(1962) 06 GAU CK 0001

In the Gauhati High Court

Case No : Criminal Revision Case No. 19 of 1961

Namichand Jain — APPELLANT

Vs

The Superintendent of Central Excise and Land Customs, Silchar (Cachar) and another — RESPONDENT

Date of Decision : 12-06-1962

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) — Section 96
Imports and Exports (Control) Act, 1947 — Section 2, 2(c), 5, 6

Citation : (1962) 06 GAU CK 0001

Hon'ble Judges : T.N.R. Tirumalpad, J.C.

Bench : Single Bench

Advocate : R.K. Manisana Singh, for the Appellant; B.B. Sen and N. Ibotombi Singh, Public Prosecutor for Respondents 1 and 2, for the Respondent

Judgement

T.N.R. Tirumalpad, J.C.

1. This is a revision petition against the judgment of the Sessions Judge in Criminal Appeal No. 133 of 1960, by which he dismissed the appeal filed by the petitioner herein and confirmed his conviction u/s 5 of the Imports and Exports Control Act and the sentence of six months'' R.I. passed against him in criminal Case No. 13 of 1958 by the Additional District Magistrate, Manipur.

2. The petitioner was travelling by bus on 11-3-1957 from Imphal to Dimapur. When the bus reached Mao on the way, P.W. 4 Shri P. Bhattacharjee, Sepoy of the Land Customs and P.W. 5 the Assistant Sub-Inspector of Police searched the luggage of the petitioner and P.W. 6 seized therefrom 96 gross lead pencils made in Japan and he prepared the seizure list Ext. A/10. The seizure was stated to be made under S. 96 (?) Cr.P.C. Ext. A/10 shows that the seizure was only of the pencils, but it now turns out that other items like bedding, trunk, blanket, wearing apparel etc. of the petitioner were also seized, for which no seizure list was prepared.

It appears that on that date, the Preventive officer of Land Customs posted at Mao who had the power to seize the goods was out of Station and that P.W. 4, Shri Bhattacharjee, who was only a sepoy was not authorised to seize the articles. Hence, they were caused to be seized by the Assistant Sub-Inspector (P.W. 6) u/s 550 Cr.P.C.

Subsequently, by the order of the Inspector-General of Police dated 25-5-1957, the seized articles were directed to be handed over to the Customs Authorities and P.W. 1, the Deputy Superintendent of Central Excise formally seized them and he made the seizure report Ext. A/3 on 12-6-1957, From Ext. A/3, we find it stated that as the Preventive officer of Land Customs at Mao was out of Station on 11-3-1957, the goods were formally caused to be seized by the Police as suspicious property.

3. An enquiry by the Land Customs Department followed and the Collector of Central Excise and Land customs passed the order Ext. A/7, confiscated the pencils and also the other articles seized, and imposed a penalty of Rs. 1,000/- on 20-3-1958. Subsequently, on 14-11-1958, P.W. 5, the Superintendent of Central Excise and Land Customs, Silchar filed a complaint for the prosecution of the petitioner u/s 7(3) of the Land Customs Act, 1924, section 5 of the Imports and Exports (Control) Act, 1947 and section 167(81) of the Sea Customs Act on the ground that the penalty imposed on the petitioner was inadequate. The learned A.D.M., framed charges u/s 167(81) of the Sea Customs Act and section 5 of the Imports and Exports Control Act, 1947, but did not frame any charge u/s 7(3) of the Land Customs Act. In the course of the trial, he dropped the charge u/s 167(81) of the Sea Customs Act on the ground that P.W. 5 was not competent to tile the complaint. The A.D.M. convicted the petitioner u/s 5 of the Imports and Exports Control Act and sentenced him to six months'' R.I. and a the of Rs. 500/-. The said conviction was confirmed by the Sessions Judge in appeal, but while confirming the sentence of six months'' R.I., the Sessions Judge set aside the sentence of fine.

4. Now in revision, the main question argued before me was that P.W. 5, the Superintendent of central Excise and Land Customs, Silchar, had no power to file the complaint and that the petitioner cannot be convicted on a complaint filed by him. This argument was repelled by both the lower Courts. But it was again strongly pressed before me and I find that there is considerable force in the said argument.

