

(1978) 02 CAL CK 0029

In the Calcutta High Court

Case No : Criminal Revision Case No. 108 of 1977

Union of India (UOI)

APPELLANT

Vs

Shamlal Dey and Others

RESPONDENT

Date of Decision : 02-02-1978

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Customs Act, 1962 — Section 128, 131
Evidence Act, 1872 — Section 13
Gold (Control) Act, 1968 — Section 85

Citation : (1978) 2 ELT 523

Hon'ble Judges : S.C. Majumdar, J;P.C. Borooah, J

Bench : Division Bench

Judgement

S.C. Majumdar, J.—In this case the question is whether because of the discharge of the accused in the Criminal Court and also in the adjudication proceeding, it is open to the Govt. of India to move against the order of discharge passed by the Ld. Magistrate. It appears that there was an adjudication proceeding held in respect of the Gold seized and the adjudicating authority by an order confiscated the gold, but declined to impose a penalty on the opposite party. It is contended on behalf of the Customs Deptt. that the Ld. Magistrate misdirected himself in taking into consideration the order passed in the adjudication proceeding as the said order has no relevancy in a criminal trial.

2. It is true that the question of double jeopardy under Article 20(2) of the Constitution of India cannot arise as between a penalty imposed by the Customs Deptt. and a criminal prosecution. It was held in the case reported in Maqbool Hussain Vs. The State of Bombay, that a custom authority is only a Revenue authority with administrative power and not a judicial tribunal and the proceedings before a Customs Collector are only revenue proceeding and not a prosecution of the offender and in order of confiscation of property seized is only an order in rem and not an order in personam. In the case of Thomas Dana v. State of Punjab (1959 S.C. 375) the same view was taken and the court after

examining the whole question came to the conclusion that penalties imposed by the Customs Collector and also confiscation order by him are not prosecution and punishment within the meaning of Article 20(2) of the Constitution of India and the protection of that article is not available to any person facing confiscation under Customs Act. In this case the adjudicating authority did not impose any penalty on the opposite party.

3. But the Ld. Magistrate did not discharge the accused only on that score. He considered all the questions involved and discharged the accused. It is true that confiscation ordered cannot be available to the accused as a shield. But here the Customs authorities only imposed upon the subject an order of confiscation of the seized gold, but did not impose any penalty. The fact that the Customs authorities did not impose any penalty is a matter which can be considered u/s 13 of the Indian Evidence Act by the Ld. Magistrate. The fact stood that no penalty was imposed. This finding of the Customs Department was not challenged the Department u/s 128 of the Customs Act, 1962, as any person aggrieved by any decision or order passed under the Act may file an appeal to the appropriate authority. The words "any person" does not only cannots the individual from whom seizures were made, but includes any juristic person or artificial person. Thus the department could have filed an appeal u/s 128 of the Customs Act, 1962, or a revision u/s 131 of the Act. But nothing was done in that respect. The adjudicating authority administer administrative justice and they more often lean in favour of the administration than in favour of the subject. If the such a case the I adjudicating authority did not consider it fit to impose penalty, that must be for substantial reasons and it is a circumstance which the Ld. Magistrate was entitled to take into account. The order of adjudication thus became final. No authority under the statute was moved to set it aside. In *Raleigh Investment Co. v. Governor General in Council* (A.I.R. 1947 P.C. 78), it was clearly pointed out that an order passed by an administrative tribunal can only be questioned after exhausting all the reliefs available under the statute. Here that was not done. The order was sought to be challenged in a criminal prosecution which lay undoubtedly, but which ended in a discharge. The order of discharge is a judicial order. It cannot be said to be perverse, when the adjudicating authority which is a pro-administration administrative tribunal refused to impose any penalty. The Ld. Magistrate considered the evidence and in his view, the evidence on record did not warrant a conviction u/s 85 of the Gold Control Act, 1968. This order is not an order without jurisdiction, because the Ld. Magistrate applied his mind to the available evidence and came to the conclusion. He did not attach undue weight upon the order of the adjudicating authority. Under these circumstances it is not a case where the rule should subsist and as a revisional court cannot interfere in such a case.

Hence it is ordered that the rule be discharged.