State of Maharashtra

Vs

Mayer Hans George

Criminal Appeal No. 218 of 1963

(J. R. Mudholkar, K. Subha Rao, Raghubar Dayal JJ)

24.08.1964

JUDGMENT

SUBBA RAO J.

I regret my inability to agree. This appeal raises the question of the scope of the ban imposed by the Central Government and Central Board of Revenue in exercise of the powers conferred on them under s. 8 of the Foreign Exchange Regulation Act, (7 of 1947), hereinafter called the Act, against persons transporting prohibited articles through India.

In exercise of the powers conferred under s. 8 of the Act the Government of India issued on August 25, 1984 a notification that gold and gold articles, among others, should not be brought into India or sent to India except with the general or special permission of the Reserve Bank of India. On the same date the Reserve Bank of India issued a notification giving a general permission for bringing or sending any such gold provided it was on through transit to a place outside India. On November 24, 1962, the Reserve Bank of India published a notification dated November 8, 1962 in supersession of its earlier notification placing further restrictions on the transit of such gold to a place outside the territory of India, one of them being that such gold should be declared in the "Manifest" for transit in the "same bottom cargo" or "transhipment cargo". The respondent left Zurich by a Swiss air plane on November 27, 1962, which touched Santa Cruz Air Port at 6.05 a.m. on the next day. The Customs Officers, on the basis of previous information, searched for the respondent and found him sitting in the plane. On a search of the person of the respondent it was found that he had put on a jacket containing 28 compartments and in 19 of them he was carrying gold slabs weighing approximately 34 kilos. It was also found that the respondent was a passenger bound for Manila. The other facts are not necessary for this appeal. Till November 24, 1962 there was a general permission for a person to bring or send gold into India, if it was on through transit to a place outside the territory of India; but from the date it could not be so done except on the condition that it was declared in the "Manifest" for transit as "same bottom cargo" or "transhipment cargo". When the respondent boarded the Swiss plane at Zurich on November 27, 1962, he could not have had knowledge of the fact that the said condition had been imposed on the general permission given by the earlier notification. The gold was carried on the person of the respondent and he was only sitting in the plane after it touched the Santa Cruz Airport. The respondent was prosecuted for importing gold into India under s. 8(1) of the Act, read with s. 23(1-A) thereof, and under s. 167(8)(i) of the Sea Customs Act. The learned Presidency Magistrate found the accused guilty on the two counts and sentenced him to rigorous imprisonment for one year. On appeal the High Court of Bombay held that the second proviso to the relevant notification issued by the Central Government did not apply to a person carrying gold with him on his body, that even if it applied, mens rea being a necessary ingredient of the offence, the respondent, who brought gold into India

for transit to Manila, did not know that during the crucial period such a condition had been imposed and, therefore, he did not commit any offence. On those findings, it held that the respondent was not guilty under any of the aforesaid sections. In the result the conviction by the Presidency Magistrate was set aside. This appeal has been preferred by special leave against the said order of the High Court.

Learned Solicitor-General, appearing for the State of Maharashtra, contends that the Act was enacted to prevent smuggling of gold in the interests of the economic stability of the country and, therefore, in construing the relevant provisions of such an Act there is no scope for applying the presumption of common law that mens rea is a necessary ingredient of the offence. The object of the statute and the mandatory terms of the relevant provisions, the argument proceeds, rebut any such presumption and indicate that mens rea is not a necessary ingredient of the offence. He further contends that on a reasonable construction of the second proviso of the notification dated November 8, 1962 issued by the Board of Revenue, it should be held that the general permission for bringing gold into India is subject to the condition laid down in the second proviso and that, as in the present case the gold was not disclosed in the Manifest, the respondent contravened the terms thereof and was, therefore, liable to be convicted under the aforesaid sections of the Foreign Exchange Act. No argument was advanced before us under s. 168(8)(i) of the Sea Customs Act and, therefore, nothing need be said about that section.

Learned counsel for the respondent sought to sustain the acquittal of his client practically on the grounds which found favour with the High Court. I shall consider in detail his argument at the appropriate places of the judgment.

The first question turns upon the relevant provisions of the Act and the notifications issued thereunder. At the outset it would be convenient to read the relevant parts of the said provisions and the notifications, for the answer to the question raised depends upon them.

Section 8. (1) The Central Government may, by notification in the Official Gazette, order that subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any prescribed, bring or send into India any gold .....

Explanation. - The bringing or sending into any port or place in India of any such article as aforesaid intended to be taken out of India without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be bringing, or, as the case may be, sending into India of that article for the purpose of this section.

In exercise of the power conferred by the said section on the Central Government, it had issued the following notification dated August 25, 1948 (as amended upto July 31, 1958) :

> "In exercise of the powers conferred by sub-section (1) of section 8 of the Foreign Exchange Regulation Act, 1947 (VII of 1947) and in supersession of the Notification of the Government of India ..... the Central Government is pleased to direct that, except with the general or special permission of the Reserve Bank no person shall bring or send into India from any place out of India :-
>
> (a) any gold coin, gold bullion, gold sheets or gold ingot, whether refined or not;
> .....

The Reserve Bank of India issued a notification dated August 25, 1948 giving a general permission in the following term :

"..... the Reserve Bank of India is hereby pleased to give general permission to the bringing or sending of any such gold or silver by sea or air into any port in India provided that the gold or silver (a) is on through transit to a place which is outside both (i) the territory of India and (ii) the Portuguese Territories which are adjacent to or surrounded by the territory of India and (b) is not removed from the carrying ship or aircraft, except for the purpose of transhipment.

On November 8, 1962, in supersession of the said notification the Reserve Bank of India issued the following notification which was published in the Official Gazette on November 24, 1962 :

"..... the Reserve Bank of India gives general permission to the bringing or sending of any of the following articles, namely,

(a) any gold coin, gold bullion, gold sheets or gold ingot, whether refined or not,

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into any port or place in India when such article is on through transit to a place which is outside the territory of India. Provided that such article is not removed from the ship or conveyance in which it is being carried except for the purpose of transhipment;

Provided further that it is declared in the manifest for transit as same bottom cargo or transshipment cargo."

