
(1985) 04 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 18/85 (HC)

Shivaji

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-04-1985

Acts Referred:

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
(COFEPOSA) — Section 3 (1), 3 (1) (iii)
Constitution of India, 1950 — Article 20, 21
Customs Act, 1962 — Section 123, 123 (1), 123 (2)
Evidence Act, 1872 — Section 106, 114

Citation : (1985) 5 ECC 125 : (1995) 76 ELT 262 : (1985) ILR (Kar) 1455 :
(1985) 2 KarLJ 101

Hon'ble Judges : V.S. Mallimath, C.J.; R.S. Mahendra, J

Bench : Division Bench

Advocate : Jestmal, for the Appellant; N. Santosh Hegde, Advocate General, for the Respondent

Judgement

V.S. Malimath, C.J.—This is the second round before us. His first Writ Petition challenging the very detention was Writ Petition 138 of 1984 which we dismissed on the 25th of January, 1985. The petitioner has been detained in pursuance of the order made by the State Government u/s 3(1)(iii) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. Having failed to successfully assail this order of detention in the first Writ Petition, he has come forward with this second writ petition. It is necessary to point out that the first writ petition was also represented by the Counsel as is the present one.

2. In this writ petition, the only ground urged by Sri Jestmal, learned Counsel for the appellant, is that the retrospective application of Section 123 of the Customs Act, would offend Articles 20 and 21 of the Constitution. Zip fasteners were seized from the custody of the petitioner on the 5th and 6th of June, 1984 on which date provisions of Section 123 were not applicable as there was no notification applying provisions of Section 123 to the goods seized in this case

viz., zip fasteners. A notification was issued u/s 123(1) of the Customs Act rendering the said provision applicable on the 20th of July, 1984. In Writ Petition 135 of 1984, we have held that in respect of seizure of goods prior to the issue of notification u/s 123, the provisions of Section 123(1) would become applicable on the ground that the said provision only regulates the procedure. It was contended by Sri Jestmal, in the first instance, that the retrospective operation of Section 123 in this case would offend Article 20(1) of the Constitution. The learned Advocate General rightly pointed out that the provisions of Article 20(1) of the Constitution cannot be pressed into service in this case as this is a case of preventing detention and not the case of conviction in respect of which a particular punishment has been prescribed by the law. Sub-Article (1) of Article 20 provides that no person shall be convicted of any offence except for violation of a law in force at the time of commission of the act charged as an offence, nor be subjected a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. We agree with the learned Advocate General that on the plain reading of sub-Article (1) of Article 20, the same is not applicable.

3. So far the contention of Sri Jestmal, learned Advocate for the petitioner, that the retrospective application of Section 123 violates Article 21 of the Constitution, is concerned, the only question for examination is as to whether the procedure is just, reasonable and fair. Article 21 has conferred a fundamental right to the effect that no person shall be deprived of his right or liberty except in accordance with the procedure established by law. The procedure established by law has to be just, fair and reasonable. The question for consideration is as to whether the retrospective application of Section 123 would justify an inference that the procedure is not just, fair or reasonable. The learned Advocate General invited our attention to the decision of the Supreme Court reported in *Balumal Jamnadas Batra Vs. State of Maharashtra*, between *Balumal Jamnadas Batra v. State of Maharashtra*. That was a case of prosecution u/s 135 of the Customs Act in which the question of applicability of Section 123 came up for consideration in similar circumstances. That was also a case in which the notification u/s 123(2) in respect of the lighters which were seized in the case, came to be issued after the said articles came to be seized in that case. The question for consideration was as to whether the provisions of Section 123(1) could be pressed into service in a prosecution launched against a person who was found in possession of those articles. The Supreme Court held that as Section 123(1) of the Customs Act only lays down a procedural rule, the same could be applied when the case came up for trial before the court after the issuing of the notification u/s 123(2). Even though on the date of seizure of those articles, the notification u/s 123(2) had not been issued the Supreme Court did not find it unreasonable or unfair in giving retrospective operation to the provisions of Section 123 in a prosecution launched u/s 135 of the Customs Act. That being the position, we are inclined to accept the contention of the learned Advocate General that retrospective operation of Section 123 cannot be regarded as unfair, unjust or unreasonable so

as to enable the petitioner to successfully invoke the provisions of Article 21 of the Constitution. We may add that Section 123(1) only raises an initial presumption to the effect that the goods seized are smuggled goods, which presumption is rebuttable and the person in possession would be in a position to place material to indicate that the goods seized from his possession are not smuggled goods. There are similar provisions in the Evidence Act which do cast burden on the person in possession of certain goods. Section 114 of the Evidence Act provides that the court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (a) to Section 114 of the Evidence Act provides that the court may presume that a man who is in possession of stolen goods soon after the theft is either thief or has received the goods knowing them to be stolen, unless he can account for his possession. Section 123(1) of the Customs Act is similar to the provisions of Sections 106 and 114 of the Evidence Act. An inference to be drawn only if the goods are seized in the reasonable belief by the prescribed authority that they are smuggled goods where upon the burden of proving that they are not smuggled goods, shall be on the person from whose possession the goods were seized. The procedure prescribed by Section 123(1), in our opinion, is just fair and reasonable procedure and cannot, therefore, be regarded as violative of Article 21(1) of the Constitution. We have, therefore, no hesitation in repelling the contention of Sri Jestmal that retrospective operation of Section 123(1) is violative of Article 20 and 21 of the Constitution.

4. As we are inclined to dismiss this Writ Petition on merits, we have considered it unnecessary to examine the contention of the learned Advocate General that this Writ Petition is not maintainable having regard to the dismissal of the previous Writ Petition 138 of 1984 and that at any rate, the contention now raised by him should not be permitted to be urged as the petitioner had sought to raise these contentions by raising additional grounds which he subsequently withdrew.

5. For the reasons stated above, this Writ Petition fails and is dismissed.