
(1929) 03 BOM CK 0009

In the Bombay High Court

Case No : Appeal Under Letters Patent No. 39 of 1928

Narayan Manjanna Shanbhog

APPELLANT

Vs

The Scretory of State for India

RESPONDENT

Date of Decision : 22-03-1929

Acts Referred:

Sea Customs Act, 1878 — Section 167(3)

Citation : (1929) 31 BOMLR 1052

Hon'ble Judges : Kemp, J; Amberson Marten, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amberson Marten, Kt., C.J.—This is a Letters Patent Appeal from the judgment of Mr. Justice Murphy dismissing summarily an appeal from Mr. Sen, the District Judge of confirming the decision of the first ass Subordinate Judge at Karwar. The question arises about a Maehwa which was confiscated by the customs authorities under the Sea Customs Act, Appeals do not lie to the High Court from the decision of the customs authorities. This Court, speaking generally, has no jurisdiction in revenue matters having regard to the Government of India Act, But what we are entitled to see is that the principles of natural justice have been carried out and provided that is done by the revenue authorities, then this Court is no longer concerned with the actual decision arrived at by the authorities as to whether it is right or wrong.

2. This is a limited jurisdiction which is well known in certain branches of the civil law. For instance, as regards the expulsion of members of a club, where the decision rests under the rules with the members of the club, speaking generally the Court is only concerned to see that the principles of natural justice have been observed, including in particular that the member is given notice of the charge and given an opportunity of meeting it, One recent instance of this is the Salvation Army case in the Chancery Division where Mr. Justice Eve directed that the Council of the Salvation Army should give an opportunity to General Booth of

being heard in support of his case before the Council actually passed a particular resolution depriving the General of his position as head of the Army.

3. Naturally then when one comes to criminal or quasi-criminal cases involving penalties, that applies all the more strictly. Here the appellant was found guilty by the Collector of Salt Revenue and on his appeal to the Central Board of Revenue they held that the confiscation was valid, and that moreover the appellant had been given a fair opportunity of putting forward his case. Mr. Sen, the learned District Judge, arrived at the same conclusion in the subsequent civil suit which the appellant brought to set aside the order of confiscation and for damages for illegal confiscation of the Machwa.

4. Now the actual offence in question is that the appellant, who is an importer of matches, was a party to the following fraudulent scheme to defeat the customs. The Maehwa was loaded in Bombay, and there a false manifest was prepared purporting to show inter alia that twelve boxes of matches were taken on board. In fact they were not, and they did not exist. On the voyage to Shirali the Machwa, according to the finding of the revenue authorities, put into some Portuguese port presumably Goa and there took on board the twelve boxes of matches. Then when the Machwa arrived at her port of destination, viz., Shirali, she unloaded these matches as forming part of the false manifest that had been prepared in Bombay. She had no right to call at any foreign port coast-wise between Bombay and Shirali, That Marten Gm would be one offence. Still less had she any right to commit this fraud as regards her manifest and to take on board this cargo at a foreign port. The object was this. Bombay matches have to pay duty, Portuguese matches have not, Consequently, if a trader can buy matches in Goa for say Rs. X and sell them in British India for Rs. X + Y, Y representing the value of the duty, naturally be benefits to the extent of Rs. Y. This is the fraud that the customs authorities have found proved.

5. Now we come to the principles of natural justice. It is true in the first place that Kantappa, the importer and the part-owner of the Machwa, was never given an opportunity of knowing the charges brought against him. But he made two statements and if one turns to the second statement which he made on June 2, 1924, (Exhibit 13), it will be found there that the Superintendent of Salt Revenue put this question clearly to him :?

There ia evidence against you as regards importing into Shirali twelve cases of matches in the month of March. It is as follows : The said cases were not exported from Bombay, But they have been loaded at some place in Goa territory when the country craft was coming from Bombay, Therefore give your answer with reasons as to why a sentence should not be passed against you u/s 167, Clause 3(70), and Section 168 of the Sea Customs Act.

Kantappa thereupon gave his reasons which are recorded, But the charge against him was perfectly definite, and if one turns to Section 167, Article 70, of the Sea Customs Act, it will be found that it is an offence if any goods are found on board

of any coasting vessel without being entered in the manifest or cargo-book or both as the case may be of such vessel. In that case such goods are liable to confiscation and the Master of such vessel is liable to a penalty.

6. Now in this case, in the view we take, these particular goods, viz., the matches in fact loaded at Goa were found on board the coasting vessel without being entered in the manifest. What was entered in the manifest was a non-existent box of matches alleged to have been loaded in Bombay. It is contended that the goods were never found within the meaning of this section because the authorities gave permission for them to be unloaded. But that we think is really on the facts of the present case in the nature of a quibble.

7. Turning then to Section 168 of the Sea Customs Act we find that the confiscation of goods includes any package in which they are found and then there is this material clause :? "Every vessel, cart or other means of conveyance, and every horse or other animal, used in the removal of any goods liable to confiscation under this Act shall in like manner be liable to confiscation." It was accordingly urged here that the *Machwa* herself was not used in the removal of the goods but the offence only began when the vessel came into the port of Shirali and the goods were actually removed from the ship. But we think that this *Machwa* was used in the removal of the goods within the meaning of this particular clause. On the facts of this particular case one cannot say that the clause would only apply to some lighter or other boat which actually landed the matches from the *Machwa* herself at the port of Shirali.

