

(1956) 07 CAL CK 0010
In the Calcutta High Court
Case No : Matter No. 60 of 1955

Shermal Jain

APPELLANT

Vs

Collector of Central Excise and Land Customs, Calcutta

RESPONDENT

Date of Decision : 05-07-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 101, 102, 103, 104
Foreign Exchange Regulation Act, 1947 — Section 23A, 23B, 8(1)
Lands Customs Act, 1924 — Section 3, 5, 6, 7
Sea Customs Act, 1878 — Section 167(8), 178A, 183, 19, 9

Citation : AIR 1956 Cal 621

Hon'ble Judges : Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sinha, J.—The facts in tills case are shortly as follows:

Some time in March 1954, the Customs authorities obtained information that two insured parcels which were declared as containing "Handloom cloth", then lying at the Calcutta General Post Office, contained contraband goods. A batch of C. P. C., officers went to the post office and requested the postal authorities to deliver the parcels to the consignee in the presence of the officers. But no consignee turned up, and ultimately the two parcels were handed over to the customs authorities by order of the Chief Presidency Magistrate, Calcutta. The first insured Parcel No. 120 was despatched by one P. B. Deb from Agartalla post office to Messrs. Sell Abu Backer & Co. of 58, Lower Circular Road, Calcutta. The second insured Parcel No. 77 was despatched by Section N. Ghosh from Agartalla Bazar post office, to Messrs. Md. Abu Backer & Co. of 65/11-12, Lower Chitpore Road, Calcutta. Upon being opened, the first was seen to contain 11 pieces of gold bars weighing 188, 5/8 tolas and the second one was seen to contain 9 pieces of gold bars weighing 199, 1/2 tolas. According to the information obtained by the customs authorities, there exists a widespread system of

smuggling gold from Eastern Pakistan via Agartalla. The circumstances under which this gold was sent, induced the authorities to think that the gold was contraband. I may mention here that the value of the gold which had been sent under the false description of "Handloom cloth", would be in the neighbourhood of Rs. 30,000/-, and that Agartalla is not a normal source of supply of gold to the Calcutta market. The authorities first contacted the consignees in Calcutta by serving show cause notices upon them. Messrs Md. Abu Backer & Co. of 65/11-12 Lower Chitpore Road absolutely disclaimed all responsibility in the matter, stating that no insured parcel was receivable by them from Agartalla Bazar and they knew nothing about it. The other firm, Sell Abu Backer & Co., stated that one Shermal Jain, proprietor of Mahabir Stores, Agartalla (petitioner in this case) happened to be their customer. He told them that he was temporarily going out of Calcutta and requested them to receive a parcel on his behalf, but they disclaimed knowing anything about the contents. Next, Shermal Jain the petitioner herein, was contacted. He claimed ownership of the gold bars and stated that Section N. Ghosh and P. B. Deb were employees attached to his, firm Mahabir Stores at Agartalla. They had sent the gold bars, declaring them to be "Handloom cloth" in order to please their employer and save postage.

2. As regards the gold, the story made out was as follows:

240 tolas 2 annas of gold was purchased by the petitioner from one Sri Motilal Deb Nath of Agartalla and 150 tolas 6 annas of gold was purchased by the petitioner from Messrs. Joy Banker Raiyya Guru of Calcutta. Motilal Deb Nath of Agartalla is a farmer and land owner at Agartalla. Messrs. Joy Sanker Rajyya Guru of Calcutta were dealers in gold. It was alleged that the petitioner wanted the gold for making ornaments. The petitioner did produce two receipts from the alleged sellers. The reason why the gold was sent back to Calcutta is as follows;

3. It is said that a theft took place at the petitioner's shop at Agartalla involving a sum of Rs. 13,270/- and that heavy sums of money were due to different creditors in his business at the time, and that moneys were due from the consignees, who were creditors. The gold was sent down to Calcutta for the purposes of liquidating the debts. A definite case was made that the petitioner owed Rs. 8,000/- to Sell Abu Backer and Rs. 5,000/- to Md. Abu Backer and Co. and that it was proposed to pay off these debts as also others, after selling the gold. Both Messrs. Sell Abu Backer and Md. Abu Backer & Co., have denied that any money is due from the petitioner to them.

