

Leo Roy Frey

Vs

The Superintendent, District Jail, Amritsar, and Another (and connected petition)

Petitions Nos. 126 and 127 of 1957

(CJI S. R. Dass, S. K. Das, Vivian Bose, A. K. Sarkar, T. L. Venkatarama Ayyar JJ)

31.10.1957

JUDGMENT

DAS C.J. -

In their respective separate petitions, the petitioners pray (1) for an order, direction or writ in the nature of certiorari and/or prohibition calling for the records in the case of the Assistant Collector of Land Customs & Central Excise, Amritsar, against the two petitioners and one Moshe Baruk, on the file of the Additional District Magistrate of Amritsar and for quashing the proceedings therein, and (2) for an order, direction or writ in the nature of habeas corpus for the production before this Court of the persons of the petitioners to be dealt with according to law.

The facts appearing from the records are shortly as follows : The petitioner, Leo Roy Frey, purchased a car No. C.D. 75 TT 6587 from an officer of the American Embassy in Paris. This car was sold by the petitioner Frey to the petitioner Thomas Dana, in May 1957. On transfer, the car was registered in the name of the petitioner Dana on May 18, 1957. Both the petitioners thereafter booked their passages through the American Express Company from Geneva to Bombay by s.s. ASIA. The car was also shipped by the same vessel. The two petitioners disembarked at Karachi on June 11, 1957, and after a brief halt at Karachi, they left together by plane for Bombay and reached Bombay on the same day. The petitioners stayed together at the Ambassador Hotel at Bombay from June 11, 1957, to the afternoon of June 19, 1957. On the last mentioned date both of them left Bombay by plane and reached Delhi the same evening. They occupied room No. 1 at Janpath Hotel and stayed there from June 19, to June 29, 1957. After the car, which had been booked by rail from Bombay to Delhi, had arrived in Delhi, the two petitioners left Delhi and travelled together in the car from Delhi to Amritsar on June 22, 1957, and after staying the night there, they arrived at Attari Road Land Customs Station on their way out to Pakistan on June 23, 1957. The Customs officers there required the petitioners to declare in Baggage Declaration Forms supplied to them the articles which they had in their possession, including any goods which were subject to Export Trade Control and/or Foreign Exchange restrictions and/or were dutiable. Each of the petitioners completed his Baggage Declaration Form and handed it over to the Customs authorities duly signed by him. On that very day the persons of each of the petitioners were also searched and certain currency and movable property which had not been included in the baggage declaration were recovered. Amongst other things, a pocket radio and a time-piece were recovered from the petitioner Dana and a pistol of 22 bore with 48 live cartridges of the same bore was recovered from the person of the petitioner Frey. Both the petitioners were put under arrest on the same day, namely, June 23, 1957. On June 30, 1957, the petitioners were interrogated and the car was thoroughly searched. As a result of such intensive search and minute inspection, a secret chamber above the petrol tank was discovered. On opening the secret chamber, Indian currency to the tune of Rs. 8,50,000 and U.S. dollars amounting

to 10,000 were discovered in the concealed recess and seized by the police. On July 7, 1957, notice was issued to the petitioner Dana under s. 167(8) of the Sea Customs Act to show cause before the Collector why under that section penalty should not be imposed on him and why the seized articles should not be confiscated. A similar notice was served on the petitioner Frey, on July 9, 1957. The petitioners made representations in writing and were also heard in person. On July 24, 1957, the Collector of Central Excise and Land Customs made an order for the confiscation of the currency and also of the motor car with an option to the petitioner Dana to redeem the car on payment of Rs. 50,000 and also ordered confiscation of articles other than the currency recovered from the car subject to redemption on payment of Rs. 100. The Collector was also satisfied that each of the two petitioners was equally guilty of an offence under s. 167(8) of the Sea Customs Act and imposed a personal penalty of Rs. 25,00,000 on each of the petitioners, to be paid within two months from the date of the order or such extended period as the adjudicating officer might allow.