The combined effect of the terms of the section and the notifications may be stated thus : No gold can be brought in or sent to India though it is on through transit to a place which is outside India except with the general or special permission of the Reserve Bank of India. Till November 24, 1962, under the general permission given by the Reserve Bank of India such gold could be brought in or sent to India if it was not removed from the ship or aircraft except for the purpose of transhipment. But from that date another condition was imposed thereon, namely, that such gold shall be declared in the manifest for transit as "same bottom cargo" or "transhipment cargo".

Pausing here, it will be useful to notice the meaning of some of the technical words used in the second proviso to the notification. The object of maintaining a transit manifest for cargo, as explained by the High Court, is twofold, namely, "to keep a record of goods delivered into the custody of the carrier for safe carriage and to enable the Customs authorities to check and verify the dutiable goods which arrive by a particular flight". "Cargo" is a shipload or the landing of a ship. No statutory or accepted definition of the word "cargo" has been placed before us. While the appellant contends that all the goods carried in a ship or plane is cargo, the respondent's counsel argues that nothing is cargo unless it is included in the manifest. But what should be included and what need not be included in the manifest is not made clear. It is said that the expressions "same bottom cargo" and "transit cargo" throw some light on the meaning of the word "cargo". Article 606 of the Chapter on "Shipping and Navigation" in Halsbury's Laws of England, 3rd edition, Vol. 35, at p. 426, brings out the distinction between the two types of cargo. If the cargo is to be carried to its destination by the same conveyance throughout the voyage or journey it is described as "same bottom cargo". On the other hand, if the cargo is to be transhipped from one conveyance to another during the course

of transit, it is called "transhipment cargo". This distinction also does not throw any light on the meaning of the word "cargo". If the expression "cargo" takes in all the goods carried in the plane, whether it is carried under the personal care of the passenger or entrusted to the care of the officer in charge of the cargo, both the categories of cargo can squarely fall under the said two heads. Does the word "manifest" throw any light ? Inspector Darine Bejan Bhappu says in his evidence that manifest for transit discloses only such goods as are unaccompanied baggage but on the same flight and that "accompanied baggage is never manifested as Cargo Manifest". In the absence of any material or evidence to the contrary, this statement must be accepted as a correct representation of actual practice obtaining in such matters. But that practice does not prevent the imposition of a statutory obligation to include accompanied baggage also as an item in the manifest if a passenger seeks to take advantage of the general permission given thereunder. I cannot see any inherent impossibility implicit in the expression "cargo" compelling me to exclude an accompanied baggage from the said expression.

Now let me look at the second proviso of the notification sated November 8, 1962. Under s. 8 of the Act there is ban against bringing or sending into India gold. The notification lifts the ban to some extent. It says that a person can bring into any port or place in India gold when the same is on through transit to a place which is outside the territory of India, provided that it is declared in the manifest for transit as "same bottom cargo or transshipment cargo". It is, therefore, not an absolute permission but one conditioned by the said proviso. If the permission is sought to be availed of, the condition should be complied with. It is a condition precedent for availing of the permission.

Learned counsel for the respondent contends that the said construction of the proviso would preclude a person from carrying small articles of gold on his person if such article could not be declared in the manifest for transit as "same bottom cargo" or "transhipment cargo" and that could not have been the intention of the Board of Revenue. On that basis, the argument proceeds, the second proviso should be made to apply only to such cargo to which the said proviso applies and the general permission to bring gold into India would apply to all other gold not covered by the second proviso. This argument, if accepted, would enable a passenger to circumvent the proviso by carrying gold on his body by diverse methods. The present case illustrates how such a construction can defeat the purpose of the Act itself. I cannot accept such a construction unless the terms of the notification compel me to do so. I do not see any such compulsion. The alternative construction for which the appellant contends no doubt prevents a passenger from carrying with him small articles of gold. The learned Solicitor-General relies upon certain rules permitting a passenger to bring into India on his person small articles of gold, but ex facie those rules do not appear to apply to a person passing through India on a foreign country. No doubt to have international goodwill the appropriate authority may be well advised to give permission for such small articles of gold or any other article for being carried by a person with him on his way through India to foreign countries. But for one reason or other, the general permission in express terms says that gold shall be declared in the manifest and I do not see, not any provision of law has been placed before us, why gold carried on a person cannot be declared in the manifest if that person seeks to avail himself of the permission. Though I appreciate the inconvenience and irritation that will be caused to passengers bona fide passing through our country to foreign countries for honest purposes, I cannot see my way to interpret the second proviso in such a way as to defeat its purpose. I, therefore, hold that on a fair construction of the notification dated November 8, 1962 that the general permission can be taken advantage of only by a person passing through India to a foreign country if he declares the gold in his possession in the manifest for transit as "same bottom cargo" or "transhipment cargo".

The next argument is that mens rea is an essential ingredient of the offence under s. 8 of the Act,

read with s. 23 (1-A)(a) thereof. Under s. 8 no person shall, except with the general or special permission of the Reserve Bank of India, bring or send to India any gold. Under the notification dated November 8, 1962, and published on November 24, 1962, as interpreted by me, such gold to earn the permission shall be declared in the manifest. The section, read with the said notification, prohibits bringing or sending to India gold intended to be taken out of India unless it is declared in the manifest. If any person brings into or sends to India any gold without declaring it in such manifest, he will be doing an act in contravention of s. 8 of the Act read with notification and, therefore, he will be contravening the provisions of the Act. Under s. 23(1-A)(a) of the Act he will be liable to punishment of imprisonment which may extend to two years or with fine or with both. The question is whether the intention of the Legislature is to punish person who break the said law without a guilty mind. The doctrine of mens rea in the context of statutory crimes has been the subject matter of many decisions in England as well as in our country. I shall briefly consider some of the important standard textbooks and decisions cited at the Bar to ascertain its exact scope.

In Russell on Crime, 11th edn. Vol. 1, it is stated at p. 64 :

> "..... there is a presumption that in any statutory crime the common law mental element, mens rea, is an essential ingredient."