3. On or about 25-5-1954 a show cause notice was served on the petitioner by the Superintendent of Central Excise and Land Customs, Central Preventive Circle, Calcutta, copy whereof is annexed to the petition. The notice, inter alia, stated that gold had been brought into India from Pakistan across the land frontier and subsequently brought to Calcutta without either a valid permit of land customs in contravention of Section 5, Land Customs Act, 1924 and without a valid permit granted by the Reserve Bank of India in contravention of various notifications under the Foreign Exchange Regulation Act of 1947. It was stated

that an offence had been committed u/s 5, Land Customs Act, 1924 and Section 19 or the Sea Customs Act, 1878 as made applicable by Section 23A/23B, Foreign Exchange Regulation Act, 1947. The petitioner was called upon to show cause why penal action should not be taken against him and the gold confiscated u/s 7, Land Customs Act. 1924 and Section 167 (8), Sea Customs Act, 1878. The petitioner submitted his explanation, a copy whereof is annexed to the petition. It appears that hearings were given on various dates and the petitioner himself produced evidence and witnesses and was represented by counsel. Even the gold had to be produced for examination by goldsmiths. Copies of the minutes have been produced in Court and I direct that they should be filed as of record.

4. On 14-12-1954 the Collector after giving reasons held that the story put forward by the petitioner was not true and that he was satisfied that the gold was imported into India from Pakistan in contravention of the law, and subsequently sent to Calcutta. He, therefore, ordered that the gold bars should be confiscated u/s 167 (8), Sea Customs Act read with Section 183, and Section 23A, Foreign Exchange Regulation Act. This rule was issued on 6-4-1955 and is directed against this order of confiscation.

5. Mr. Ray appearing on behalf of the petitioner has taken several points. The first point is a pure question of law. According to Mr. Ray, the inter-mixture of Land Customs Act and Sea Customs Act together with the Foreign Exchange Regulation Act was illegal and the Collector of Central Excise and Land Customs, Calcutta, had no authority to take cognisance of a contravention of the Foreign Exchange Regulation Act, and in any event, could not make an order based on either Section 19 or Section 167 (8) or Section 183, Sea Customs Act, 1878. The second point taken by Mr. Ray is a mixed point of law and fact. He argued that taking all the facts into consideration, it has not been proved that the gold came from Pakistan and that the onus of proof was on the customs authorities and it was not possible for the petitioner to prove the negative; also that the petitioner had satisfactorily accounted for the origin of the gold. The last point of Mr. Ray is that there has been a violation of the rules of natural justice and that his client did not have adequate opportunity of meeting the case against him.

6. I think that so far as the facts are concerned, they are as bad as can possibly be conceived. So far as the origin of the gold is concerned, the Collector has not believed that either of the alleged sources are bona fide. As regards Motilal Deo Nath of Agartalla, he is a farmer and land owner but not in a large way. The story that he has given of the source of this large amount of gold has failed to convince the Collector. With regard to Messrs. Joy Sankar Rajyya Guru, the Collector has looked into the account books of that firm. He found that the entry relating to the alleged sale of 150 tolas 6 annas of gold to the petitioner was a clear interpolation between two entries. As a matter of fact, the witness giving evidence admitted that the entry relating to the sale was actually made after the subsequent entry, which he unconvincingly explained was done for want of space. The Collector has disbelieved the evidence on this point. He has pointed