8. That brings me to the next point that when the Collector of Salt Revenue made his formal order, he unfortunately tried to put it into legal form, and proceeded in the middle of his judgment to frame certain charges. So far as we can understand, though the facts are not quite fully before us, there never were any proceedings before the Collector himself at which the parties were present or at which they were told that he would then frame certain charges, As far as we are concerned the actual hearing, so to speak, at which the charges were made was before the Superintendent, Consequently, from a technical point of view the Collector could not frame charges in the middle of his judgment, Framing charges is a matter which has to be done before you proceed to hear the parties, and not when you are delivering judgment.

9. Further in framing those charges the Collector framed a charge against the *tindal* u/s 159 of the Sea Customs Act punishable u/s 167(63) and (70); and he also charged Kantappa with aiding and abetting this and thereby making himself liable to penalty u/s 167(3), Turning to these sections it will be found that Section 159 relates to touching at a foreign port, and as the *Machwa* touched at a foreign port the *tindal* ought to have appended to the manifest a declaration to that effect and ought to have subjoined thereto a true specification of the goods shipped at that port. As regards Article 63, that is an offence of touching at a foreign port or alternatively failing to declare the same in writing to the Customs Collector at the Customs port at which such vessel afterwards first arrives. Article

63 also provides that if any goods liable to export duty have been landed from or any goods liable to import duty have been shipped in such vessel at such foreign port the Master is liable to a further special penalty. But as is pointed out to us Article 63 does not provide for the, confiscation of goods.

10. However, when the matter came before the Central Board of Revenue they considered the matter further. They had a formal appeal in writing from Kantappa and they found that the goods were liable to confiscation u/s 167(70) and that consequently the Machwa became liable to confiscation u/s 166. They accordingly confirmed the order of confiscation.

11. Now it is urged that as in other proceedings the order against the tindai has been found to be open to objection on the ground that he was not given a fair opportunity of defending himself, therefore the charge against the present appellant should ipso facto fall to the ground. As already pointed out this so-called charge was & charge inserted in the judgment and not a charge which was made against the appellant in the proper way, viz., at the hearing before the judgment. Therefore that objection seems to us to fall to the ground. Further, as pointed out in *Mahadev Oanesh v. Secretary of State for India* I.L.R(1921). 46 Bom. 732 :?

A Customs Officer acting u/s 182 of the Sea Customs Act, 1878 should proceed according to general principles, which are not necessarily legal principles, and is not bound to adjudicate on confiscation and penalty as if the matter was proceeding in a Court of law according to the provisions of the Civil or Criminal Procedure Code.

Here we think that Kantappa was given before the Superintendent a fair notice of the charge made against him and that he had a fair opportunity of making his answer, which in point of fact he did. That being so, the customs authorities had jurisdiction to determine whether that charge was true or not and to arrive at a certain conclusion on it. That being so, so far as at any rate Kantappa is concerned, the jurisdiction of this Court is ousted.

12. Now we come to the last point raised before us and it is this; that the Machwa belonged to the joint Hindu family, and that the adjudication against Kantappa could not affect the interests of the remaining members of the family in the Machwa, But Kantappa, the importer, was a member of that family, he imported what I may call these fraudulent matches as a member of the Hindu joint family and he made use of the Hindu joint family Machwa for the purpose of his fraudulent scheme. Further it is conceded that the Collector was not obliged to have au the members of the Hindu joint family before him. They number apparently fifteen.

13. It is further urged that the Collector should not have made any order of confiscation without having the registered owner of the Machwa, viz,, Pandurang before him who was also the manager of e family. But this Machwa apparently is not registered under the Merchant Shipping Act but only registered under a local

Bombay Act. Further Pandurang knew at any rate that something was in the air because he was called upon to make certain statements before the customs authorities along with the tindal. The tindal was examined on April 2, 1924, Pandurang on April 1, and Kantappa who was the actual importer on the 26th. There is no suggestion that Pandurang ever wanted the customs authorities to hear him any further. It is urged that this particular charge was not put to Pandurang the registered owner. Under the circumstances of the case, and having regard to the fact that this is a Hindu joint family importing these matches presumably for the benefit of the Hindu joint family and using the family vessel for the purpose of this fraudulent scheme, we think that it was not essential that Pandurang the nominal registered owner of the Machwa should be formally charged before the authorities before they could confiscate the vessel.

14. I wish to add this word of warning that we are not laying it down that perfectly innocent ship-owners may suddenly find their vessel confiscated because some shipper of cargo has been defrauding the customs authorities. We have a case here where the fraudulent importer is also the part-owner of the vessel used for the purposes of the fraud. On the facts as found here by the customs authorities, we think they had jurisdiction to make the order of confiscation which they did and that accordingly the suit was rightly dismissed by the learned Judge. Consequently this appeal will be dismissed with costs.