5. Section 6 of the Imports and Exports (Control) Act, before its amendment by Act IV of 1960, applies to the present case. Before its amendment, section 6 was as follows:

Section 6 ? Cognizance of offences ? No Court shall take cognizance of any offence punishable u/s 5 except upon complaint in writing made by a Customs-collector or by an Officer of Customs authorised in writing in this behalf by a Customs-collector, and no Court inferior to that of a Presidency Magistrate or a

Magistrate of the first Class shall try any such offence.

Thus, for a Court to take cognizance of the offence, the complaint has to be made by a Customs-collector or by an Officer of Customs authorised in writing by a Customs-collector. Shri S.K. Dey (P.W. 5), as a Superintendent of Central Excise and Land Customs, Silchar, was certainly an Officer of Customs, but he was not authorised by a Customs-collector to file the complaint. What was sought to be shown, however, in the lower Courts was that the Superintendent of Central Excise and Land Customs, Silchar, would come within the meaning of a Customs-collector referred to in section 6. Both the lower Courts accepted the said argument.

6. Customs-collector'' is defined in section 2 or the Imports and Exports (Control) Act, 1947 as meaning a Customs-collector as defined in the Sea Customs Act or a Collector of Land Customs appointed under the Land Customs Act, 1924. Thus, the prosecution had to prove that this Superintendent of Central Excise and Land customs will come within the definition of either a customs-collector as defined in the Sea Customs Act or a Collector of Land Customs appointed under the Land Customs Act, 1924. It cannot be disputed that the Superintendent of Central Excise and Land Customs is an Officer of Customs within the meaning of section 2(c) of the Imports and Exports (Control) Act. He is also a Land Customs officer appointed under the Land Customs Act, 1924. But it is not enough if he is an Officer of Customs or a Land Customs Officer. It has to be shown that he is either a Customs-collector as defined in the Sea Customs Act or a Collector of Land Customs appointed under the Land Customs Act, 1924. For that we shall have to see the definition of Customs-collector in the Sea customs Act or Collector of land Customs under the Land customs Act.

7. We shall first see the definition in the sea customs Act. Section 3(c) of the Sea Customs Act defines a Customs-collector.

''Customs-collector'' includes every officer of Customs for the time being in separate charge of a customs-house or duly authorised to perform all, or any special, duties of an officer so in charge.

What is meant by ''custom-house'' is not defined in the Sea Customs Act, but section 11(f) of the Sea customs Act gives the power to the Chief Customs Authority by a notification in the official gazette to declare what shall, for the purpose of the said Act, be deemed to be a custom-house, and the limits thereof. Manipur is stated to be within the Silchar Circle and it is claimed that Silchar Circle is a custom-house and that the Superintendent of Central Excise and Land Customs, Silchar is in-charge of the said custom-house. When I called upon the prosecution to produce the notification by which it has been declared as a custom-house, I was informed that there was no such notification. Hence it follows that the Superintendent of Central Excise, Silchar, and Land Customs, cannot be an officer of Customs in charge of a custom-house.

But it was argued that even though he may not be an Officer in separate charge of customs-house, he is an Officer of Customs duly authorised to perform all or any special duties of an Officer so in charge within the meaning of the latter part of the definition in section 3(c). One fails to understand how he could be duly authorised to perform all or any special duties of an Officer so in charge unless there is a notification declaring Silchar circle to be a custom-house.

8. I find that the Additional District Magistrate, has relied on a decision of the Bombay High Court A.J. Butler Vs. Mohanlal and Co. and Others, . That was a case where the Superintendent of Central Excise and land Customs (Preventive Branch) Baroda, applied for a search warrant to a Magistrate u/s 172 of the sea Customs Act and search warrant was issued and executed. But u/s 172 of the Sea Customs Act, it is only on an application by a Customs-collector that a search warrant can be issued.

9. The question, therefore, was whether the Superintendent of Central Excise and Land Customs (Preventive Branch) Baroda, was a Customs-collector within the meaning of that section. It would appear from the said decision that the Superintendent of Central Excise and Land Customs (Preventive Branch) Baroda was duly authorised to exercise the powers conferred and performed the duties imposed on a Customs-collector under various sections or the Sea Customs Act, by the Notification Ho. 67-Cus dated 23-12-1952. Thus, since that Officer was duly authorised to perform some of the duties of a Customs-collector, their Lordships came to the conclusion in that case that the said Officer would come within the definition of Customs-collector u/s 3(c) of the Sea Customs Act, and hence he was entitled u/s 172 of the said Act to apply for a search warrant.