On the question how to rebut this presumption, the learned author points out that the policy of the courts is unpredictable. I shall notice some of the decisions which appear which appear to substantiate the author's view. In Halsbury's Laws of England, 3rd edn. Vol. 10, in para, 508, at p. 273, the following passage appears :

> "A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, willfulness, or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the objects and terms of the statute."

This passage also indicates that the absence of any specific mention of a state of mind as an ingredient of an offence in a statute is not decisive of the question whether mens rea is an ingredient of the offence or not : it depends upon the object and the terms of the statute. So too, Archbold in his book on "Criminal Pleading, Evidence and Practice", 35th end., says much to the same effect at p. 24 thus :

> "It has always been a principle of the common law that mens rea is an essential element in the commission of any criminal offence against the common law ... In the case of statutory offence it depends on the effect of the statute ..... There is a presumption that mens rea is an essential ingredient in a statutory offence, but this presumption is liable to be displaced either by the works of the statute creating the offence or by the subject matter with which it deals."

The leading case on the subject is Sherras v. De Rutzen ([1895] 1 Q.B. 918, 921). Section 16(2) of the Licensing Act, 1872, prohibited a licensed victualler from supplying liquor to a police constable while on duty. It was held that that section did not apply where a licensed victualler bona fide believed that the police officer was off duty. Wright J., observed :

> "There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."

This sums up the statement of the law that has been practically adopted in later decisions. The Privy Council in Jacob Bruhn v. The king on the Prosecution of the Opium Farmer (L.R. [1909] A.C. 317, 324) construed s. 73 of the Straits Settlements Opium Ordinance, 1906. Section 73 of the said Ordinance stated that if any ship was used for importation, landing, removal, carriage or conveyance of any opium or chandu contrary to the provisions of the said Ordinance or of the rules made thereunder, the master and owner thereof would be liable to a fine. The section also laid down the rule of evidence that if a particular quantity of opium was found in the ship that was evidence that the ship had been used for importation of opium, unless it was proved to the satisfaction of the court that very reasonable precaution had been taken to prevent such user of such ship and that none of the officers, their servants or the crew or any persons employed on board the ship, were implicated therein. The said provisions are very clear; the offence is defined, the relevant evidence is described and the burden of proof is placed upon the accused. In the context of that section the Judicial Committee observed :

> "By this Ordinance every person other than the opium farmer is prohibited from importing or exporting chandu. If any other person does so, he prima facie commits a crime under the provisions of the Ordinance. If it be provided in the Ordinance, as it is, that certain facts, if established, justify or excuse what is prima facie a crime, then the burden of proving those facts obviously rests on the party accused. In truth, this objection is but the objection in another form, that knowledge is necessary element in crime, and it is answered by the same reasoning."

It would be seen from the aforesaid observations that in that case mens rea was not really excluded but the burden of proof to negative mens rea was placed upon the accused. In Pearks' Dairies Ltd. v. Tottenham Food Control Committee ([1919] 88 L.J. K.B. 623, 626) the Court of Appeal considered the scope of Regulations 3 and 6 of the Margarine (Maximum Prices) Order, 1917. The appellant's assistant, in violation of their instructions, but by an innocent mistake, sold margarine to a customer at the price of 1 sh. per 1b. giving only 14 1/2 ozs. by weight instead of 16 ozs. The appellants were prosecuted for selling margarine at a price exceeding the maximum price fixed and one of the contentions raised on behalf of the accused was that mens rea on the part of the appellants was not an essential element of the offence. Lord Coleridge J., cited with approval the following passage of Channell J., in Pearks, Gunston & Tee, Ltd. v. Ward ([1902] 71 L.J. K.B. 656) :

> "But there are exception to this rule in the case of quasi-criminal offences, as they may be termed, that is to say, where certain acts are forbidden by law under a penalty, possibly even under a personal penalty such as imprisonment, at any rate in default of payment of fine; and the reason for his is, that the Legislature has thought it so important to prevent the particular act from being committed that it absolutely forbids it to be done; and if it is done the offender is liable to a penalty whether he had any mens rea or not, and whether or not he intended to commit a breach of the law. Where the act is of this character then the master, who, in fact, has done the forbidden thing through his servant, is responsible and is liable to a penalty. There is no reason why he should not be, because the very object of the Legislature was to forbid the thing absolutely."

This decision states the same principle in a different form. It also places emphasis on the terms and the object of the statute in the context of the question whether mens rea is excluded or not. The decision in Rex v. Jacobs ([1944] K.B. 417) arose out of an agreement to sell price-controlled goods at excess price. The defence was that the accused was ignorant of the proper price. The Court of Criminal Appeal held that in the summing up the direction given by the Judge to the jury that it was not necessary that the prosecution should prove that the appellants knew what the permitted price was but that they need only show in fact a sale at an excessive price had taken place, was correct in law. This only illustrates that on a construction of the particular statute, having regard to the object of the statute and its terms, the Court may hold that mens rea is not a necessary ingredient of the offence. In Bread v. Wood ((1946) 62 T.L.R. 462, 463) dealing with an emergency legislation relating to fuel rationing, Goddard C.J., observed :

> "There are statutes and regulations in which Parliament has seen fit to create offences and make people responsible before criminal Courts although there is an absence of mens rea, but it is certainly not the Court's duty to be acute to find that mens rea is not a constituent part of a crime. It is of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that, unless a statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, the Court should not find a man guilty of an offence against the criminal law unless he has a guilty mind."

This caution administered by an eminent and experienced judge in the matter of construing such statutes cannot easily be ignored. The judicial Committee in Srinivas Mall Bairoliva v. King-Emperor ((1947) I.L.R. 26 Pat. 460, 469 (P.C.)) was dealing with a case in which one of the appellants was charged with an offence under the rules made by virtue of the Defence of India Act, 1939, of selling salt at prices exceeding those prescribed under the rules, though the sales were made without the appellant's knowledge by one of his servants. Lord du Parcq specking for the Board, approved the view expressed by Goddard C.J., in Brend v. Wood ((1946) 62 T.L.R. 462) and observed :

> "Their Lordships agree with the view which was recently expressed by the Lord Chief Justice of England, when he said : "It is in my opinion the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind."

