(1967) 04 MAD CK 0042

In the Madras High Court

M.K. Mohamed Hussain and Another — APPELLANT

Vs

The Central Board of Excise and Customs and Another — RESPONDENT

Date of Decision : 26-04-1967

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 23
Sea Customs Act, 1878 — Section 167(81)

Citation : (1968) 1 MLJ 211

Hon'ble Judges : T. Venkatadri, J;T. Venakatadri, J

Bench : Division Bench

Judgement

T. Venakatadri, J.—The writ petitioners are brothers and they have filed these petitions to quash the orders of the Central Board of Excise and Customs, New Delhi, confirming

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rule that the finding of a criminal Court is conclusive, in every sense, upon administrative authority. If the finding is purely a technical acquittal, the administrative authority may conceivably punish, on the same facts. Bearing these principles, if we examine1 the facts of the present case, we see that he petitioner in W.P. No. 2121 of 1965 was discharged and he petitioner in W.P. No. 2437 of 1965 was acquitted as there was only a strong suspicion amounting to almost a moral certainty. Further in regard to Section 167(81) of the Sea Customs Act, it was set aside on the ground that, when the authorities decided on the particular facts to prosecute the offender, the conviction could only be u/s 23 of the Foreign Exchange Regulation Act and could not be under the general provision of Section 167(81) of the Sea Customs Act. The conviction of the petitioner was, therefore, set aside u/s 167(81) on a technical ground.

3. In regard to the contention of learned Counsel for the petitioners that there cannot be a second punishment for the same offence, learned Counsel for the department cited Rangarajan v. State of Madras (1967) M.L.J. 136 : (1967) 1 M.L.J. 146, where Kailasam, J. has observed that a departmental enquiry against

a Government servant can be initiated On the basis of certain facts, even though the Government servant has been acquitted in a criminal prosecution on the same facts. The learned Judge has also observed:

No doubt it would be a strange predicament, if, in spite of a trial by a criminal Court on the same facts, the domestic tribunal were to come to a different conclusion on the same facts. But there cannot be a complete prohibition against the tribunal coming to a different conclusion, for it is well known that the tribunal is not bound by several rules that are binding on appreciation of evidence by a criminal Court.

4. Learned Counsel for the department contends that the proceedings before the Department and proceedings before the criminal Court are two independent proceedings and that any decision rendered by the criminal Court cannot be taken into consideration in the departmental proceedings In that connection, he cites the decision of the Supreme Court in Thomas Dana Vs. The State of Punjab, , where their Lordships have brought out the distinction between the proceeding before Revenue authorities by way of enforcing the preventive and penal provisions of the Schedule to Section 167 and a criminal trial before a Magistrate with a view to punishing offenders under the provisions of the same section. It is observed in Leo Roy Frey Vs. The Superintendent, District Jail, Amritsar and Another, , that u/s 186, Sea Customs Act, the award of any confiscation, penalty or increased rate of duty under that Act by an officer of Customs does not prevent the infliction of any punishment to which the person affected thereby is liable Under any other law. It is also observed in Maqbool Hussain Vs. The State of Bombay, , that in order that the protection of Article 20(2) of the Constitution may be invoked by a citizen there must have been prosecution and punishment in respect of the same offence before a Court of law or a tribunal required by law to decide the matters in controversy judicially on evidence and not before a departmental tribunal which entertains a departmental or administrative enquiry. Thus the position herein seems to be clear that the proceedings before the customs authorities are independent of the proceedings before the criminal Court, and the adjudication of the one will not be binding on the other.

5. In regard to the contention of learned Counsel for the petitioners that the charge u/s 167(81) would cover the same field as charge u/s 167(8) of the Sea Customs Act and that the petitioner in W.P. No. 2437 of 1965 having been acquitted of the criminal charge, the order levying penalty is illegal, learned Counsel for the respondents relied on the decision of Jagadisan,. J. in Krishna Chetty v. The Collector of Madras W.P. No. 461 of 1959 where it is observed:

On a plain reading of the two provisions of, the statute, it seems to me that the two provisions do cover the same field. It is enough to Jioint out that while Section 167(81) prescribes in terms knowledge or intention, as a necessary or essential ingredient for the establishment of the offence, Section 167(8) does not refer to any knowledge or intention or even mens rea at all...there is nothing inconsistent between the order of the learned Magistrate and the order of the Collector of Customs as the ingredients and requirements of Section 167(8) are not the same as those of Section 167(81) of the Act.

6. It is lastly contended that, once the High Court has acquitted the petitioner giving him the benefit of doubt, the Central Board of Revenue ought to have set aside the order of the Collector of Central Excise levying penalty. The High Court set aside the conviction of the petitioner u/s 23 of the Foreign Exchange Regulation Act. The department has proceeded against the petitioner u/s 167(8) of the Sea Customs Act. As pointed out in Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others, , there is a distinction between a proceeding u/s 23 of the Foreign Exchange Regulation Act and a proceeding u/s 167(8) of the Sea Customs Act. Their Lordships have observed, in that case, that Section 23 of the Foreign Exchange Regulation Act is a proceeding against the offender, and is applicable to the person who contravenes any of the provisions of that Act, whereas Section 167(8) of the Sea Customs Act provides for two kinds of penalties when contraband goods are imported into or exported from India, one is a confiscation of the goods and the other is a penalty on the person concerned. Therefore merely because the petitioners were either discharged or acquitted by the criminal Court, it cannot be said that the customs authorities have no jurisdiction to levy the penalty on the petitioners u/s 167(8) of the Sea Customs Act. Apart from that, even assuming that the petitioners have not committed any offence under the Foreign Exchange Regulation Act, because the contraband goods have not crossed the frontiers of India, still as observed by the Supreme Court in Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal, , even an attempt to take out the currency notes outside India is an offence punishable under the Sea Customs Act, as is clear from the provisions of Section 167(8). In the present case, the petitioners adopted a novel method of illegally exporting Indian currency in postal covers to their address in Ceylon and themselves going to Ceylon to receive the same. Upon the facts, I do not see any reason to interfere with the finding arrived at by the Customs authorities, in imposing penalty on them. There is no error of law or of jurisdiction. The writ petitions are dismissed but without costs.