I have no doubt that if there was no such notification, the Bombay High Court would have come to a different conclusion.

9. But no such notification in respect of the Superintendents of Central Excise and Land Customs in the Shillong Circle within which is included Silchar and Manipur, by which the Superintendents are allowed to exercise any of the powers of a Customs-collector, has been brought to my notice. As far as Shillong Circle is concerned, the two notifications brought to my notice are 1) notification No. 170 - Cus dated 18-11-1950 and 2) notification No. 141-Cus of the same date. These notifications appoint Officers of Central Excise of the Shillong Collectorate working as Preventive Officers on the Indo-Burma border to be officers of Customs and to exercise the powers conferred and duties imposed on such Officers under the Sea Customs Act. It is by these notifications that the Superintendent of Central Excise became an Officer of Customs under the Sea Customs Act.

The said two notifications do not confer any powers or impose any duties of a Customs-collector on the Officers of Central Excise or in particular on the Superintendent of Central Excise. Thus, the powers of a Superintendent of Central Excise in the Shillong Circle are quite different from the powers given to the Superintendent of Central Excise, Baroda. Unless, the prosecution is able to show that the Superintendent of Central Excise and Land customs in the Shillong Circle have been given any of the powers of a Customs-collector, they cannot come within the definition of Customs-collector u/s 3(c) or the Sea Customs Act. The Bombay decision has no application to the present case.

10. Now we shall see whether P.W. 5, who is a superintendent of Land Customs will come within the definition of a Collector of Land Customs. A collector of Land Customs is appointed u/s 3(1) and Land Customs Officers are appointed u/s 3(2) of the Land Customs Act. The Superintendent of Land Customs is certainly a Land Customs Officer appointed u/s 3(2). But, he has not been appointed a Collector of Land Customs u/s 3(1) of the Land Customs Act. Thus, he cannot be called a Collector of Land Customs. The learned Sessions Judge, I should say, was a little confused in dealing with the sections of the Sea Customs Act and the Land Customs Act.

He said that u/s 9(2)(d) of the Land customs Act, references to a Custom-house are references to a Land Customs Station and that it was not disputed that Silchar was a Land Customs Station and hence the Superintendent of Central Excise and Land Customs, Silchar, was therefore a Customs-collector as contemplated u/s 3(c) of the Sea Customs Act. He further found that the Superintendent was performing the duties prescribed u/s 5 of the Land Customs Act and that he was, thus, a Land Customs Officer, in charge of a Land customs'' Station and that he would therefore come under the latter part of the definition of Customs-collector contained u/s 3(c) of the Sea Customs Act.

11. The learned Sessions Judge was wrong in thus mixing up the sections in the two enactments, namely, the Sea Customs Act and the Land Customs Act. As already pointed out section 2(a) of the Imports and Exports (Control) Act, which defines a Customs-collector provides that he must either be a Customs-collector as defined in the Sea Customs Act or a Collector of Land Customs appointed under the Land Customs Act in order to decide whether he is a Customs-collector as defined in the Sea Customs Act, the Court can have reference only to the sections III the Sea Customs Act. In order to decide whether he is a Collector of Land Customs under the Land Customs Act, the Court has to refer to the sections of the Land Customs Act. The sections in the two enactments should not be mixed up for that purpose. I have already shown by a reference to the sections of the Sea Customs Act and the notifications issued thereunder that P.W. 5 is not a customs-collector as defined in section 3(c) of the Sea Customs Act.

12. In order to decide whether he is a Collector of Land Customs appointed under the Land Customs Act, we should refer to the sections of the Land Customs Act. It is true that u/s 9 of the Land Customs Act certain sections of the Sea Customs Act have been made applicable to the Land Customs Act with certain alterations as referred to in section 9(2) of the said Act. Section 9(2)(d) provides that references to a Customs-house shall be deemed to be references to a Land Station. The Sessions Judge, however, failed to sea that neither section 3 nor section 11 of the Sea Customs Act have been made applicable to the Land

Customs Act. Hence, in deciding whether P.W. 5 will be a Customs-collector within the meaning of section 3(c) read with section 11 of the sea Customs Act, the learned Sessions Judge was wrong in referring to section 9(2)(d) of the Land Customs Act and equating a custom-house to a Land Station.