out a very important fact viz., that the gold that has been seized could not be divided into the respective weights of gold alleged to have been purchased from the two different sources, remembering that the gold bars were in their original form as purchased. This is indeed significant. This, of course, is not a Court of Appeal on facts. If, however, it is permissible to go into the facts, it is quite evident that the story, right from the beginning to the end is untrue. The origin of the gold has not been truly disclosed. The excuse for sending it over to Calcutta in a postal packet, falsely declared to contain "Handloom cloth" was that two employees wanted to please their employer by saving postage. It will be remembered that the petitioner was not shown to be the consignor, and the parcels were posted from two different post offices and under a false declaration as "Handloom cloth". It is also incredible that gold worth over Rs. 30,000/- would be sent in this manner, upon an insurance of only Rs. 50/-, simply because employees of the petitioner wanted to please their master by saving postage. Then again, the purpose for which the gold was transmitted to Calcutta has been belied. The alleged creditors disown the mythical debts of the petitioner. As I have already stated, the customs authorities had information that there was wide-spread smuggling of gold thorough Agartalla "from Eastern Pakistan and that normally gold is not transmitted to Calcutta from Agartalla. The question is as to whether upon these facts, the customs authorities were entitled to come to the conclusion that the gold was contraband and that the provisions of the Land Customs Act and the Sea Customs Act and of the Foreign Exchange Regulation Act were violated. So far as the onus of proof is concerned, by a recent amendment in the Sea Customs Act (Act 21 of 1955) introducing Section 178A and the Land Customs Act, (Act 35 of 1955) incorporating Section 178A the onus is now upon the petitioner to prove that the gold was not contraband. Mr. Roy points out that these amendments had not come into operation at the relevant date, and therefore we have to see what the position is, without their help. There is a conflict of authorities on the point as to whether the customs authorities are an administrative body or a quasi judicial body. Even assuming that they are an administrative body having quasi judicial functions, it cannot be said that they are strictly bound by the provisions of the Indian Evidence Act. If the authorities had to prove, according to the strict provisions of the Indian Evidence Act, that particular goods, suspected to be contraband, were in fact so, then they could not succeed in most cases, and the task of controlling the smuggling of contraband goods would become impossible. That, of course, does not mean that they can act arbitrarily or upon no evidence at all except mere suspicion. It is a matter depending on the facts of each case. Taking that to be the standard, I do not think that upon the facts of the present case the customs authorities have exceeded their jurisdiction, or that they were in error in arriving at the conclusion that the goods confiscated were contraband. Besides, it must always be remembered that the remedy under Article 228 of the Constitution is purely discretionary and that the Court is not bound to grant the application of a person who does not come with a clean hand. I do not also accept the contention that there has been any violation of the rules of natural justice. The petitioner was

heard at length. He appeared through counsel, produced witnesses and even got his goldsmith to examine the gold.

7. Before dealing with the point of law raised by Mr. Ray, it would be necessary to examine the provisions of the relevant Acts in order to see how the matter stands. The Land Customs Act, 1924 (Act 19 of 1924) is an Act to consolidate, amend and extend the law relating to the levy of duties on customs on articles imported or exported by land from, or to, territories outside India. By Section 3 of the Act, the Central Government may by notification in the official gazette appoint, for any area adjoining a foreign frontier and specified in the notification, a person to be the Collector of Land Customs and such other persons as it thinks fit to be Land Customs Officers. Section 4 authorises the Chief Customs Authority to establish land customs stations and to prescribe routes by which goods or any class of goods may pass by land out of, or into, any foreign territory. u/s 5, every person desiring to pass any goods, whether dutiable or not, by land, out of, or into, any foreign territory must apply in writing in such form as may be prescribed for a permit. When the duty on such goods has been paid, or the goods have been found to be free of duty, a permit is to be granted certifying that duty has been paid or that it is not payable, as the case may be. u/s 7, any person who passes or attempts to pass any goods by land, out of, or into, foreign territory, without such a permit, or by a route otherwise than prescribed, or aids in the passing of such goods, shall be liable to a penalty specified therein. The most important section, however, for our purpose is Section 9, the relevant part whereof reads as follows;

"9. "Application of Act 8 of 1873". (1) The provisions of the Sea Customs Act. 1878 (8 of 1878) which are specified in the Schedule, together with all notifications, orders, rules or forms issued, made or prescribed thereunder, shall, so far as they are applicable, apply for the purpose of the levy of the duties of land customs under this Act in the like manner as they apply to the purpose of the levy of duties of customs on goods imported or exported by sea."

