Hira Lal and another v. State of Punjab

Tek Chand, J.

who was sitting on a cycle was killed in a railway accident which was the result of an admitted negligence on the part of the railway servants. On behalf of the respondents, reliance has been placed upon the following observations of Agnew, J., in the judgment :—

> "In the present case, as has been shown above the plaintiffs had not of course received any pecuniary benefit from their son in the past before his death. If they entertained any expectations of pecuniary help from him in the future these can only have been founded on hopes which might never have been fulfilled. If the boy had turned out well, if he had chosen to help, if he had been able to afford help, if he had obtained State employment, the expectation of the parents might have come to fruition. But we find no reason, patent from the record, why we should convert these contingencies into practical certainties, as the learned District Judge has done; and we are unable to hold that the plaintiffs had any reasonable expectation of pecuniary advantage from the remaining alive of the son, who lost his life in the Railway accident of December 1907, and the immediate result of the death was rather gain than loss of a pecuniary nature".

If the above reasoning were to hold good, then there will hardly be any case under the Fatal Accidents Act to which it cannot be applied, in order to non-suit the plaintiff. In no case the life span of the deceased, his earning capacity, or his

willingness to help his dependents, can be anticipated. Every reasonable expectation rests on certain contingencies, which cannot be clearly foreseen, or accurately foretold. The law while considering the award of damages, looks to reasonable expectations and not to positive or even practical certainties. There does not seem to be any justification for substituting "practical certainties" for "reasonable expectations" as was done in that case.

The reasoning of the trial Court for depriving the plaintiffs of their claim in suit, namely, that at the time of his death their son was not of any pecuniary advantage to his parents, and, that there were no reasonable expectations of any pecuniary advantage from the remaining alive of the son, is patently wrong and has not the support of law or logic.

I find myself in complete agreement with my learned brother that a decree for Rs. 2,500 with costs should be passed in favour of the plaintiffs and the decretal amount should be apportioned between them equally and that the court-fee payable by the plaintiffs shall be payable by the defendant.

*K.S.K.*

SUPREME COURT.

*Before Bhuvaneshwar Prasad Sinha, C. J., J. L. Kapur, P. B. Gajendragadkar, K. Subba Rao and K. N. Wanchoo, JJ;*

AMBA LAL,—*Appellant.*

*versus*

THE UNION OF INDIA AND OTHERS,—*Respondents.*

**Civil Appeal No. 154 of 1956**

*Sea Customs Act (VIII of 1878) and Land Customs Act (XIX of 1924)—Offences under—Onus of proof—On whom lies—Sea Customs Act (VIII of 1878)—Section 178-A—Whether retrospective.*

1960

October, 3rd

*Held*, that a customs officer is not a judicial tribunal and a proceeding before him is not a prosecution. But it cannot be denied that the relevant provisions of the Sea Customs Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have been committed by a person under the said Acts, summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect of which the offence is committed and impose penalty on the person concerned; see sections 168 and 171-A of the Sea Customs Act. To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence.

*Held*, that section 178-A of the Sea Customs Act was inserted in that Act by Act No. XXI of 1955 and is prospective in operation and cannot, therefore, govern a case in which the order of confiscation has been passed prior to its enactment.

*For the Appellant.*—Veda Vyasa, Senior Advocate (M/s. S. K. Kapur, K. K. Jain and Ganpat Rai, Advocates, with him).

*For the Respondents.*—H. N. Sanyal, Additional Solicitor-General of India (M/s. H. R. Khanna and T. M. Sen, Advocates, with him).

JUDGMENT

The following Judgment of the Court was delivered by :—

Subba Rao, J.

SUBBA RAO, J.—This appeal by certificate is directed against the order of the High Court of Judicature of the State of Punjab dismissing the petition filed by the appellant under Article 226 of the Constitution.