The provisions of the Land Customs Act, including the provisions of the Sea Customs Act made applicable to the Land Customs Act can be looked into only to decide whether P.W. 5, Shri S.K. Dey will be a Collector of Lana Customs, appointed under the Land Customs Act. It is not claimed that Shri S.K. Dey was appointed as Collector of Land Customs u/s 3(1) of the Land Customs Act. He was only appointed as a Superintendent of Land Customs or in other words as a Land Customs Officer u/s 3(2) of the Land Customs Act. Thus, it is clear that he is not a Collector of Land Customs appointed under the Land Customs Act.

13. It follows that the Superintendent of Central Excise and Land Customs, Slichar is not a Customs-collector as defined u/s 2(a) of the imports and Ex-ports (Control) Act. He had therefore no right to tile a complaint u/s 6 of the said Act. It was wrong on the part of the Additional District Magistrate to have taken cognizance of the offence on the written complaint of Shri S.K. Dey. As section 5 of the Imports and Exports (Control) Act, has specifically provided that no court shall take cognizance of any offence punishable u/s 5 except upon complaint in writing made by a Customs-collector or by an officer of Customs authorised in writing in that behalf by a Customs-collector and as Shri S.K. Dey was not a Customs-collector nor an Officer of Customs, authorised in writing by a Customs-collector, the Additional District Magistrate had no jurisdiction to take cognizance of this offence. The entire proceedings before him were materially irregular and the conviction of the petitioner, by the Additional District Magistrate has, therefore, to be set aside.

14. It is not necessary to enter into the merits of the case and to deal with the other objections raised by the petitioner. The Revision petition is allowed and the conviction and sentence of the petitioner u/s 5 of the Imports and Exports (Control) Act, are set aside.

15. Before I part with this case, it is necessary for me to say a few words regarding the manner in when this case arose. I have already referred to Ext. A/3, the seizure report by P.W. 1 Deputy Superintendent, Central Excise and Land Customs, Imphal, in which he has stated that as the Preventive Officer of Land Customs in Mao was cut of Station, the goods were formally got seized as suspicious property by the Assistant Sub-Inspector, u/s 550 Cr.P.C. When we turned to Ext. A/3, the notice to show cause issued by the Assistant collector, Central Excise, to the petitioner, it will be seen that the goods were found in the possession of the petitioner by the Sepoy Shri Bhattacharjee (P.W. 4). Thus, it was Shri Bhattacharjee, the Sepoy, who caused the A.S.I., to seize the goods u/s 550 Cr.P.C., evidently because, the peon himself had no power of seizure under the provisions of the Sea Customs or Land Customs Acts. Section 550 Cr.P.C. gives the Police the power of seizure of any property which may be alleged or

suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence. Neither P.W. 6, the A.S.I., who seized the property nor P.W. 4 Bhattacharjee stated that the property was alleged or suspected to be stolen. Nor was there any evidence that any complaint connected with stealing or receiving such property had been made or that any enquiry connected with such stealing or receiving was in progress. Thus, this was a clear case where P.W. 4 Bhattacharjee caused the A.S.I., to seize the property on the ground that it was found under circumstances which created suspicion of the commission of an offence. The offence in this case can only be an offence under the Sea Customs Act, the Land Customs Act or the Imports and Exports (Control) Act.