The acceptance of the principle by the Judicial Committee that mens rea is a constituent part of a crime unless the statute clearly or by necessary implication excludes the same, and the application of the same to a welfare measure is an indication that the Court shall not be astute in construing a statute to ignore mens rea on a slippery ground of a welfare measure unless the statute compels it to do so. Indeed, in that case the Judicial Committee refused to accept the argument that where there is an absolute prohibition, no question of mens rea arises. The Privy Council again in Lim Chin Aik v. The Queen ([1963] A.C. 160, 174, 175) reviewed the entire law on the question in an illuminating judgment and approached the question, if I may say so, from a correct perspective. By s. 6 of the Immigration Ordinance, 1952, of the State of Singapore, "It shall not be lawful for any person other than a citizen of Singapore to enter the colony from the Federation or having entered the colony form the Federation to remain in the colony if such person has been prohibited by order made under s. 9 of this Ordinance from entering the colony" and s. 9, in the case of an order directed to a single

individual, contained no provision for publishing the order or for otherwise bringing it to the attention of the person named. The Minister made an order prohibiting the appellant from entering the colony and forwarded it to the Immigration Officer. There was no evidence that the order had in fact come to the notice or attention of the appellant. He was prosecuted for contravening s. 6(2) of the Ordinance. Lord Evershed, speaking for the Board, reaffirmed the formulations cited from the judgment of Wright J., and accepted by Lord du Parcq in Srinivas Mull Bairoliya's case ((1947) I.L.R. 26 Pat. 460, 469 (P.C.)). On a review of the case law on the subject and the principles enunciated therein, the Judicial Committee came to the following conclusion :

> "But it is not enough in their Lordships' opinion merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the regulations. Unless this is so, there is no reason in penalising him, and it cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim."

The same idea was repeated thus :

"Where it can be shown that the imposition of strict liability would result in the prosecution and conviction of a class of persons whose conduct could not in any way affect the observance of the law, their Lordships consider that even where the statute is dealing with a grave social evil, strict liability is not likely to be intended."

Dealing with the facts of the case before it, the Privy Council proceeded to illustrate the principle thus :

> "But Mr. Le Quesne was unable to point to anything that the appellant could possibly have done so as to ensure that he complied with the regulations. It was not, for example, suggested that it would be practicable for him to make continuous inquiry to see whether an order had been made against him. Clearly one of the objects of the Ordinance is the expulsion of prohibited persons from Singapore, but there is nothing that a man can do about it, before the commission of the offence, there is no practical or sensible way in which he can ascertain whether he is a prohibited person or not."

On that reasoning the Judicial Committee held that the accused was not guilty of the offence with which he was charged. This decision adds a new dimension to the rule of construction of a statute in the context of mens rea accepted by earlier decisions. While it accepts the rule that for the purpose of ascertaining whether a statute excludes mens rea or not, the object of the statute and its wording must be weighed, it lays down that mens rea cannot be excluded unless the person or persons aimed at by the prohibition are in a position to observe the law or to promote the observance of the law. I shall revert to this decision at a later stage in a different context. This Court in Ravula Hariprasada Rao v. The State ([1951] S.C.R. 322), speaking through Fazl Ali J., accepted the observations made by the Lord Chief Justice of England in Brend v. Wood ((1946) 62 T.L.R. 462). The decision of this Court in The Indo-China Steam Navigation Co. Ltd., v. Jasjit Singh. Additional Collector of Customs, Calcutta (A.I.R. 1964 S.C. 1140) is strongly relied upon by the appellant in support of the

contention that mens rea is out of place in construing statutes similar to that under inquiry now. There, this Court was concerned with the interpretation of s. 52-A of the Sea Customs Act, 1878. The Indo-China Steam Navigation Co. Ltd., which carries on the business of carriage of goods and passengers by sea, owns a fleet of ships, and has been carrying on its business for over 80 years. One of the routes plied by its ships in the Calcutta-Japan-Calcutta route. The vessel "Eastern Saga" arrived at Calcutta on October 29, 1957. On a search it was found that a hole was covered with a piece of wood and overpainted and when the hole was opened a large quantity of gold in bars was discovered. After following the prescribed procedure the Customs authorities made an order confiscating the vessel in addition to imposing other penalties. One of the contentions raised was that s. 52-A of the Sea Customs Act the infringement whereof was the occasion for the confiscation could not be invoked unless mens rea was established. Under that section no vessel constructed, adapted, altered or fitted for the purpose of concealing goods shall enter, or be within, the limits of any port in India, or the Indian customs waters. This Court in construing the scheme and object of the Sea Customs Act came to the conclusion that mens rea was not a necessary ingredient of the offence, as, if that was so, the statute would become a dead-letter. That decision was given on the basis of the clear object of the statute and on a construction of the provisions of that statute which implemented the said object. It does not help us in constructing the relevant provision of the Foreign Exchange Regulation Act.

The Indian decisions also pursued the same line. A division Bench of the Bombay High Court in Emperor v. Isak Solomon Macmull ((1948) 50 Bom. L.R. 190, 194) in the context of the Motor Spirit Rationing Order, 1941, made under the Essential Supplies (Temporary Powers) Act, 1946, held that a master is not vicariously liable, in the absence of mens rea, for an offence committed by his servant for selling petrol in the absence of requisite coupons and at a rate in excess of the controlled rate. Chagla C.J., speaking for the Division Bench after considering the relevant English and Indian decisions, observed :

> "It is not suggested that even in the class of cases where the offence is not a minor offence or not quasi-criminal that the Legislature cannot introduce the principle of vicarious liability and make the master liable for the acts of his servant although the master had no mens rea and was morally innocent. But the Courts must be reluctant to come to such a conclusion unless the clear words of the statute compel them to do so or they are driven to that conclusion by necessary implication."