The Schedule contains Section 167 (8) as also Section 183, Sea Customs Act, but does not contain Section 19 of the said Act. Section 167 (8), Sea Customs Act lays down that if any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chap. 4 of this Act, be imported into or exported from India contrary to such prohibition or restriction, then such goods were liable to be confiscated and any person concerned in such offence shall be liable to a penalty. Chap. 4, Sea Customs Act deals with prohibitions and restrictions of importation and exportation. As it stands, there is no prohibition for the import or export of gold or bullion. Section 19 contained in Chap. 4, however, reads as follows;

"19. The Central Government may from time to time, by notification in the official gazette, prohibit or restrict the bringing or taking by sea or by land goods of any specified description into or out of the States across any customs frontier as defined by the Central Government."

8. The relevant provisions of the Foreign Exchange Regulation Act (Act 7 of 1947) are Sections 8 (1) and 23A. They are as follows;

"8. Restrictions on import and export of certain currency and bullion. -- (1) The Central Government may, by notification in the official gazette, order that, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed bring or send into the States any gold or silver or any currency notes or bank notes or coin whether Indian or foreign." "23A. Application of Sea Customs Act, 1878. --Without prejudice to the provisions of Section 23 or to any other provision contained in this Act, the restrictions imposed by Sub-sections (1) and (2) of Section 8. shall be deemed to have been imposed u/s 19, Sea Customs Act, 1870 (8 of 1878), and all the provisions of that Act shall have effect accordingly, except that Section 183 thereof shall have effect as if for the word "shall" therein the word "may" was substituted."

9. In exercise of the powers conferred by Sub-section (1) of Section 8, Foreign Exchange Regulation Act, 1947, the Central Government has issued a notification No. 12(11)-F1/48, dated 25-8-1948, directing that except with the general or special permission of the Reserve Bank, no person shall bring or send into the States from any place outside India-

(a) any gold coin, gold bullion, gold sheets or gold ingot whether refined or not; or

(b) any silver bullion, any silver sheets or plates"

10. The argument of Mr. Ray upon this point is that the importation of the gold, assuming that it was so imported, in contravention of the Land Customs Act, could only bring in the Sea Customs Act u/s 9 read with the schedule, to the Land Customs Act. He says that while Section 167 (8), Sea Customs Act is thus merged into the Land Customs Act, Section 19 has been omitted. He says that this omission cannot be supplied by the Foreign Exchange Regulation Act. In other words, when reading the provisions of Section 167 (8), Sea Customs Act, as part of the Land Customs Act, we must take into consideration the Sea Customs Act as it stands, and for that purpose we cannot read into the Sea Customs Act any provision of the Foreign Exchange Regulation Act. If, of course, Section 19, Sea Customs Act is excluded or if it has to be read as it stands, unaffected by the Foreign Exchange Regulation Act, then there is no prohibition with regard to the import of any gold. In my opinion this argument is of no substance. It is not possible to read or construe an Act by ignoring other Acts which may be in operation. Section 9 read with the Schedule of the Land Customs Act brings in Section 167 (8), Sea Customs Act. As soon as we go to Section 167 (8), Sea Customs Act, Section 19 is attracted. By itself it does not contain any prohibition against import of gold, but by the Foreign Exchange Regulation Act the prohibition against import of gold is incorporated or deemed

