

(1963) 09 MAD CK 0013
In the Madras High Court
Case No : Writ Appeal No. 123 of 1962

K.K. Shaik and Dawood

APPELLANT

Vs

Collector of Customs, Madras

RESPONDENT

Date of Decision : 04-09-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Foreign Exchange Regulation Act, 1947 — Section 12(1), 13(1), 23, 23A, 8
Sea Customs Act, 1878 — Section 167, 167(8), 19

Citation : (1965) CriLJ 560 : (1964) ILR (Mad) 555

Hon'ble Judges : S. Ramachandra Iyer, C.J.;Anantanarayanan, J

Bench : Division Bench

Judgement

Ramachandra Iyer, C.J.

(1) ""S. S. State of Madras"" arrived at the Madras Harbour on 16-4-1958, with passengers from Penang. One Nagoor Meera, who arrived by

that steamer brought with him a Raleigh cycle as his personal baggage. The Customs authorities had evidently some reason to suspect that the

cycle contained prohibited goods and on closer examination, the stems of the year forks of the cycle were found to contain 397 gold pellets

weighing 126-43 tolas. Nagoor Meera gave a statement before the authorities that the cycle was sent by one Sikkander of Penang with

instructions to hand it over to Shaik Dawood, the appellant before us.

(2) Import of gold has been prohibited by a notification under S. 23 of the Foreign Exchange Regulation Act, 1947. The appellant did not dispute

that he was concerned with the illegal importation of the goods concealed in the cycle. After giving a reasonable opportunity to the appellant, the

Collector of Customs, by his order, dated 4-2-1959, confiscated the gold and

imposed a personal penalty of Rs. 25,000 on the appellant under S.

167(8) of the Sea Customs Act 1878. The appellant, not being the actual smuggler was not concerned with the property of the confiscation

ordered; but he challenged the validity of the personal penalty imposed on him by application to this court under Art. 226 of the Constitution.

Veeraswami J. has dismissed that application and hence this appeal.

(3) S. 8 of the Foreign Exchange Regulation Act 1947 empowers the Central Government by a notification in the official gazette to order that no

person shall except with the general or special permission of the Reserve Bank bring into this country any gold or silver, etc. It is not a matter in

dispute that there was a notification under the provisions of that section on 25-8-1948, that no person shall bring into India any gold, etc, without

the general or special permission granted by the Reserve Bank of India. Contravention of the restriction is made punishable under S. 23 of the

Foreign Exchange Regulation Act. That provides for the prosecution of the offender in a court of law; it further empowers the court trying the

offence, in addition to any sentence or penalty, which it may impose for such contravention to direct that any currency, security, gold or silver, etc.,

so unauthorisedly brought shall be confiscated to the Central Government. Sec. 23, therefore, provides a punishment for the offence of

contravening the restrictions imposed by the Act and it authorises the Magistrate who tries the case to confiscate the goods in respect of which the

offence has been committed.

(4) Sec. 23A provides for a departmental penalty as well. That says:

Without prejudice to the provisions of S. 23 or to any other provision contained in this Act S. 8, sub-sec. (1) of S. 12 and clause (a) of sub-sec.

(1) of S. 13 shall be deemed to have been imposed under S. 19 of the Sea Customs Act, 1878 (VIII of 1878) and all the provisions of that Act

shall have effect accordingly, except that Sec. 188 thereof shall have effect as if for the word ""shall"" therein the word ""may"" were substituted.

This provision deems that the offence of contravention of the provisions of the Foreign Exchange Regulation Act specified therein to be a

contravention of the restrictions coming within S. 19 of the Sea Customs Act as well. The provisions of that Act have thus been incorporated in the

Foreign Exchange Regulation Act itself. As a consequence, contravention of S. 19

of the Sea Customs Act will entail penalties prescribed by S.

167 of the Sea Customs Act as well. Clause (8) of that section provides that if any goods, the importation of which is prohibited or restricted

under Chapter IV of the Act, be imported into India contrary to the such restriction, such goods shall be liable to confiscation and any person

concerned in such offences shall be liable to pay a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees.

(5) It is now well settled that the penalty imposed by this section, namely, confiscation of the goods and imposition of the personal penalty are

wholly administrative in character. *Sinha J.* as he then was pointed out in *Thomas Dana Vs. The State of Punjab*, .

Those penalties, the Collector had been empowered to impose in order not only to prevent a recurrence of such infringement, but also to recoup

the loss of revenue resulting from such infringements. A person may be guilty of certain acts which expose him to a criminal prosecution for a

criminal offence, to a penalty under the law intended to collect the maximum revenue under the taxing law and/or at the same time make him liable to

damages in torts.

(6) The result is that notwithstanding the imposition of administrative penalty under S. 167(8) of the Sea Customs Act by the Collector (that

provision having been incorporated in the Foreign Exchange Regulation Act by virtue of the S. 23-A) the offender will be liable to be proceeded

against as and for a criminal offence under S. 23 of the Foreign Exchange Regulation Act.

(7) In the present case, the appellant before us appears to have been prosecuted before a Criminal Court under the provisions of S. 23 of the

Foreign Exchange Regulation Act but that needed in his acquittal, an appeal against the order of acquittal proved to be of no avail.

