(1971) 09 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No. 4733 of 1969

Markos Aranaoutakis APPELLANT

Vs

The Collector of Customs and Central Excise RESPONDENT

Date of Decision : 24-09-1971

Acts Referred:
Customs Act, 1962 — Section 115(2)

Citation : AIR 1972 Ker 192 : (1971) KLJ 826

Hon'ble Judges : P. Narayana Pillai, J

Bench : Single Bench

Advocate : V.K. Hamsa and K. Sikhivahanan, for the Appellant; George Vadekkel, for the Respondent

Judgement

P. Narayana Pillai, J.—This petition is directed against an order, copy of which is Ext. P-5, passed by the respondent, the Collector of Customs and Central Excise, Cochin, the operative portion of which reads:

"I confiscate absolutely the U.S.A. Currency amounting to Dollars 2418-00 u/s 121 of the Customs Act, 1962, as proceeds from the sale of 39 cases of whisky smuggled from the S. T. Speedway; I also confiscate absolutely the U.S. A. currency amounting to Dollars 930.00 wider Section 111(f) of the Customs Act, 1962. I impose a personal penalty of Rs. 75,000/- (Rupees seventy five thousand only) on Mr. Markos Aranoutakis, Master on Board S. T. Speedway and a penalty of Rs. 50,000 (Rupees fifty thousand only) on Mr. Karantonis Antonios, 2nd officer on Board S. T. Speedway u/s 112 of the Customs Act, 1962.

I also order that the import duty amounting to Rs. 22,815.00 leviable on 39 cases of whisky be paid by the Master of the vessel, Mr. Makcos Aranoutakis.

I also confiscate the vessel S. T. Speedway u/s 115(2) of the Customs Act 1962, but give the owners of the vessel, an option to redeem the vessel on payment of a fine of Rs. 70,000 (Rupees seventy thousand only) in lieu of confiscation, within one month or such extended period as the undersigned may allow on sufficient cause being shown."

2. The petitioner is the captain of the vessel, S. T. Speedway, under Liberian colours owned by M/s. Gothic Shipping Co., Panama, South America. The vessel arrived at the Cochin Port on September 5, 1969. On arrival the petitioner tendered the store list including the private property list. According to the store list the vessel held a stock of 456 qt. bottles of whisky. The currencies in the possession of the officers and crew were declared in the private property list. During the vessel''s stay in the port, three cases, 36 qt. bottles, of whisky were supplied to the vessel by M/s. D. C. Johar and Sons at the request of the petitioner. They were also kept in the bonded locker on board the vessel. When the vessel departed from the port on September 7, 1969, by 12 noon it had a stock of 492 qt. bottles of whisky.

3. As the refrigerated room in the vessel had to be repaired the vessel anchored off the Fair Way Buoy at the outer roads within the limits of the Cochin Port. At 4 P.M. the next day, i.e., September 8, a party of customs officers went on board the vessel on getting information that 39 cases of whisky had been landed from the vessel by smugglers on payment of U. S. Dollars. On checking the contents of the bonded locker of the vessel in the presence of the petitioner and the second officer in the ship it was detected that there was shortage of 39 cases or 468 qt. bottles of whisky.

4. Statements were then taken from the petitioner and the second officer. The second officer confessed having sold 39 cases of whisky to five persons who came on board in boats by 2 o''clock on the night between the 7th and 8th September, 1969 for 2418 U. S, Dollars. This amount as well as 930 U. S. Dollars which he had with him, totalling 3348 U. S. Dollars, were placed by him inside an envelope underneath the bed of the petitioner in his cabin. After confessing all that he pulled out the envelope from underneath the bed of the petitioner. As regards 938 U. S. Dollars which belonged to the second officer it had not been declared in the private property list filed at Cochin on arrival of the vessel. The petitioner in his statement denied having had any knowledge about the possession of the 938 U. S. Dollars by the second officer and the sale of the 39 cases of whisky by the second officer. But he admitted that he was responsible for the custody and distribution of the stock to the crew on board. After giving opportunity to all concerned as to why action should not be taken and getting their explanations the respondent passed Ext. P-5 order.

5. As regards the confiscation of the 3348 U. S. Dollars and the imposition of penalty of Rs. 50,000/- on the second officer the same is not challenged in this proceeding. What is questioned here is only the imposition of the penalty of Rs. 75,000/- on the petitioner and the imposition of the import duty of Rupees 22,815/- on the 39 cases of whisky and the confiscation of the vessel.

6. It is by now well settled by the decisions of the Supreme Court that the fundamental principles of criminal Jurisprudence and or natural justice apply to

proceedings under the Sea Customs Act. In Amba Lal v. Union of India AIR 1861 SC 264 the Supreme Court said:

"This Court has held that a customs officer is not a judicial tribunal and that a proceeding before him is not a prosecution. But it cannot be denied that relevant provisions of the Sea Customs Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have been committed by a person under the said Acts summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect o? which the offence is committed and impose penalty on the person concerned, see Sections 168 and 171-A of the Sea Customs Act and Sections 5 and 7 of the Land Customs Act. To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence."