So too, a Division Bench of the Mysore High Court in The State of Coorg v. P. K. Assu (I.L.R. [1955] Mysore 516) held that a driver and a cleaner of a lorry which carried bags of charcoal and also contained bags of paddy and rice underneath without permit as required by a notification issued under the Essential Supplies (Temporary Powers) Act, 1946, were not guilty of any offence in the absence of their knowledge that the lorry contained foodgrains. To the same effect a Division Bench of the Allahabad High Court in State v. Sheo Prasad (A.I.R. 1956 All. 610) held that a master was not liable for his servant's act in carrying oilseeds in contravention of the order made under the Essential Supplies (Temporary Powers) Act, 1946, on the ground that he had not the guilty mind. In the same manner a Division Bench of the Calcutta High Court in C. T. Prim v. The State (A.I.R. 1961 Cal. 177) accepted as settled law that unless a statute clearly or by necessary implication rules out mens rea as a constituent part of the crime, no one should be found guilty of an offence under the criminal law unless he has got a guilty mind.

The law on the subject relevant to the present enquiry may briefly be stated as follows. It is a well settled principle of common law that mens rea is an essential ingredient of a criminal offence.

Doubtless a statute can exclude that element, but it is a sound rule of construction adopted in England and also accepted in India to construe a statutory provision creating an offence in conformity with the common law rather than against it unless the statute expressly or by necessary implication excluded mens rea. To, put it differently, there is a presumption that mens rea is an essential ingredient of a statutory offence; but this may be rebutted by the express words of a statute creating the offence or by necessary implication. But the mere fact the object of a statute is to promote welfare activities or to eradicate grave social evils is in itself not decisive of the question whether the element of guilty mind is excluded from the ingredients of the offence. It is also necessary to enquire whether a statute by putting a person under strict liability help him to assist the State in the enforcement of the law : can he do anything to promote the observance of the law ? A person who does not know that gold cannot be brought into India without a licence or is not bringing into India any gold at all cannot possibly do anything to promote the observance of the law. Mens rea by necessary implication can be excluded from a statute only where it is absolutely clear that the implementation of the object of a statute would otherwise be defeated and its exclusion enables those put under strict liability by their act or omission to assist the promotion of the law. The nature of mens rea that will be implied in a statute creating an offence depends upon the object of the Act and the provisions thereof.

What is the object of the Act ? The object of the Act and the notification issued thereunder is to prevent smuggling of gold and to conserve foreign exchange. Doubtless it is a laudable object. The Act and the notification were conceived and enacted in public interest; but that in itself is not, as I have indicated, decisive of the legislative intention.

The terms of the section and those of the relevant notification issued thereunder do not expressly exclude mens rea. Can we say that mens rea is excluded by necessary implication ? Section 8 does not contain an absolute prohibition against bringing or sending into India any gold. It in effect confers a powers on the Reserve Bank of India to regulate the import by giving general or special permission; nor the notification dated August 25, 1948, issued by the Government embodies any such absolute prohibition. It again, in substance, leaves the regulation of import of gold to the Reserve Bank of Bank of India; in its turn the Reserve Bank of India by a notification of the same date permitted persons to transit gold to a place which is outside the territory of India and the Portuguese territories without any permission. Even the impugned notification does not impose an absolute prohibition against bringing into India gold which is on through transit to a place outside India. It permits such import for such through transit, but only subject to conditions. It is, therefor, manifest that the law of India as embodied in the Act under s. 8 and in the notification issued thereunder does not impost an absolute prohibition against bringing into India gold which is on through transit to a place outside India; and indeed it permits such bringing of gold but subject to certain conditions. The Legislature, therefore, did not think that public interest would irreparably suffer if such transit was permitted, but it was satisfied that with some regulation such interest could be protected. The law does not become nugatory if the elements of mens rea is read into it, for there would still be persons who would be bringing into India gold with the knowledge that they would be breaking the law. In such circumstances no question of exclusion of mens rea by necessary implication can arise.

If a person was held to have committed an offence in breach of the provision of s. 8 of the Act and the notification issued thereunder without any knowledge on his part that there was any such notification or that he was bringing any gold at all, many innocent persons would become victims of law. An aeroplane in which a person with gold on his body is travelling may have a forced landing in India, or an enemy of a passenger may surreptitiously and maliciously put some gold trinket in

his pocket without his knowledge so as to bring him into trouble; a person may be carrying gold without knowledge or even without the possibility of knowing that a law prohibiting taking of gold through India is in existence. All of them, if the interpretation suggested by the learned Solicitor-General be accepted, will have to be convicted and they might be put in jail for a period extending to 2 years. Such an interpretation is neither supported by the provision of the Act nor is necessary to implement its object. That apart, by imposing such a strict liability as to catch innocent persons in the net of crime, the Act and the notification issued thereunder cannot conceivably enable such a class of persons to assist the implementation of the law : they will be helpless victims of law. Having regard to the object of the Act, I think no person shall be held to be guilty of contravening the provisions of s. 8 of the Act, read with the notification dated November 8, 1962, issued thereunder, unless he has knowingly brought into India gold without complying with the terms of the proviso to the notification.

Even so it is contended that the notification dated November 8, 1962, is law and that the maxim "ignorance of law is no defence" applies to the breach of the said law. To state it differently, the argument is that even the mental condition of knowledge on the part of a person is imported into the notification; the said knowledge is imputed to him by the force of the said maxim. Assuming that the notification dated November 8, 1962, is a delegated legislation, I find it difficult to invoke that maxim as the statute empowering the Reserve Bank of India to give the permission, or the rules made thereunder do not prescribe the mode of publication of the notification. Indeed a similar question arose before the Privy Council in Lim Chin Aik v. The Queen ([1963] A.C. 160), and a similar argument was advanced before it; but the Board rejected it. I have already dealt with this decision in another context. There the Minister under the powers conferred on him by s. 9 of the Immigration Ordinance 1952, issued an order prohibiting the appellant therein from entering Singapore. He was prosecuted for disobeying that order. Section 9, in the case of an order directed to a single individual, contained no provision for publishing the order or for otherwise bringing it to the knowledge of the person named. The Crown invoked the precept that ignorance of the law was no excuse. In rejecting the contention of the Crown, Lord Evershed speaking for the Board, observed at p. 171 thus :

> "Their Lordships are unable to accept the contention. In their Lordships opinion, even if the making of the order by the Minister be regarded as an exercise of the legislative as distinct from the executive or administrative function (as they do not concede), the maxim cannot apply to such a case as the present where it appears that there is in the State of Singapore no provision, corresponding, for example, to that contained in section 3(2) of the English Statutory Instruments Act of 1946, for the publication in any form of an order of the kind made in the present case or any other provision designed to enable a man by appropriate inquiry to find out what 'the law' is."