16. When we turn to the seizure list Ext. A/10, made by the A.S.I., (P.W. 6) u/s 550 Cr.P.C. we find that only the Japanese made pencils of the quantity of 96 gross were seized by the A.S.I. If that was so, one is unable to understand how items 2 to 11 in Ext. A/6 consisting of an old hold-all, steel trunk, blanket and other wearing apparel of the petitioner were caused to be detained by this A.S.I., or handed over subsequently to the Customs Authorities. It is the duty of a police officer when seizing property to prepare the seizure list in respect of all the property seized. He cannot detain any property without including the same in the seizure list. This is only a sample of the manner in which citizens are harassed by the Police and I am sorry to say that the Customs sepoy, P.W. 4 has also joined in such Harassment As early as 8-6-1957, the petitioner had submitted the petition Ext. A/2 to P.W. 1 the Deputy Superintendent of Central Excise stating that even his clothing, bedding and trunk had been seized by the Police, even though no receipt was given to him by P.W. 6 for the seizure of such bedding, trunk and clothing. I cannot understand how P.W. 6 could have seized items 2 to 11 without including them in the seizure list and how he could hand them over to the Customs Authorities when there was nothing to show from the seizure list Ext. A/10, prepared by him that he had seized the said articles. Such conduct on the part of the Police Officer P.W. 6 has to be condemned.

17. Again, when a Police Officer seized property u/s 550 Cr.P.C. it is his duty to report the matter forthwith to a Magistrate u/s 523 Cr.P.C. and the disposal of such property has to be in accordance with the order of the Magistrate. It is clear from the records in this case that the seizure of these articles was not reported to a Magistrate and no order of a Magistrate was obtained regarding their disposal. Ext. A/3 shows that the articles were handed over to the Customs Authorities on the orders of the Inspector-General of Police. When the articles are seized by the Police u/s 550, it is only a Magistrate who can pass orders regarding their disposal and the I.G.P. had no power to order their disposal. I am aware of the provision in section 180 of the Sea Customs Act, which is as follows:

180. Procedure in respect of things seized on suspicion ? When any things liable to confiscation under this Act are seized by any Police-officer on suspicion that they have been stolen, he may carry them to any police-station or Court at which

a complaint connected with the stealing or receiving of such things has been made, or an enquiry connected with such stealing or receiving is in progress, and there detain such things until the dismissal of such complaint or the conclusion of such enquiry or of any trial thence resulting.

In every such case the Police-officer seizing the things shall send written notice of their seizure and detention to the nearest customs-house; and immediately after the dismissal of the complaint or the conclusion of the enquiry or trial, he shall cause such things to be conveyed to, and deposited at, the nearest customs-house, to be there proceeded against according to law.

It will be seen from a reading of the said section that it will not apply to a case of goods seized u/s 550 Cr.P.C. on suspicion of the commission of any offence, but only when any things liable to confiscation under the Sea Customs Act are seized by any Police Officer on suspicion that they have been stolen. I have pointed out that the articles were not seized on suspicion that they were stolen, but on suspicion of the commission of an offence under the Customs law. In such a case, section 180 of the Sea Customs Act will not apply and the articles can be disposed of only by the Magistrate to whom it is the duty of the Police Officer who seized them to report the seizure forthwith. In any case, when a Police Officer seized any articles u/s 550 Cr.P.C. he must report the seizure forthwith to a magistrate and even if section 180 of the Sea Customs Act applies to the case, he can only apply to the Magistrate to have the goods conveyed to the Customs Authorities. Section 180 of the Sea Customs Act directs a Police Officer to cause such things to be conveyed to the nearest Customs-house and he can cause them to be so conveyed only by applying to the Magistrate for it, by bringing section 180 of the Sea Customs Act to the notice of the Magistrate.

It is my duty to say that the manner in which the articles were seized and were got conveyed to the Customs Authorities on the orders of the I.G.P. has not been in accordance with law.

18. It is better that the Customs Authorities understand that they cannot make use of a Police Officer to seize articles u/s 550 Cr.P.C. on suspicion or commission of an offence under the Customs Law. The Customs Authorities have themselves been given vast powers of seizure under the Customs law and it is their duty to have such seizure made by Officers of Customs who have been empowered to do so. Police Officers can seize properties u/s 550 Cr.P.C. only in cases where they can investigate into the offences under the Cr.P.C. or under any other law. In the case of offences under the Customs law, police officers do not investigate, and Magistrates can take cognizance of such offences only on complaint by Officers of Customs. Officers of Customs and Officers of Police must themselves act within the law and cannot transgress it and cause harassment to the citizens. It is necessary that the irregularities committed by the Customs Authorities and the Police should be brought to their notice and for that purpose I have made these observations.