The facts giving rise to this appeal may be briefly stated. The appellant is at present a resident of Barmer in the State of Rajasthan. But before 1947 he was living in a place which is now in Pakistan. On June 22, 1951, the Deputy Superintendent, Land Customs Station, Barmer, conducted a search of the appellant's house and recovered therefrom the following ten articles :

| Articles seized | Weight | Estimated value |
|---|---|---|
| | | Rs. |
| 1. Silver Slab | 2600 tolas | 5,200/- |
| 2. 29 Sovereigns (Kingh Ed. VII) | | 2,262/- |
| 3. 9 pieces of gold bullion | 201 tolas and 9 mashas. | 22,193/- |
| 4. 4 pieces of silver bullion | 114 tolas. | 230/- |
| 5. Uncurrent silver coins numbering 575 | | 865/- |
| 6. Cold bars | 49 tolas and 9 mashas | 5,475/- |
| 7. 255 Phials of liquid gold | | 9,875/- |
| 8. Torches 23<br>9. Playing cards 3 Dozens.<br>10. Glass beads 48 packets | | 400/- |
| | Total.. | 46,500 |

On July 14, 1951, the Assistant Collector, Ajmer, gave notice to the appellant to show cause and explain why the goods seized from him should not be confiscated under section 167(8) of the Sea Customs Act and section 7 of the Land Customs Act. The appellant in his reply stated that items 1 to 5 *supra* were brought by him from Pakistan

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after the partition of the country in 1947 and that items 6 to 10 were purchased by him *bona fide* for value in Barmer. On October 27, 1951, the appellant appeared before the Collector of Central Excise, who made an inquiry, and admitted before him that items 6 to 10 were smuggled goods from Pakistan, but in regard to the other items he reiterated his plea that he originally brought them from Pakistan in the year 1947. The Collector of Central Excise held that the appellant had failed to establish that items 1 to 5 had been brought by him to India in the year 1947 and he also did not accept the plea of the appellant in regard to items 6 to 10 that he was a *bona fide* purchaser of them. In the result he held that all the goods were imported into India in contravention of, (i) section 3 of the Import Export Control Act read with sections 19 and 167(8) of the Sea Customs Act, (ii) sections 4 and 5 of the Land Customs Act read with section 7 thereof. He made an order of confiscation of the said articles under section 167(8) of the Sea Customs Act and section 7 of the Land Customs Act; but under section 183 of the Sea Customs Act he gave him an option to redeem the confiscated goods within four months of the date of the order on payment of a sum of Rs. 25,000. In addition he imposed a penalty of Rs. 1,000 and directed thepayment of import duty leviable on all the items together with other charges before the goods were taken out of customs control. Aggrieved by the said order, the appellant preferred an appeal to the Central Board of Revenue. The Central Board of Revenue agreed with the Collector of Central Excise that the onus of proving the import of the goods in question was on the appellant. In regard to items 1 to 5, it rejected the plea of the appellant mainly on the basis of a statement alleged to have been

made by him at the time of seizure of the said articles. In the result the appeal was dismissed. The revision filed by the appellant to the Central Government was also dismissed on August 28, 1953. Thereafter the appellant filed a writ petition under Article 226 of the Constitution in the High Court of Punjab but it was dismissed by a division bench of the High Court on November 3, 1954. Hence this appeal.

It would be convenient to deal with this appeal in two parts—one in regard to items 1 to 5 and the other in regard to items 6 to 10.

The decision in regard to items 1 to 5 turns purely on the question of onus. The Collector of Central Excise as well as the Central Board of Revenue held that the onus of proving the import of the goods lay on the appellant. There is no evidence adduced by the customs authorities to establish the offence of the appellant, namely, that the goods were smuggled into India after the raising of the customs barrier against Pakistan in March, 1948. So too, on the part of the appellant, except his statement made at the time of seizure of the goods and also at the time of the inquiry that he brought them with him into India in 1947, no other acceptable evidence has been adduced. In the circumstances, the question of onus of proof becomes very important and the decision turns upon the question on whom the burden of proof lies.