Here, as there, it is conceded that there is no provision providing for the publication in any form of an order of the kind made by the Reserve Bank of India imposing conditions on the bringing of gold into India. The fact that the Reserve Bank of India published the order in the Official Gazette does not affect the question for it need not have done so under any express provisions of any statute or rules made thereunder. In such cases the maxim cannot be invoked and the prosecution has to bring home to the accused that he had knowledge or could have had knowledge if he was not negligent or had made proper enquiries before he could be found guilty of infringing the law. In this case the said notification was published on November 24, 1962, and the accused left Zurich on November 27, 1962, and it was not seriously contended that the accused had or could have had with diligence

the knowledge of the contents of the said notification before he brought gold into India. I, therefore, hold that the respondent was not guilty of the offence under s. 23(1-A) of the Act as it has not been established that he had with knowledge of the contents of the said notification brought gold into India on his way to Manila and, therefore, he had not committed any offence under the said section. I agree with the High Court in its conclusion though for different reasons.

Though the facts established in the case stamp the respondent as an experienced smuggler of gold and though I am satisfied that the Customs authorities bona fide and with diligence performed their difficult duties, I have reluctantly come to the conclusion that the accused has not committed any offence under s. 23(1-A) of the Act.

In the result, the appeal fails and is dismissed.

Ayyangar J. This appeal by special leave is directed against the judgment and order of the High Court of Bombay setting aside the conviction of the respondent under s. 8(1) of the Foreign Exchange Regulation Act (7 of 1947), hereinafter called the "Act", read with a notification of the Reserve Bank of India dated November 8, 1962 and directing his acquittal. The appeal was heard by us at the end of April last and on the 8th May which was the last working day of the Court before it adjourned for the summer vacation, the Court pronounced the following order :

> "By majority, the appeal is allowed and the conviction of the respondent is restored; but the sentence imposed on him is reduced to the period already undergone. The respondent shall forthwith be released and the bail bond, if any, cancelled. Reasons will be given in due course."

We now proceed to state our reasons. The material facts of the case are not in controversy. The respondent who is a German national by birth is stated to be a sailor by profession. In the statement that he made to the Customs authorities, when he was apprehended the respondent stated that some person not named by him met him in Hamburg and engaged him on certain terms of remuneration, to clandestinely transport gold from Geneva to places in the Far East. His first assignment was stated by him to be to fly to Tokyo wearing a jacket which concealed in its specially designed pockets 34 bars of gold each weighing a kilo. He claimed he had accomplished this assignment and that he handed over the gold he carried to the person who contacted him at Tokyo. From there he returned to Geneva where he was paid his agreed remuneration. He made other trips, subsequently being engages in like adventures in all of which he stated he had succeeded, each time carrying 34 kilos of gold bars which on every occasion was carried concealed in a jacket which he wore, but we are now concerned with the one which he undertook at the instance of this international gang of gold smugglers carrying, similarly, 34 kilo bars of gold concealed in a jacket which he wore on his person. This trip started at Zurich on November 27, 1962 and according to the respondent his destination was Manila where he was to deliver the gold to a contact there. The plane arrived in Bombay on the morning of the 28th. The Customs authorities who had evidently advance information of gold being attempted to be smuggled by the respondent travelling by that plane, first examined the manifest of the aircraft to see if any gold had been consigned by any passenger. Not finding any entry there, after ascertaining that the respondent had not come out of the plane as usual to the airport lounge, entered the plane and found him there seated. They then asked him if he had any gold with him. The answer of the respondent was "what gold" with a shrug indicating that he did not have any. The Customs Inspector thereupon felt the respondent's back and shoulders and found that he had some metal blocks on his person. He was then asked to come out of the plane and his baggage and person were searched. On removing the jacket he wore it was found to have 28

specially made compartments 9 of which were empty and from the remaining 19, 34 bars of gold each weighing approximately one kilo were recovered. The respondent, when questioned, disclaimed ownership of the gold and stated that he had no interest in these goods and gave the story of his several trips which we have narrated earlier. It was common ground that the gold which the respondent carried was not entered in the manifest of the aircraft or other documents carried by it.

The respondent was thereafter prosecuted and charged with having committed an offence under s. 8(1) of the Act and also of certain provision of the Sea Customs Act, in the Court of the Presidency Magistrate, Bombay. The Presidency Magistrate, Bombay took the complaint on file. The facts stated earlier were not in dispute but the point raised by the respondent before the Magistrate was one of law based on his having been ignorant of the law prohibiting the carrying of the gold in the manner that he did. In other words, the plea was that mens rea was an ingredient of the offence with which he was charged and as it was not disputed by the prosecution that he was not actually aware of the notification of the Reserve Bank of India which rendered the carriage of gold in the manner that he did an offence, he could not be held guilty. The learned Magistrate rejected this defence and convicted the respondent and sentenced him to imprisonment for one year. On appeal by the respondent the learned Judges of the High Court have allowed the appeal and acquitted the respondent upholding the legal defence which he raised. It is the correctness of this conclusion that calls for consideration in this appeal.

Before considering the arguments advanced by either side before us it would be necessary to set out the legal provisions on the basis of which this appeals has to be decided. The Foreign Exchange Regulation Act, 1947 was enacted in order to conserve foreign exchange, the conservation of which is of the utmost essentiality for the economic survival and advance of every country, and very much more so in the case of the developing country like India. Section 8 of the Act enacts the restrictions on the import and export, inter alia, of bullion. This section enacts, to read only that portion which relates to the import with which this appeal is concerned :

> "8. (1) The Central Government may, by notification in the Official Gazette, order that, subject to such exemptions, if any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any, prescribed, bring or send into India any gold or silver or any currency notes or bank notes or coin whether Indian or foreign.

Explanation. - The bringing or sending into any port or place in India, of any such article as aforesaid intended to be taken out of India without being removed from the ship or conveyance in which it is being carried shall nonetheless be deemed to be a bringing, or as case may be, sending into India of that article for the purposes of this section."