On August 12, 1957, the Assistant Collector of Customs and Central Excise, Amritsar, lodged a complaint against the two petitioners and one Moshe Baruk of Bombay before the Additional District Magistrate, Amritsar, under s. 23 read with s. 8 of the Foreign Exchange Regulations Act, 1947 and s. 167(81) of the Sea Customs Act, 1878, as amended by the Sea Customs (Amendment) Act, 1955. Subsequently, a fresh complaint was filed by the same Assistant Collector of Land Customs and Central Excise against the two petitioners and the said Moshe Baruk before the Additional District Magistrate, Amritsar, under s. 23 read with s. 8 of the Foreign Exchange Regulations Act, 1947, and s. 167(81) of the Sea Customs Act and s. 120-B of the Indian Penal Code, read with s. 23/23-B, Foreign Exchange Regulations Act and s. 167(81), Sea Customs Act, 1878. A case was also started against the petitioner Frey under the Indian Arms Act for being in possession of the pistol and the cartridges in contravention of the provisions of s. 20 of that Act. He was ordered to be let out on bail in the sum of Rs. 10,000 with one surety in the Arms Act case, which he furnished. The trial of the Arms Act case has concluded in the Court of the Additional District Magistrate but orders are pending. The petitioners, Frey and Dana, were directed to be released on bail in the sum of rupees five lakhs and ten lakhs respectively, which were finally reduced by the High Court to rupees two lakhs and five lakhs respectively. Neither of the petitioners could furnish the requisite security and they have, therefore, been in judicial custody. They have now come forward with these applications for the reliefs already mentioned. Their main contention, urged before us, is that they have been deprived of their liberty otherwise than in accordance with procedure established by law.

In ordinary circumstances the production of the order or warrant for the apprehension and detention of an undertrial prisoner would be a good return to a writ of habeas corpus. But the petitioners contend that in this case there has been a violation of their fundamental right under Art. 20(2) of the Constitution. Replying on the observations in the decision of the Calcutta High Court in *Assistant Collector v. Soorajmal* [(1952) 56 C.W.N. 452], and in the decision of the Madras High Court in *Collector of Customs v. A. H. A. Rahiman* [A.I.R. 1957 Mad. 496], it is contended that in making the order of confiscation and penalty under s. 167(8) of the Sea Customs Act, the Collector was acting judicially and therefore the petitioners have already been proceeded with and punished for the offence of importation and attempted exportation of goods, the importation or exportation of which is for the time being prohibited or restricted by or under chap. IV of the sea Customs Act, and consequently they cannot again be prosecuted and punished for the same offence. The argument is that the pending proceedings before the Additional District Magistrate offend against the protection given to the petitioners by Art. 20(2) of Constitution. That in imposing confiscation and penalties the Collector acts judicially has been held by this Court in its judgment pronounced on May 16, 1957, in *F.N. Roy v. Collector of Customs* [Petition No. 438 of 1955]. No question has been raised

as to the maximum amount of penalty that can be imposed under s. 167(8) and we are not called upon to express any opinion on that point. But the fact that the Collector of Customs acted judicially is not decisive and does not necessarily attract the protection guaranteed by Art. 20(2) and the question still remains whether the petitioners' case comes within the provisions of Art. 20(2). That article protects a person from being "prosecuted and punished for the same offence more than once". The question has to be answered as to whether the petitioners had previously been prosecuted and punished for the same offence for which they are now being prosecuted before the Additional District Magistrate. The proceedings before the Customs authorities were under s. 167(8) of the Sea Customs Act. Under s. 186 of that Act, the award of any confiscation, penalty or increased rate of duty under that Act by an officer of Customs does not prevent the infliction of any punishment to which the person affected thereby is liable under any other law. The offences with which the petitioners are now charged include an offence under s. 120B, Indian Penal Code. Criminal conspiracy is an offence created and made punishable by the Indian Penal Code. It is not an offence under the Sea Customs Act. The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore quite separate offences. This is also the view expressed by the United States Supreme Court in *United States v. Rabinowich* [(1915) 238 U.S. 78]. The offence of criminal conspiracy was not the subject matter of the proceedings before the Collector of Customs and therefore it cannot be said that the petitioners have already been prosecuted and punished for the "same offence". It is true that the Collector of Customs has used the words "punishment" and "conspiracy", but those words were used in order to bring out that each of the two petitioners was guilty of the offence under s. 167(8) of the Sea Customs Act. The petitioners were not and could never be charged with criminal conspiracy before the Collector of Customs and therefore Art. 20(2) cannot be invoked. In this view of the matter it is not necessary for us, on the present occasion, to refer to the case of *Maqbool Hussain v. The State of Bombay* [[1953] S.C.R. 730] and to discuss whether the words used in Art. 20 do or do not contemplate only proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal so ordinarily understood. In our opinion, Art. 20 has no application to the facts of the present case. No other points having been urged before us, these applications must be dismissed.

Applications dismissed.

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