This Court has held that a customs officer is not a judicial tribunal and that a proceeding before him is not a prosecution. But it cannot be denied that the relevant provisions of the Sea Customs

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Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have been committed by a person under the said Acts, summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect of which the offence is committed and impose penalty on the person concerned; see sections 168 and 171A of the Sea Customs Act and sections 5 and 7 of the Land Customs Act. To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence. In the present case no such evidence is forthcoming; indeed there is no title of evidence to prove the case of the customs authorities. But it is said that the onus shifted to the appellant for three reasons, namely, (i) by reason of the provisions of section 178A of the Sea Customs Act; (ii) by reason of section 5 of the Land Customs Act; and (iii) by reason of section 106 of the Evidence Act.

Section 178A of the Sea Customs Act does not govern the present case, for that section was inserted in that Act by Act No. XXI of 1955 whereas the order of confiscation of the goods in question was made on January 18, 1952. The section is prospective in operation and cannot govern the said order.

Nor does section 5 of the Land Customs Act apply to the present case. Under section 5(1) of

the said Act, "Every person desiring to pass any goods.....by land, out of or into any foreign territory shall apply in writing.....for a permit for the passage thereof, to the Land Customs Officer incharge of a land customs station.....". By sub-section (2) of section 5 of the said Act, if the requisite duty has been paid or the goods have been found by the Land Customs Officer to be free of duty, the Land Customs Officer is empowered to grant a permit. Under sub-section (3) thereof, "Any Land Customs Officer, duly empowered by the Chief Customs authority in this behalf, may require any person in charge of any goods which such Officer has reason to believe to have been imported, or to be about to be exported, by land from, or to, any foreign territory to produce the permit granted for such goods; and any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation." This section has no bearing on the question of onus of proof. This section obviously applies to a case where a permit is required for importing goods by land from a foreign country into India and it empowers the Land Customs Officer, who has reason to believe that any goods have been imported by land from any foreign territory, to demand the permit and to verify whether the goods so imported correspond with the specification contained in the permit. If there was no permit or if the goods did not correspond with the specification contained in the permit, the said goods would be liable to be detained and confiscated. The application of this section is conditioned by the legal requirement to obtain a permit. If no permit is necessary to import goods into India, the provisions of the section cannot be attracted.

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In the present case the customs barrier was established only in March, 1948, that is, after the said items of goods are stated by the appellant to have been brought into India.

We cannot also accept the contention that by reason of the provisions of section 106 of the Evidence Act the onus lies on the appellant to prove that he brought the said items of goods into India in 1947. Section 106 of the Evidence Act in terms does not apply to a proceeding under the said Acts. But it may be assumed that the principle underlying the said section is of universal application. Under that section, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This Court in *Shambu Nath Mehra* v. *The State of Ajmer* (1), after considering the earlier Privy Council decisions on the interpretation of section 106 of the Evidence Act, observed at page 204 thus :

> "The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."

If section 106 of the Evidence Act is applied, then, by analogy, the fundamental principles of criminal jurisprudence must equally be invoked. If so, it follows that the onus to prove the case against the appellant is on the customs authorities and they failed to discharge that burden in respect of items 1 to 5. The order of confiscation relating to items 1 to 5 is set aside.

Before closing this aspect of the case, some observations have to be made in respect of the

(1) [1956] S.C.R. 199

manner in which the statement given by the appellant when the goods were seized was used against him by the customs authorities. It would be seen from the order of the Collector of Central Excise as well as that of the Central Board of Revenue that they had relied upon the statement alleged to have been made by him at the time the search was made in his house in order to reject his case that he brought some of the items of goods into India in the year 1947. The appellant in his reply to the show-cause notice complained that his statement was taken in English, that he did not know what was recorded and that his application for inspection and for the grant of a copy of his statement was not granted to him. It does not appear from the records that he was given a copy of the statement or that he was allowed to inspect the same. In the circumstances we must point out that the customs authorities were not justified to rely upon certain alleged discrepancies in that statement to reject the appellant's subsequent version. If they wanted to rely upon it they should have given an opportunity to the appellant to inspect it and, at any rate, should have supplied him a copy thereof.

