

(1965) 10 BOM CK 0013

In the Bombay High Court

Case No : Appeal No's. 2, 3 and 5 of 1965

Vasnatal Ranchhoddas Patel and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 18-10-1965

Acts Referred:

Customs Act, 1962 — Section 110, 110(1), 110(2), 124, 151
General Clauses Act, 1897 — Section 9

Citation : AIR 1967 Bom 138 : (1966) 68 BOMLR 223 : (1967) CriLJ 715

Hon'ble Judges : Chainani, C.J;Kotval, J

Bench : Division Bench

Advocate : P.A. Poonawala, for the Appellant; S.J. Sorabjee, for the Respondent

Judgement

Chainani, C.J.

(1) These three appeals have been heard together as they raise common questions of law and fact. On 23rd July, 1964 the Assistant Enforcement Officer, enforcement Directorate, obtained a search warrant from the Chief Presidency Magistrate, Bombay u/s 19 of the Foreign Exchange Regulation Act authorising him to search shop No. 157 situated at Mumbadevi Road, Bombay and seize incriminating documents, foreign exchange, instruments, account books, correspondence and passport, if any for the purpose of the enquiry into offences under Sections 4,5 and 9 of the said Act. In pursuance of this warrant, the Assistant Enforcement Officer, respondent No. 3,. accompanied by some other officers of the Enforcement Branch, searched the said premises on the same day. No incriminating documents or other materials were found. One V. R. Patel, who is the appellant in appeal No. 2 of 1965, was then present in the shop. He was searched in the presence of panchas and four packets containing diamonds, believed to be foreign cut diamonds, were found on his person. They were, therefore, seized. There was a safe in the shop the key of which was with the proprietor, who was not present the. The safe was,. therefore, sealed. One of the enforcement Officers then telephoned to a Custom Officer about the seizure of

the diamonds. Two Custom Officers then went there, but as the panchanama had been already made and as the diamonds had been already taken charge of and also sealed, they did not themselves seize them. They, however, started holding investigation in regard to these diamonds. A summons u/s 108 of the Customs Act was served upon the appellant and his statement was also recorded.

(2) On the following day, 24th July, 1964, the safe was opened. It was found to contain seven packets of diamonds and currency notes of the value of Rs. 24,055. All these articles were seized by the officers of the Enforcement Directorate. Out of these seven packets, one was claimed by J. C. Mehta, the appellant in appeal No. 3 of 1965 and five were claimed by J. A. Mehta, who is the appellant in appeal in appeal No. 5 of 1965. All the packets of diamonds remained in the custody of the Enforcement Directorate till 4th September. On that date two Custom Officers took charge of the diamonds from the Enforcement Directorate and Seized them u/s 110 of the Customs Act. A receipt for the diamonds taken charge of was passed in favour of the Assistant Director of the Enforcement Directorate. It appears that, thereafter, in November, 1964 the three appellants as well as the proprietor of the shop Motiwalla were called by the Customs and in the presence of Motiwalla and the appellants in appeals Nos. 2 and 3 of 1965, the Custom Officers removed the seals placed on the packets by the Enforcement Directorate and re-sealed them by putting the seals of the Customs Department.

(3) The appellants then applied to the Chief Presidency Magistrate for orders directing the officers of the Enforcement Directorate to return the diamonds to them. It was urged on behalf of the Enforcement Directorate that the diamonds had not been seized in pursuance of the search warrant issued by the Chief Presidency Magistrate, but that they had been seized u/s 151 of the Customs Act 1962 read with the notification issued by the Central Government on 23rd May 1964 and that on 4th September they had been taken charge of by the customs authorities. This contention was accepted by the Chief Presidency Magistrate who held that as the Customs Authorities had taken charge of the diamonds according to law, he could not order their return to the appellants. Thereafter, the appellants filed miscellaneous petition on the Original Side of the High Court against the union of India, the Deputy Director and another officer of the Enforcement Directorate respondents Nos. 2 and 3, and the Collector of Customs. In these petitions they prayed that the respondents should be directed to forthwith return and/or deliver the diamonds to them. These petitions were summarily dismissed. Against the orders dismissing the petitions the present three appeals have been filed.

(4) u/s 110(2) of the Customs Act, a notice under clause (a) of section 124 has to be issued to the owner of the goods or other person concerned within six months of the seizure of the goods. The Collector of Customs is, however, empowered to extend the period of six months on sufficient cause being shown for a period not exceeding six months. In exercise of this power the Collector of

Customs extended the period by three months on 4-3-1965. On 27th May 1965 the period was further extended by three months. We have been informed that as required by section 124 notices to show cause why the goods should not be confiscated or penalty imposed, have since been issued to the appellants. Those proceedings are not pending before the Customs Authorities.