Section 8 has to be read in conjunction with s. 23 which imposes penalties on persons contravening the provisions of the Act. Sub-section (1) penalises the contravention of the provisions of certain named sections of the Act which do not include s. 8, and this is followed by sub-s. (1-A) which is residuary and is directly relevant in the present context and it reads :

"23. (1-A) Whoever contravenes -

> (a) any of the provisions of this Act or of any rule, direction or order made thereunder, other than those referred to in sub-section (1) of this section and section 19 shall, upon conviction by a Court, be punishable with imprisonment for a term

which may extend to two years, or with fine, or with both;

(b) any direction or order made under section 19 shall, upon conviction by a Court be punishable with fine which may extend to two thousand rupees."

These have to be read in conjunction with the rule as to onus of proof laid down in s. 24(1) which enacts :

"24. (1) Where any person is prosecuted or proceeded against for contravening any provisions of this Act or of any rule, direction or order made thereunder which prohibits him from doing an act without permission, the burden of proving that he had the requisite permission shall be on him."

Very soon after the enactment of the Act the Central Government took action under s. 8(1) and by a notification published in the Official Gazette dated August 25, 1948 the Central Government directed that "except with the general or special permission of the Reserve Bank no person shall bring or send into India from any place out of India any gold bullion", to refer only to the item relevant in the present context. The Reserve Bank by a notification of even date (August 25, 1948) granted a general permission in these terms :

"The Reserve Bank of India is hereby pleased to give general permission to the bringing or sending of any gold or any such silver by sea or air into any port in India :

Provided that the gold or silver

(a) is on through transit to a place which is outside both

(i) the territory of India,

(ii) the Portuguese territories which are adjacent to or surrounded by the territory of India, and

(b) is not removed from the carrying ship or aircraft except for the purpose of transhipment".

On November 8, 1962, however, the Reserve Bank of India in supersession of the notification just now read, published a notification (and this is the one which was in force at the date relevant to this case) giving general permission to the bringing or sending of gold, gold-coin etc. "into any port or place in India when such article is on through transit to a place which is outside the territory of India :

Provided that such articles if not removed from the ship or conveyance in which it is being carried except for the purpose of transhipment :

Provided further that it is declared in the manifest for transit as same bottom cargo or transhipment cargo". This notification was published in the Gazette of India on November 24, 1962.

It was not disputed by Mr. Sorabjee - learned Counsel for the respondent, subject to an argument based on the construction of the newly added 2nd proviso to which we shall refer later, that if the

second notification of the Reserve Bank restricting the range of the exemption applied to the respondent, he was clearly guilty of an offence under s. 8(1) of the Act read with the Explanation to the sub-section. On the other hand, it was not also disputed by the learned Solicitor-General for the appellant-State that if the exemption notification which applied to the present case was that contained in the notification of the Reserve Bank dated August 25, 1948 the respondent had not committed any offence since (a) he was a through passenger from Geneva to Manila as shown by the ticket which he had and the manifest of the aircraft, and besides, (b) he had not even got down from the plane.

Two principal questions have been raised by Mr. Sorabjee in support of the proposition that the notification dated November 8, 1962 restricting the scope of the permission or exemption granted by the Reserve Bank did not apply to the case. The first was that mens rea was an essential ingredient of an offence under s. 23(1-A) of the Act and that the prosecution had not established that the respondent knowingly contravened the law in relation to the carriage of the contraband article; (2) The second head of learned Counsel's argument was that the notification dated November 8, 1962, being merely subordinate or delegated legislation, could be deemed to be in force not from the date of its issue or publication in the Gazette but only when it was brought to the notice of persons who would be affected by it and that as the same was published in the Gazette of India only on November 24, 1962 whereas the respondent left Zurich on the 27th November he could not possibly have had any knowledge there of the new restrictions imposed by the Indian authorities and that, in these circumstances, the respondent could not be held guilty of an offence under s. 8(1) or s. 23(1-A) of the Act. He also raised a subsidiary point that the notification of the Reserve Bank could not be attracted to the present case because the second proviso which made provision for a declaration in the manifest "for transit as bottom cargo or transhipment cargo" could only apply to gold handed over to the aircraft for being carried as cargo and was inapplicable to cases where the gold was carried on the person of a passenger.

We shall deal with these points in that order. First as to whether mens rea is an essential ingredient in respect of an offence under s. 23(1-A) of the Act. The argument under this head was broadly as follows : It is a principle of the Common Law that mens rea is an essential element in the commission of any criminal offence against the Common Law. This presumption that mens rea is an essential ingredient of an offence equally applies to an offence created by statute, though the presumption is liable to be displaced by the words of the statute creating the offence, or by the subject-matter dealt with by it (Wright J. in Sherras v. De Rutzen). But unless the statute clearly or by fair implication rules out mens rea, a man should not be convicted unless he has a guilty mind. In other words, absolute liability is not to be presumed, but ought to be established. For the purpose of finding out if the presumption is displaced, reference has to be made to the language of the enactments, the object and subject-matter of the statute and the nature and character of the act sought to be punished. In this connection learned Counsel for the respondent strongly relied on a decision of the Judicial Committee in Srinivas Mall Bairoliya v. King-Emperor. ((1947) I.L.R. 26 Patna 460 (P.C.)) The Board was, there, dealing with the correctness of a conviction under the Defence of India Rules, 1939 relating to the control of prices. The appellant before the Board was a wholesale dealer who had employed a servant to whom he had entrusted the duty of allotting salt to retail dealers and noting on the buyer's licence the quantity which the latter had bought and received all of which were required to be done under the rules. For the contravention by the servant of the Regulations for the sale of salt prescribed by the Defence of India Rules the appellant was prosecuted and convicted as being vicariously liable for the act of his servant in having made illegal exactions contrary to the Rules. The High Court took the view that even if the appellant had not been proved to have known the unlawful acts of his servant, he would still be liable on the ground

that "where there is an absolute prohibition and no question of mens rea arises, the master is criminally liable for the acts of his servant". On appeal to the Privy Council Lord Du Parcq who delivered the judgment of the Board dissented from this view of the High Court and stated :

> "They see no ground for saying that offences against those of the Defence of India Rules here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. See the judgment of Wright J. in Sherras v. De Rutzen [(1895) 1 Q.B. 918, 921]. Offences which are within that class are usually of a comparatively minor character, and it would be a surprising result of this delegated legislation if a person who was morally innocent of blame could be held vicariously liable for a servant's crime and so punishable 'with imprisonment for a term which may extend to three years'".