(8) Before the learned Judge, there was a contention that as S. 23-A of the Foreign Exchange Regulation Act while incorporating the provisions of

S. 19 of the Sea Customs Act, had exposed the offender to a personal penalty as well as confiscation of the illegally imported goods, it should

be held to be void as imposing a second penalty on the offender in addition to the one prescribed by S. 23. The learned Judge has overruled that

contention and the correctness of the same has not been contested before us.

(9) The only contention raised in support of the appeal is that inasmuch as S. 23-A of the Foreign Exchange Regulation Act deems the restriction

imposed under S. 8 of the Act as one imposed under S. 19 of the Sea Customs Act, the provisions of the latter Act can be incorporated into the

Foreign Exchange Regulation Act only to the extent it is not in conflict with it. It is argued that as under S. 23 of the Foreign Exchange Regulation

Act, there is power in the magistrate to impose a fine and confiscate the illegally imported goods, a similar power is held to be vested in the

Collector of Customs under S. 167(8) of the Sea Customs Act will have the effect of transgressing on the area of the jurisdiction given to the

magistrate under the former section. Secondly, S. 23-A which incorporates in itself the provisions of the Sea Customs Act, being subject to an

important qualification, namely, without prejudice to the provisions of S. 23 of the Foreign Exchange Regulation Act, it would mean that the

Collector acting under the provisions of S. 167(8) of the Sea Customs Act, would not have these powers that are specifically given to the

Magistrate under S. 23 of the Foreign Exchange Regulation Act.

(10) The learned Judge has, in our opinion, rightly, rejected this contention. The words without prejudice to the provisions of S. 23 of the Act

occurring in S. 23-A can only mean in addition to. The meaning of the expression without prejudice given in Shorter Oxford Dictionary is: "Without

detriment to any existing right or claim, without detracting from one's own rights or claims".

(11) But Mr. Mohan Kumaramangalam contends that the expression without prejudice to in the section should be taken to mean without in any

way transgressing on the powers conferred upon the court under S. 23 of the Foreign Exchange Regulation Act. We are unable to accept such an

interpretation. As we pointed out at the beginning, disparate are the penalties imposed under S. 23 and S. 23-A of the Foreign Exchange Regulation

Act. The former is intended to deal with the offender as a criminal, who has transgressed the law and the latter imposes an administrative penalty

to make it unprofitable for the offender to commit the offence again and also to reimburse the State of its expenses in maintaining anti-smuggling

posts. In other words the nature of the penalty imposed under the two sections and the areas of their operations are different, though it might

happen that in the matter relating to goods both the Collector as well as the Magistrate are given powers to confiscate them.

(12) It is, however, argued on behalf of the appellant that if the Collector were to exercise the powers given to him under S. 167(8) of the Sea

Customs Act, to confiscate the illegally imported goods, such goods will not be available to the Magistrate subsequently, if he so minded, to

confiscate them on the offence being proved against the smuggler and that, therefore, S. 167(8) of the Sea Customs Act should be regarded as

inapplicable to such offences. The fact that the Collector had in exercise of his powers confiscated the goods cannot prevent the Magistrate from

passing an order of confiscation, technically speaking. The only consequence of the former order will be that the goods will not be available for

confiscation by the latter authority. During the course of the arguments this aspect of the matter was put in the form of an illustration; suppose a

person were to import volatile goods which before the Magistrate deals with the case, had completely evaporated. It cannot mean that the

provisions of S. 23 which empower a Magistrate to confiscate the goods have been contravened. The result of the evaporation of the substance

will be that the goods will not be available for confiscation. Similarly, where by virtue of the exercise of the concurrent administrative power

conferred on the Collector, the goods are confiscated, it would only mean that the goods will not be available for further confiscation; that cannot

mean that the powers of the Magistrate in that regard have been infringed. In our opinion, the words without prejudice to the provisions of S. 23

occurring in S. 23-A of the Foreign Exchange Regulation Act can only mean that a contravention of the notification made under S. 8 and sub-

sections (1) and (2), would expose the offender to two types of actions by the respective authorities, one by way of criminal prosecution and the

other under S. 19 of the Sea Customs Act. The remedies thus available to the State are concurrent.

(13) It has been contended on behalf of the appellant that if really the Legislature had intended that this should be the effect of the legislation, it

would have used more appropriate words in S. 23-A like those contained in S. 3(2) and (5) of the Imports and Exports (Control) Act, 1947. That

need not necessarily be so. The mere fact that S. 23-A does not repeat the same language as contained in S. 5 of the Imports and Exports

(Control) Act cannot mean that a different result was intended.

(14) This conclusion of ours is supported by the fact that a contrary one would lead to considerable inconvenience and difficulty. As pointed out in

a recent judgment of the Supreme Court in Pukhraj Vs. D.R. Kohli, the provisions of the Sea Customs Act apply unless it were shown that the

goods had not been imported contrary to the statutory prohibition or restrictions. It will then be the duty of the Collector to proceed forthwith

under the provisions of that section. A criminal prosecution the other hand might take comparatively a longer time. To hold that the administrative

action should not be taken till the authorities decide not to take any action under S. 23, will undoubtedly cause in convenience. In the present case,

the grievance of the appellant is about the personal penalty, and not against the confiscation of the goods. Penalty itself is not a fine as

contemplated by S. 23. We are, therefore, in agreement with the learned Judge that the Collector had jurisdiction in justifiable cases to impose a

personal penalty in cases arising under Ss. 23 and 23-A of the Foreign Exchange Regulation Act. The appeal fails and is dismissed with costs.

(15) Appeal dismissed.