(5) Section 151 of the Customs Act empowers the officers mentioned in the section to assist officers of customs in the execution of this Act. The officers of the Enforcement Directorate acted under this section read with the notification issued by the Central Government on 23rd May 1964, when they seized the diamonds claimed by the appellants, on 23rd and 24th July 1964. Mr. Sorabjee, the learned counsel for the respondents has, however, fairly conceded before us that he is unable to justify the seizure of the diamonds under the provisions of section 151. No other provision of law has been pointed to us under which the diamonds could have been seized or taken charge of by the officers of the Enforcement Directorate. The seizure of the diamonds on 23rd and 24th July 1964, therefore, appears to have been without authority of law. The diamonds are now in the custody of the Customs Authorities. I will deal separately with the question whether they could lawfully have taken possession of these diamonds. Mr. Poonawalla has contented that as the appellants were deprived of their property without authority of law by the officers of the Enforcement Directorate, they are entitled to orders directing respondents Nos. 2 and 3 to return the diamonds to them. The diamonds are, however, no longer in the custody of the Enforcement Directorate and we cannot give directions to respondents Nos 2 and 3 which they are not in a position to comply with and which will consequently be infructuous.

(6) The next question to be considered is whether the Customs Officers could have seized the diamonds on 4th September 1964 as stated by them. The section under which they could have seized the diamonds is section 110. Sub-section (1) of this section states that if the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods. Sub-section (2) of this section reads as follows:

"(2) Where any goods are seized under sub-section (1) and no notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized".

Before any action can be taken under this section, it is, therefore, necessary that the proper officer should entertain the belief that the goods are liable to confiscation under this Act. The significant word is "belief" and not "suspicion". In *M.G. Abrol and Another Vs. Amichand Vallamji and Others*, it was held that a belief in the existence of a thing required a more solid foundation than in the case of a mere suspicion and that the belief must be such as any reasonable man in the circumstances of the case would entertain about the existence or non-existence of a thing. It was also held that belief must be entertained at the time when the

goods are seized.

(7) Mr. Poonawalla has contended that this prerequisite of taking action u/s 110 has not been satisfied in this case. The respondent No. 5, the Collector of Customs, has filed an affidavit and in more than one place, he has stated that the Customs Officers had taken charge of the goods and seized them as they had reason to believe that they were liable to confiscation on the ground that they appeared to have been illegally imported. In paragraph 26 it has been stated that they were seized by the Customs Officers in the reasonable belief that they were smuggled goods. In his affidavit, however, the Collector of Customs has not mentioned the materials, which led the proper Customs Officer to entertain the belief that the diamonds are liable to confiscation under the Act. In paragraph 28 of his affidavit, he has stated that the question whether the diamonds were seized under a reasonable belief that they were smuggled or not is not relevant at this stage and that it would be relevant only during the adjudication proceedings. This observation made by the Collector is not correct. When the action of the Collector in seizing the goods u/s 110 is challenged in a writ petition the Collector must satisfy the Court that the requirements of section 110 had been complied with. We would, therefore, have asked the Collector to file a supplementary affidavit and disclose the relevant materials, but we have decided not to do so, as show cause notices have already been issued to the appellants and adjudication proceedings are pending, in which the appellants can raise this point. Mr. Sorabjee has stated that the appellants will be given a full opportunity to urge this point in those proceedings.

(8) It was also urged by Mr. Poonawalla that the Customs Officers who had seized the diamonds were not proper officers within the meaning of the Act. This argument was not pressed in view of the statement in paragraph 27 of the Collector's affidavit that the goods had been seized by two proper Customs Officers namely Mukesh and Borges.

(9) The goods were seized by the Officers of the Enforcement Directorate on 23rd and 24th July 1964. They were taken charge of by the Customs Authorities on 4th September 1964. Mr. Poonawalla has strenuously argued that the transfer of custody of the goods by the officers of the Enforcement Directorate to the Customs Officers does not constitute seizure within the meaning of section 110 of the Act. In support of this contention he has relied on the decision of the Supreme Court in *Gian Chand and Others Vs. The State Of Punjab*, . In that case on receiving information that some smugglers were transporting gold from Amritsar into Jullundur, the City Inspector of Police, Jullundur organised a raid-party and raided the house of the appellants. In the course of the search certain bars, of gold were found on the person of some of the inmates of the house and in the house itself. Thereafter a complaint was filed u/s 411 and 414 of the Indian Penal Code. This charge of receiving stolen property preferred against the appellants was, however, not proceeded with. On an application made by the Assistant Collector of Customs, the goods were delivered to the Customs