to be incorporated in the Sea Customs Act. We must read Section 19, Sea Customs Act together with the Foreign Exchange Regulation Act. Thus read, it is quite obvious that if there is an importation of gold into the States without a valid permit, then there is a violation not only of the Foreign Exchange Regulation Act but of the Sea Customs Act and of also the Land Customs Act. The next question is as to whether a Land Customs Officer could administer the Sea Customs Act. I have already referred to Section 3, Land Customs Act which gives power to the Central Government to appoint any person to be Land Customs Officer. u/s 6, Sea Customs Act, the Central Government has also been given power to appoint such person as it thinks fit to be Sea Customs Officer. In exercise of these powers, some notifications have been published. The relevant notification is as follows:

"Notification No. 69-Cus., dated the 29th Sept. 1951.

In exercise of the powers conferred by Section 6 of the Sea Customs Act, 1878 (8 of 1878), and in supersession of the Government of India in the Ministry of Finance (Revenue Department) notification No. 71, dated the 12th August, 1950, the Central Government hereby appoints all the Land Customs Officers who have been appointed or may be appointed from time to time to be such under Sub-section (1) of Section 3 of the Land Customs Act, 1924 (19 of 1924), to be officers of Customs for their respective jurisdictions and to exercise the powers conferred and to perform the duties imposed on such officers by the first named Act."

It will thus be seen that the Sea Customs Act authorises any person to be appointed as officer under that Act and by notification, Land Customs Officers have been appointed as Sea Customs Officers. Hence there has been a fusion of jurisdiction between the officers administering the provisions of the two Acts.

11. Mr. Kar has explained the whole scheme as follows:

He pointed out that our country has got an immense land frontier as well as a tremendous set coast. While the sea customs authorities look after the sea coasts, the land customs authorities have established stations along the frontiers, and control the importation or exportation of goods across the frontiers. But. it is not possible, nor is it thought beneficial, to keep these authorities in water-tight compartments. They act in constant co-operation with one another, and their functions and powers have been deliberately inter-mixed. It has not been argued before me that the legislature has not the jurisdiction to bring this kind of fusion in the two services. Mr. Ray however did argue that under the Sea Customs Act, it is authorised to appoint any person to be a Sea Customs Officer, but this, would not extend to the appointment of an officer who is already appointed under another Act. I, however, do not see any justification for imposing this restriction. In my opinion, such appointments are perfectly valid in law.

12. Lastly I must refer to one or two other points made by Mr. Ray. Mr. Ray

argued that if there has been a violation of the Foreign Exchange Regulation Act, then the only possible procedure left to the authorities is to proceed u/s 23 of that Act, that is to say, make a complaint in writing to a Magistrate, thereby initiating criminal proceedings. Mr. Ray, however, admits that this point has for the time being been decided against his contention, by a Division Bench of this High Court presided over by Das J., in -- "Sewpujan Rai Indrason Rai Ltd. v. The Collector of Customs, judgment D/- 3-7-1953. A.F.O.O. No. 7 of 1953 (A). In the circumstances I hold that there is nothing in this point.

13. Mr. Ray further argued that neither the show cause notice nor the order made, gave particulars of the alleged offence. Here again I am unable to agree. Both the show cause notice as well as the order of the Collector clearly specify the offence with which the petitioner is charged and the punishment. It will be observed that the goods held to have been contraband have been confiscated as tainted goods. There is no finding that the petitioner has himself imported the goods and therefore no penalty has been imposed upon him. As has been pointed out in the case of -- "Sewpujan Rai Indrason Rai Ltd. v. The Collector of Customs (A)", (Supra) it is possible to follow the tainted goods and confiscate the same, without proceeding personally against any person and without coming to a finding as to who was the actual smuggler, that is to say, a person who had succeeded in bringing the goods from foreign territory into Indian soil.

14. For the reasons given above, this application fails and the rule must be discharged. All interim orders, if any, are vacated. There will be no order as to costs.