

(1987) 11 BOM CK 0032

In the Bombay High Court

Case No : Appeal No. 937 of 1983 in Writ Petition No. 1938 of 1983

National Harbour Launch Services

APPELLANT

Vs

A.M. Prasad, Additional Collector of Customs (Preventive) and
Others

RESPONDENT

Date of Decision : 06-11-1987

Acts Referred:

Customs Act, 1962 — Section 111, 112, 115, 129A

Citation : (1992) 41 ECR 647

Hon'ble Judges : Pendse, J;Kotwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pendse, J.—This is an appeal preferred against the order dated August 20, 1983 passed by Mr. Justice Bharucha summarily dismissing Writ Petition No. 1938 of 1983. The petition was filed to challenge the legality of the order dated July 7, 1983 passed by the Customs, Excise and Gold (Control) Appellate Tribunal in exercise of powers u/s 129-A of the Customs Act. Only few facts are required to be stated to appreciate the grievance of the appellant.

2. The appellant M/s. National Harbour Launch Services is owner of a launch M.L. YAZDAN1 and on December 28, 1980 at about 9.30 p.m. the launch was interrupted in Bombay harbour by Customs Petrol party on suspicion. The search of the vessel resulted in the finding of (a) 8 plastic bags containing chemical powder totally weighing 300 kgs., (b) 18 bottles of beer, (c) 9 cartons and 5 loose packets of 555 cigarettes, and (d) 30 cassettes tapes. Then occupants of the vessel were arrested and these occupants include the Master of the vessel and two Khalasis employed by the owner. The vessel was seized under Panchnama and the statements of the occupants were recorded. The occupants admitted that the vessel was used for committing thefts from the ships which were anchored in the open sea. The occupants were prosecuted and the Additional Collector of Customs commenced proceedings under Sections 111, 112

and 115 of the Customs Act in respect of contravention of various provisions of the Customs Act. The owner was served with the notice of proceedings and the owner filed written statement, inter-alia claiming that he was not aware of what transpired on December 28, 1980 which was a Holiday being Sunday. The owner also claimed that he was not a party to the conspiracy to commit theft and the launch was used without his permission. The owner claimed that the Master of the vessel Dhamnaskar had no business or right to use the launch on a holiday and when the driver was not on duty.

3. The Additional Collector of Customs (Preventive) Bombay by order dated November 11, 1982 held that the chemical powder valued at Rs. 3,73,000/- should be confiscated and so also the contravened goods, like cassette tapes, beer bottles and Cigarettes of foreign origin. The Additional Collector also confiscated the vessel u/s 115(2) of the Customs Act but gave option to the owner to redeem it on payment of Rs. 30,000/-. A fine of Rs. 5,000/- was imposed on Shah Alam, one of the occupants, who according to the Additional Collector was the key person behind the act of smuggling.

4. The owner filed appeal as prescribed u/s 129-A of the Customs Act before the Tribunal. The Tribunal did not find any merit in the claim of the appellant that the provisions of Section 115(2) of the Customs Act were not attracted. The Tribunal felt that the material on record was enough to warrant the conclusion that the appellant-owner had knowledge that the vessel was used for the purpose of smuggling. The Tribunal while confirming the order of confiscation of the vessel, reduced the amount of fine to Rs. 3,000/- in lieu of the order of confiscation. The Tribunal felt that as the Additional Collector had imposed a personal penalty of Rs. 5,000/- on the main culprit Shah Alam, the punishment awarded to the appellant by way of fine of Rs. 30,000/- in lieu of confiscation was quite heavy.

4A. The order of the Tribunal was challenged by the appellants by filing Writ Petition No. 1938 of 1983 under Article 226 of the Constitution of India on the Original Side of this Court and the petition was summarily dismissed by the learned Single Judge by observing that it is not permissible to reappreciate evidence to grant relief to the appellant. The order of the learned Single Judge is under challenge.

5. Mr. Faizullahoy, learned Counsel appearing on behalf of the appellant, very strenuously urged that the order of confiscation of the vessel and the fine of Rs. 3,000/- in lieu of order of confiscation is not in accordance with law. The learned Counsel urged that the Customs authorities failed to produce any material to substantiate the claim that the owner had knowledge of the smuggling activities indulged in by the Master in conspiracy with other people. The expression "smuggling" has been defined u/s 2(3) of the Act and means in relation to any goods, any act or omission which will render such goods liable to confiscation u/s 111 or u/s 113 of the Customs Act. It cannot be debated that the vessel was used for the purpose of smuggling because by committing theft from the ships berthed in the open sea, the goods were tried to be imported within the country

without any payment of duty and in contravention of rules of import. The short question which fell for determination before the adjudicating authority was whether the vessel is liable for confiscation. Now Section 115(2) of the Act, inter alia, provides that any conveyance used as a means of transport in the smuggling of any goods shall be liable to be confiscated unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in-charge of the conveyance, and that each of them had taken all such precautions against such use as are for the time being specified in the rules. The plain reading of this sub-section makes it clear that the burden is cast upon the owner or his agent or any person in charge of the vessel to establish that the vessel was used for the purpose of smuggling without their knowledge or connivance. The expression "person in-charge" has been defined u/s 2(31) of the Act and in relation to the vessel means the Master of the vessel. The Master of the vessel in dispute was one Krishna Waman Dhamnaskar and he was one of the occupants of the vessel when the Customs authorities searched the same and recovered the contraband goods. It is, therefore, impossible even to suggest that the person in charge of the vessel or the agent of the owner had no knowledge of the activities in which the vessel was used.

6. Mr. Faizullabhoy urged that the owner of the vessel had no knowledge because the vessel was used for smuggling activities on a holiday when normally the vessel was not plied. It was also contended that the regular driver of the vessel was on leave and it was not permissible for the Master of the ship to permit anyone else to drive the same. We are unable to see any merit in these circumstances so as to conclude that the order passed by the Customs authorities in adjudication proceedings suffers from any infirmity. As mentioned hereinabove, the conveyance is liable to confiscation unless owner, his agent and person in-charge establish that all of them had no knowledge of the smuggling activities and all of them had taken such precautions as prescribed by the rules to prevent misuse of the vessel. In the present case, the order of confiscation cannot be faulted with because the person in-charge of the vessel was guilty of using the vessel for the purpose of smuggling. We do not find any infirmity in the order passed by the adjudicating authorities. Reliance by Mr. Faizullabhoy on the decision in the case of *Mogul Line Limited v. Additional Collector of Customs, Bombay* and Anr. reported in 1982 ELT 397 : 1982 ECR 86 (Bom) is entirely misconceived because in that case a specific finding was recorded that the Master and the owner of the ship had no personal knowledge about the smuggling activities. In the present case, the only finding in favour of the owner is that he was not party to the conspiracy but this finding does not exonerate the person in-charge of the vessel who was occupant when the Customs authorities searched the vessel.

7. Mr. Faizullabhoy then submitted that in any event, the quantum of fine imposed in lieu of confiscation is excessive. We are unable to see any merit in the submission. The Tribunal had reduced the fine from Rs. 30,000/- to Rs. 3,000/-.

The learned Single Judge was exercising writ jurisdiction under Article 226 of the Constitution of India and not the appellate jurisdiction and the learned Judge very rightly points out that the decision of the adjudicating authorities cannot be disturbed by re-appreciation of evidence. We are in entire agreement with the view taken by the learned Single Judge and, therefore, the appeal must fail.

8. Accordingly, appeal is dismissed, but in the circumstances of the case, there will be no order as to costs.