Authorities presumably under the second para of section 180 of the Sea Customs Act. Thereafter a notice was issued to the appellants to show cause why the goods should not be confiscated u/s 167 (8) of the Sea customs Act and after considering the explanation of the appellants the Collector passed an order directing the confiscation of the goods. The appellants were also prosecuted for the offence u/s 167 (81) of the Act and were convicted. In arriving at his conclusion the trial Magistrate held that section 178-A applied to the case and that the onus of showing that the goods were not smuggled goods was on the appellants. The High Court took the same view. Sub-section (1) of section 178-A provides that where any goods to which this section applied are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized. The Supreme Court held that a seizure under the Act is one for which the authority to seize is conferred by the Act and that in the context it could be referred to as a seizure u/s 178, which corresponds to section 110 of the new Customs Act, 1962. The Supreme Court further held that the transfer of the possession of the goods to the Customs Authorities by virtue of the provisions contained in section 180 of the Sea Customs Act did not constitute a fresh seizure or a seizure within the meaning of section 178-A of the Act so as to shift the burden of proof on the appellants. u/s 178-A the burden of proving that the goods are not smuggled goods can be placed on a person only if the goods are seized from his possession. In *Gian Chand and Others Vs. The State Of Punjab*, the Customs Authorities had not seized the goods from the possession of the appellants. The Supreme Court held that they could not, therefore, be called upon to prove that the goods were not smuggled goods. This decision of the Supreme Court must be read in the context of the facts of that case. It cannot be regarded as an authority for the proposition that if an officer not competent to do so, wrongfully seizes goods, they cannot subsequently be seized by an officer who is lawfully empowered to seize them. In this connection, Mr. Sorabjee has rightly pointed out that section 110 does not place any limitation as to the person from whose possession or the time and the place at which the goods believed to be liable to confiscation, can be seized. If there is reasonable ground to believe that the goods are liable to confiscation, they can be seized from any person who has custody of them, even if he has obtained such custody unlawfully. We are, therefore, unable to accept Mr. Poonawalla's argument that the taking over of possession of the diamonds by proper customs officers on 4th September 1964 from the officers of the Enforcement Directorate did not constitute seizure within the meaning of section 110 of the Act.

(10) The other point, which has been raised by Mr. Poonawalla, is that assuming that the Customs Officers had seized the goods within the meaning of section 110 on 4th September, 1964, no notice could have been issued to the appellants after 3rd March 1965, as the period of six months expired on that date and the Collector of Customs was not competent to extend the period under the proviso to sub-section (2) of section 110, as he has done. Section 9 of the General

Clauses Act states that in any Central Act it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to". Mr. Poonawalla has argued that this section has no application in the present case, because the words "from" and "to" are not used in sub-section (2) of section 110. The principle underlying section 9 has been applied even in the cases of judicial orders passed by Courts, even though in terms the section is not applicable. Section Ramchandra Govind v. Laxman Savleram AIR 1938 Bom 447 . Dharamraj Mahadeo Vs. Additional Deputy Commissioner, Akola and Others, , Puranchand v. Mohd Din AIR 1935 Lah 291, Marakanda Sahu Vs. Lal Sadananda Singh, , and Liquidator Union Bank, Mal. v. Padmanabha Menon (1954) 2 M LJ 44. The material words in sub-s. (2) of section 110 are "within six months of the seizure of the goods". In such provisions the word "of" has been held to be equivalent to "from" :see Willims v. Burgess and Walcot (1840) 12 A & E 635. In that case section 1 of the relevant statute enacted that warrants of attorney shall be filed "within twenty-one days after the execution Section 2 enacted that unless they were "filed as aforesaid within the said space of twenty-one days from the execution, "they and the judgment thereon shall be void subject to the conditions specified in the section. The warrant of attorney was executed on 9th December, 1839 and it was filed, and judgment entered up on the 30th December. It was held that in computing the period of 21 days the day of the execution must be excluded. Reliance was placed on Ex parte Fallon (1793) 5 T R 283 in which the word used was "of" and not "from" It was observed that "of", "from" and "after" really meant the same thing and that no distinction could be suggested from the nature of the two provisions. In Stroud's Judicial Dictionary, Vol, 3, 1953 Edition in Note (5) under the word "of", it has been observed that "of" is sometimes the equivalent of "after" e.g., in the expression "within 21 days of the execution". The principle underlying section 9 of the General Clauses Act cannot therefore, be held to be inapplicable, merely because the word used in sub-section (2) of section 110 is "of" and not "from"

(11) The next question to be considered is whether the day on which the goods were seized can be excluded in view of the fact that the period of six months referred to in sub-section (2) of section 110 is to be reckoned not from a particular day but from the happening of an event, viz., the seizure of the goods. The relevant words are "within six months of the seizure of the goods" and not "within six months of the day of the seizure of the goods". The law on this point has been stated by Halsbury to be as follows : (See halsbury's Laws of England, Third Edition. Vol. 37 page 95).