Coming to items 6 to 10, we have no reason to reject, as we have been asked to do, the statement made in the order of the Collector of Central Excise, dated Octiber 27, 1951, that the appellant accepted that items 6 to 10 were smuggled goods from Pakistan. It would have been better if the customs authorities had taken that admission in writing from the appellant, for that would prevent the retraction of the concession on second thoughts. That apart, it is more satisfactory if a body entrusted with functions such as the customs authorities are entrusted with, takes that precaution when its decision is mainly to depend

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upon such admission. But in this case, having regard to the circumstances under, and the manner in, which the said concession was made, we have no reason to doubt the correctness of the statements of fact in regard to this matter made in the orders of the customs authorities. If so, it follows that the finding of the customs authorities that the appellant purchased the said items which were smuggled goods, should prevail. The order of confiscation of these five items will, therefore, stand.

Even so, it is contended by the learned counsel for the appellant that the customs authorities went wrong in imposing a penalty on him under section 167(8) of the Sea Customs Act. The said section reads :

> "If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act, be imported into or exported from India contrary to such prohibition or restriction.....such goods shall be liable to confiscation; and
>
> any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees."

The appellant's argument is that though he purchased the said smuggled goods he is not concerned with the importation of the goods contrary to the prohibition or restriction imposed by or under Chapter IV of the Sea Customs Act. The offence consists in importing the goods contrary to the prohibition, and therefore, the argument proceeds, a person, who has purchased them only after they were imported, is not hit by the said section. There is some force in this argument, but we do

not propose to express our final view on the matter as the appellant is liable to the penalty under section 7(1) (c) of the Land Customs Act, 1924. The said section reads :

"*Section* 7. (1): Any person who—

.....

(c) aids in so passing or conveying any goods, or knowing that any goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed,

shall be liable to a penalty not exceeding, where the goods are not dutiable, fifty or, where the goods or any of them are dutiable, one thousand rupees, and any dutiable goods in respect of which the offence has been committed shall be liable to confiscation."

In this case the finding is that the appellant with the knowledge that the goods had been smuggled into India kept the goods, and, therefore, he was liable to penalty under that section. We hold that the penalty was rightly imposed on him.

It is then contended that the Collector of Central Excise had no jurisdiction to impose conditions for the release of the confiscated goods. The Collector of Central Excise in his order says, "In addition the import duty leviable on all these items together with other charges, if any payable, should be paid and necessary formalities gone through before the goods can be passed out of Customs Control." In *Shewpujanrai Indrasanrai Ltd.* v. *The Collector of Customs and Others* (1), a similar question arose for consideration of this Court.

(1) [1959] S.C.R. 821.

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There by an impugned order the Collector of Customs imposed two conditions for the release of the confiscated goods, namely, (1) the production of a permit from the Reserve Bank of India in respect of the gold within four months from the date of despatch of the impugned order, and (2) the payment of proper customs duties and other charges leviable in respect of the gold within the same period of four months. This Court held, agreeing with the High Court, that the Collector of Customs had no jurisdiction to impose the said two conditions. The learned Additional Solicitor General concedes that the said decision applies to the present case. We do not, therefore, express any view whether that decision can be distinguished in its application to the facts of the present case. On the basis of the concession we hold that the conditions extracted above, being severable from the rest of the order, should be deleted from the said order of the Collector of Central Excise.

Learned counsel for the appellant then argues that the option given in the said order to the appellant to redeem the confiscated goods for home consumption within four months of the order on payment of Rs. 25,000 was based upon the validity of the confiscation of all the ten items and, as this Court now holds that confiscation was bad in respect of items 1 to 5, the amount of penalty of Rs. 25,000 should proportionately be reduced. There is justification for this contention. But we cannot reduce the amount, as under section 183 of the Sea Customs Act the amount has to be fixed by the concerned officer as he thinks fit. But as the basis of the order partially disappears, we give liberty to the appellant to apply to the customs authorities for giving him an option to redeem the confiscated goods on payment of a lesser amount, having regard to the changed circumstances.