done with the goods subsequent to that period of time, cannot form part of the offence as mentioned in S. 167(8). In that view of the matter I must hold that the penalty that is levied against the petitioners was without any jurisdiction and that the same must be set aside.

(11) In connection with the construction of the words "person concerned", Mr. Joshi has relied upon the decision in the case of Attorney-General v. Robson, (1850) 20 LJ Ex 188. On the facts and the construction of the Statute in question in that case it was held that the words "otherwise concerned" mean having any interest whatever in the matter. words of the Statute in that case were much more wider and are not apposite to the phraseology of S. 167(8). Even if the construction t be applied in the present case was that "person concerned" meant "person having any interest whatever in the matter" that meaning would have to be applied to the matter of the smugging of the two slabs of gold in question. The offence of smuggling in my view became complete at the period of time when the gold was imported into India cotrary to prohibition and restriction andthe subsequent attempt to destroy the evidence that the gold was of foreign origin cannot make the petitioners persons having interest in the matter of smuggling of this gold. Mr. Joshi also relied upon the observations of the Supreme Court in the case of Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others, . The relevant part of the bservations are as follows:

"There is, we think, an appreciable difference between the expression ''any person concerned in any such offence'' occurring in the third column of S. 167(8) of the Sea Customs Act and the expression ''whoever contravenes any of the provisions of this Act'' occurring in S. 23 of the Foreign Exchange Act. A person may be concerned in the importation of smuggled gold, without being a smuggler himself or without himself contravening any of the provisions of the Foreign Exchange Act. In this sense, the scope of S. 167(8), Sea Customs Act is different from that of S. 23 of the Foreign Exchange Act".

(12) Now these observations certainly are indicative of the fact tht the individual bringing into India gold or other goods contrary to prohibition or restriction imposed is not the only person covered by the phrase "person concerned" as contained in third column of S. 167(8). As I have already indicated a purchaser who arranges to have the goods imported into India contrary to the restriction and prohibition may be a person who is concerned in the offence as mentioned in S. 167(8). That however is not a person who is dealing with the goods subsequent to the arrival thereof without his being concerned in illegal importation thereof into India. It appears to me that the words "person concerned" relate to all those who may have an interest already accrued in the illegal importation prior to the period of time of such importation. That however I have no reason to decide in this case and does not arise before me. Si far as the petitioners are concerned I cannot hold that they were persons concerned in the importation of these two slabs of gold into India. That they have been helping Shankarlal in destroying the evidence of gold of Foreign origin smuggled into India does not in any manner make them persons concerned in the offence as mentioned in S. 167(8).

(13) The petitioners are accordingly entitled to have the penalty imposed upon them quashed. The impugned order as agasinst the petitioners will therefore

stand quashed. The respondents will pay costs of the petition to the petitioners.

(14) Petition allowed.