7. The evidence to connect the petitioner with the offences is purely circumstantial. The first circumstance relied upon is the admission of the second officer that he had not disclosed that he was in possession of 930 XI. S. Dollars and that he had sold without the knowledge of the petitioner 39 cases of whisky. His statement has to be taken as a whole. It cannot be dissected. Read as a whole it shows that the petitioner had no knowledge of the possession of 930 U. S. Dollars by the second officer and the sale by him of 39 cases of whisky from the bonded store of the ship.

8. Another circumstance relied upon is that 3348 U. S. Dollars were recovered from underneath the bed o? the petitioner in the cabin. Here again the statements show that it was placed there by the second officer without the knowledge of the petitioner. The cabin from where it was recovered was always being kept open. It was not locked and all persons inside the vessel had free access to it. It was not being used exclusively by the petitioner. In such circumstances the recovery of 3348 U. S. Dollars from underneath the bed of the petitioner in the cabin loses all importance and it cannot be used as a circumstance to connect him with the offence.

9. The next circumstance relied upon is that the petitioner had admitted that he was responsible for the custody and distribution of the stock to the crew on board. That does not necessarily show that the sale of whisky could not have been made without his knowledge. That circumstance is perfectly consistent with his innocence as well. There were several persons working under him in the vessel. The second officer was in charge of the bonded store. He joined the vessel as second officer only about three months prior to arrival of the vessel at Cochin. Before he was put in charge of the bonded store another person was in

charge of the same. He was signed off by the petitioner as it was found that he had unauthorisedly sold articles inside the vessel. It was thereafter that the present second officer was put in charge of the bonded store. These statements when read together show that the petitioner had really taken all precautions against unauthorised sale of articles in the bonded store and that it was in spite of that that the 39 cases of whisky happened to be sold.

There is nothing in the statements to show that he was in any way negligent.

10. The last circumstance relied upon was that there was no explanation on the part of the petitioner when questioned as to why a further quantity of whisky was purchased at Cochin when there was already sufficient quantity inside the bonded store for consumption on board. In Ext. P-5 in the concluding portion of paragraph 28 it is said:

"The Master had no explanation to offer when asked specifically why a further quantity was purchased at Cochin when he had sufficient quantity for consumption on board."

But a previous portion of the same order shows that he had really an explanation. Paragraph 23 of Ext. P-5 reads:

"When it was pointed out to the Master that the quantity of whisky taken on board was far in excess of their requirements, during the last several trips, he replied that they used to exchange whisky for other provisions from other Greek ships at Kharge Island."

There was sufficient explanation for purchase of additional quantity at Cochin when then; was enough quantity of whisky on board the vessel. It was a clear case of misreading. The circumstances relied upon in Ext. P-5 are not sufficient to connect the petitioner with the offence,

11. It is u/s 115(2) of the Customs Act, 1962, that the confiscation has been ordered. For that provision to apply the conveyance should have been used as "a means of transport in the smuggling of any goods or in the carriage of any smuggled goods". The articles inside the bonded store were imported into the country in the vessel. When they remained inside the vessel they were u/s 86 of the Act not liable to pay duty. Section 86 provides that stores imported in a vessel without payment of duly can remain on board in the vessel while in India and stores means goods for use in the vessel. Therefore when the 39 cases of whisky remained in the bonded store of the vessel they were not liable for payment of duty. They became liable for payment of duly only when they got out of the ship. They became smuggled only when they were taken out of the vessel. The vessel was not used as a means of transport in the smuggling of goods or in the carriage of smuggled goods.

12. Goods in the bonded store of a vessel may go out of the vessel in several ways. They may be stolen from the ship. If the vessel happens to sink they may go down into the sea and from there they may be picked up by divers who may

appropriate the same for themselves. They may get decayed and thereafter be thrown over board. When so done goods not decayed may by mistake be thrown out along with decayed goods and goods not decayed so thrown out may be appropriated by those who happen to get at them. The officers in the vessel themselves may sometimes empty whisky bottles in the sea. If articles happen to go out of the vessel in any of those or similar other manners the Master of the ship is not liable to nay the duty on the articles and the vessel is not liable to be confiscated. The manner in which the 39 cases of whisky were taken out of the vessel was not different, They were practically stolen from it with the active connivance of the second officer and without the knowledge of the petitioner.

13. It was open to the respondent to have levied import duty on the second officer who admittedly had effected the sale. But that was not done.

14. There is no evidence either to connect the petitioner with the offence or to justify confiscation of the vessel. Ext. P-5 order in that regard exhibits clear ignorance and disregard of law. It also offends the sense of justice and fair play. There are no valid grounds to support it.

15. Hence Ext. P-5 order to the extent it is impeached in this petition is quashed. It shall stand unaffected in all other respects. There is no order as to costs.