"The general rule in cases in which a period is fixed within which a person must act or take the consequences is that the day of the act or event from which the period runs should not be counted against him.

This general rule applies irrespective of whether the limitation of time is imposed

by the act of a party or by statute; thus, where a period is fixed within which a criminal prosecution or a civil action may be commenced, the day on which the offence is committed or the cause of action arises is excluded in the computation."

In *Goldsmith's Co v West Metropolitan Rly Co.* (1904) 1 KB 1, a special Act enacted by Parliament empowered the railway company to take lands compulsorily for the purpose of their undertaking and the powers of the company for this purpose were to cease after the expiration of three years from the passing of the Act. The Act received the Royal assent on August 9, 1899 and on August 9, 1902, the company gave to the plaintiff's a notice to treat for the purchase of lands belonging to them and scheduled in the special Act. It was held that the day of passing of the Act must be excluded in the computation of three years, and that the notice was served in time. The same view was taken in *Marren v. Dawson Bentley and Co., Ltd.* (1961) 2 QB 135. In that case Harvers J. referred to the observations made by Wills J. in *Radcliffe v. Bartholomew* (1892) 1 QB 161 who after quoting the remarks made by Parke B in *Young v. Higgon.* (1840) 8 D1 212 : 6 M & W 49, "apply the criterion which has been before suggested reduce the time to one day, and then see what hardship and inconvenience must ensue if "the principle I have stated is not to be adopted; observed" and these remarks are entirely applicable to the present case. The result of reducing the time to one day would be that an offence might be committed a few minutes before midnight, and there would only be those few minutes in which to lay the complaint, which would be to reduce the matter to an absurdity." These remarks would apply with equal force in the present case. Let us consider what the position would be, if the notice was required to be issued within one day of the seizure of the goods and not within six months thereof. The result may then be that if the goods were seized say five minutes before midnight, the time available for issuing the notice would be only five minutes or less which may be too short for this purpose. To avoid such a result, which may in certain cases make the section nugatory, the day of seizure should be excluded in computing the period of limitation.

(12) Mr Poonawalla has urged that while this may be the position in English Law, in India we are governed by section 9 of the General Clauses Act and that unless that section applies, the day on which the goods were seized must also be included in computing the period of six months referred to in sub-section (2) of section 110. Since, however, the principle underlying section 9 of the General Clauses Act is the same as that laid down in the above English decisions, it seems to us that even when the period is fixed by reference to an event, the day on which that event takes place should be excluded in computing the prescribed period of limitation.

(13) The period of six months in the present case therefore, expired on the midnight of 4th March 1965. Before then the period had been extended by three months by the Collector of Customs. The extension of the period was

consequently valid.

(14) Mr. Poonawalla has also argued that there was no sufficient cause for extending the period under the proviso to sub-section (2) of section 110. This was a matter primarily for the Collector of Customs to decide and Mr. Poonawalla has not been able to satisfy us that the Collector of Customs had exercised his discretion wrongly.

(15) These are all the points which have been urged in Appeal No. 2 of 1965. For the reasons which I have given the appeal fails and is dismissed.

(16) The same points have been raised in Appeal No. 5 of 1965. For the same reasons this appeal must also be dismissed.

(17) In Appeal No. 3 of 1965, an additional point has been urged and that is that the papers on record do not establish that the packet of diamonds claimed by the appellant had been seized by the Collector of Customs. The particular packer contained one diamond. It appears that the signatures of the appellants in the other two appeals had been taken by the officers of the Enforcement Directorate on the packets claimed by them. The receipt passed by the Customs Officer at the time of taking charge of diamonds from the officers of the Enforcement Directorate does not mention any packet bearing the signature of the appellant in this appeal. No. 3. It has therefore, been urged by Mr. Poonawalla that it has not been shown that the packet containing the diamond claimed by this appellant was seized by the Customs Officers. We are not impressed by this argument. In paragraph 14 of his application, the appellant himself has stated that in November 1964 he had been called by the Customs Authorities and that in his presence the seal of the Enforcement Directorate was removed by the Customs Officer and that it was then re-sealed by putting the seal of the Customs Department. According to the appellant himself, therefore the packet containing the diamond claimed by him had been seized by the Customs. The Collector of Customs has also stated that the packet had been seized by the proper customs officers on 4th September 1964. There, therefore, does not appear to be any substance in the argument of Mr. Poonawala, that the diamond claimed by the appellant in this appeal had not been seized by the proper Customs Officer. This appeal must, therefore, also be dismissed.

(18) Since the goods originally appear to have been seized without authority of law by the officers of the Enforcement Directorate, we make no order as to costs of these appeals. The appellant's attorneys will be entitled to withdraw the amounts deposited by them in these appeals.

(19) Appeals dismissed.