

(1981) 09 BOM CK 0023

In the Bombay High Court

Case No : Misc. Petition No. 526 of 1978

John P.D. Souza

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 08-09-1981

Acts Referred:

Customs Act, 1962 — Section 115, 115(2)

Citation : (1982) 10 ELT 185

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. The petitioner is providing catering services to the Ocean-going ships. On April 2, 1966, steamship "JALADHIR" arrived in the Bombay Port. The ship was captained by one Dehyadre, who was known to the petitioner for more than 24 years. Dehyadre visited the place of the petitioner in the city. Thereafter on April 9, 1966, the petitioner drove his car bearing No. BMY 3132 to the Indira Docks and the car was parked near the place where the ship was berthed. The bearer of the Captain Dehyadre brought a suit case neat the car which the petitioner kept in the boot of the car. While the petitioner was waiting near the car, the Customs authorities raided the car and on opening the dicky and the suit case it was noticed that the suit case contained large number of contraband articles including nine liquor bottles. Apart from the suit case, in the dicky two cameras and projectors were noticed. The Customs Authorities seized the goods and prosecuted the petitioner and Dehyadre in the Criminal Court. In the Criminal Court both the petitioner and Dehyadre were acquitted.

2. The Customs Authorities commenced proceedings to confiscate the contraband goods as well as the car by service of show cause notice dated October 4, 1966. The Customs authorities proposed to confiscate the car as it was used in the smuggling of contraband articles. After the petitioner filed his reply, the Additional Collector passed an order on May 8, 1969 confiscating the contraband goods as well as the car owned by the petitioner. The petitioner was given an

option to get the car released on payment of penalty of Rs. 10,000/-. The Assistant Collector imposed a personal fine of Rs. 5,000/- on the petitioner.

3. In an appeal preferred by the petitioner before the Appellate Collector of Customs, the order of confiscation of car was maintained but the fine of Rs. 10,000/- for exercising option was reduced to the amount of Rs. 5,000/- only. The personal penalty of Rs. 5,000/- was sustained. The Revision Application preferred before the Government of India ended in dismissal by an order dated October 7, 1977. These orders of confiscation of car and personal penalty on the petitioner are under challenge in this petition filed under Article 226 of the Constitution of India.

4. The learned counsel appearing in support of the petition, very vehemently urged that the petitioner was not aware of the contents of the suit case and as such it is not permissible to confiscate the car on the basis that the same was used for smuggling goods in the country. Section 115 of the Customs Act provides for confiscation of conveyance which carries imported goods. Sub-section (2) of Section 115 reads as under :

"Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal and that each of them had taken all such precautions against such use as are for the time being specified in the rules :

Provides that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to any in lieu of the confiscation of the conveyance a fine not exceeding the market price of the goods which are sought to be smuggled or the smuggled goods, as the case may be."

From the plain reading of this sub-section, it is clear that a conveyance is liable to confiscation unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself. It is not in dispute that in the boot of the car owned by the petitioner contraband goods were found packed in a suit case in addition to two cameras and projector, and from the facts available in the present case it is difficult to conclude that the petitioner was not conscious that his car was used for smuggling goods.

5. Two or three circumstances stand out to sustain the finding of the three authorities below that the petitioner had knowledge of the contents of the suit case. In the first instance the petitioner is a caterer catering to the foreign going ships and visits the dock area on several occasions. The petitioner is not an innocent person unaware of the Rules and Regulations in respect of the import of articles in this country. Secondly, the ship crossed the Indian water on April 3, 1966 and the Captain of the ship visited the petitioner in the city. The claim of

the petitioner is that when he went with his car to the docks on April 9, 1966, his friend told him that he had certain personal luggage and dutiable goods which he desired to declare at the Customs Gate and that suit case should be kept in his car. The petitioner claims that after the suit case was kept in the dicky of his car he was waiting for the captain to come, but the captain did not turn up and while he was waiting the Customs authorities raided the car. It is difficult to accept the claim made by the petitioner. The suit case containing large number of contraband articles, as mentioned in the panchanama, copy of which is annexed as Exp. A, must be pretty heavy and any person familiar with the surroundings of the Customs area and the dock area would have been put on guard to enquire as to what the contents are. Apart from this circumstance, the petitioner had kept two cameras and projector also in the dicky of the car and that is indicative of the fact that the petitioner was fully conscious of the material which he was carrying for his friend. In these circumstances, the finding of the three authorities below that the petitioner had full knowledge of the articles which he was carrying in the boot of his car cannot be stated to be without any basis. In my judgment, the conclusion arrived at by the authorities below is in accordance with evidence on record and requires no interference in this proceedings under Article 226 of the Constitution.

6. Accordingly, the petition fails and the rules is discharged with costs.