The learned Lord then quoted with approval the view expressed by the Lord Chief Justice in Brend v. Wood ((1946) 110 J.P. 317) :

> "It is ..... of the utmost importance for the protection of the liberty of the subject that a court should always bear in mind that, unless the statute, either clearly or by necessary implication rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind".

Mr. Sorabjee is justified in referring us to these rules regarding presumption and construction and it may be pointed out that this Court has, in Ravula Hariprasada Rao v. The State ([1951] S.C.R. 322, 328), approved of this passage in the judgment of Lord Du Parcq and the principle of construction underlying it. We therefore agree that absolute liability is not to be lightly presumed but has to be clearly established. Besides, learned Counsel for the respondent strongly urged that on this point the exposition by Lord Evershed in Lim Chin Aik v. The Queen ([1963] A.C. 160), had clarified the principles applicable in this branch of the law, and that in the light of the criteria there laid down we should hold that on a proper construction of the relevant provisions of the Act, mens rea or guilty mind must be held to be an essential ingredient of the offence and that as it was conceded by the prosecution in the present case that the respondent was not aware of the notification by the Reserve Bank of India, dated the 8th November, he could not be held guilty of the offence. We might incidentally state that that decision was also relied on in connection with the second of the submissions made to us as regards the time when delegated legislation could be deemed to come into operation, but to that aspect we shall advert later.

In order to appreciate the scope and effect of the decision and of the observations and reasoning to which we shall presently advert it is necessary to explain in some detail the facts involved in it. Section 6(2) of the Immigration Ordinance, 1952, of the State of Singapore enacted :

> "6. (2) It shall not be lawful for any person other than a citizen of Singapore to enter the Colony from the Federation ..... if such person has been prohibited by order made under s. 9 of this Ordinance from entering the colony."

By sub-s. (3) it was provided that :

> "Any person who contravenes the provisions of sub-section (2) of this section shall be guilty of an offence against this ordinance".

Section 9 which is referred to in s. 6(2) read, to quote the material words of sub-section (1) :

> "The minister may by order ..... (1) prohibit either for a stated period or permanently the entry or re-entry into the colony of any person or class of persons".

Its sub-s. (3) provided :

> "Every order made under sub-s. (1) of this section shall unless it be otherwise provided in such order take effect and come into operation on the date on which it was made".

While provision was made by the succeeding portion of the sub-section for the publication in the Gazette of orders which related to a class of persons, there was no provision in the sub-section for the publication of an order in relation to named individuals or otherwise for bringing it to the attention of such persons. The appellant before the Privy Council had been charged with and convicted by the courts in Singapore of contravening s. 6(2) of the Ordinance by remaining in Singapore when by an order made by the Minister under s. 9(1) he had been, by name, prohibited from entering the island. At the trial there was no evidence from which it could be inferred that the order had in fact come to the notice or attention of the accused. On the other hand, the facts disclosed that he could not have known of the order. On appeal by the accused, the conviction was set aside by the Privy Council. The judgment of the Judicial Committee insofar as it was in favour of the appellant, was based on two lines of reasoning. The first was that in order to constitute a contravention of s. 6(2) of the Ordinance mens rea was essential. The second was that even if the order of the Minister under s. 9 were regarded as an exercise of legislative power, the maxim 'ignorance of law is no excuse' could not apply because there was not, in Singapore, any provision for the publication, in any form, of an order of the kind made in the case or any other provision to enable a man, by appropriate enquiry, to find out what the law was.

Lord Evershed who delivered the judgment of the Board referred with approval to the formulation of the principle as regards mens rea to be found in the judgment of Wright J. in Sherras v. De Rutzen, ([1895] 1 Q.B. 918) already referred to. His Lordship also accepted as correct the enunciation of the rule in Srinivas Mall Bairoliya v. King-Emperor ((1947) I.L.R. 26 Patna 460. (P.C.)) in the passage we have extracted earlier. Referring next to the argument that where the statute was one for the regulation for the public welfare of a particular activity it had frequently been inferred that strict liability was the object sought to be enforced by the legislature, it was pointed out :

> "The presumption is that the statute or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea."

Reference was then made to legislation regulating sale of food and drink and he then proceeded to state :

> "It is not enough merely to label the statute as one dealing with a grave social evil and from that to infer that strict liability was intended. It is pertinent also to inquire whether putting the defendant under strict liability will assist in the enforcement of the regulations. That means that there must be something he can do, directly or

> indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the regulations. Unless this is so, there is no reason in penalising him, and it cannot be inferred that the legislature imposed strict liability merely in order to find a luckless victim."

As learned Counsel has laid great stress on the above passages, it is necessary to analyse in some detail the provisions in the Singapore Ordinance in relation to which this approach was made and compare them with the case on hand. Let us first consider the frame of s. 6(2) of the Singapore Ordinance the relevant portion of which we have set out earlier. It prohibits the entry of non-citizens into the colony from the Federation, only in the event of that entry being banned by a general or particular order made by the Minister under s. 9. In other words, in the absence of an order made under s. 9, there was freedom of entry or rather absence of any legal prohibition against entry of persons from the Federation. In the light of this situation, the construction adopted was that persons who normally could lawfully enter the colony, had to be proved to have a guilty mind i.e., actual or constructive knowledge of the existence of the prohibition against their entry before they could be held to have violated the terms of s. 6(2). It is in this context that the reference to "the luckless victim" has to be understood. The position under ss. 8 and 23 of the Act is, if we say so, just the reverse. Apart from the public policy and other matters underlying the legislation before us to which we shall advert later, s. 8(1) of the Act empowers the Central Government to impose a complete ban on the bringing of any gold into India, the act of "bringing" being understood in the sense indicated in the Explanation. When such a ban is imposed, the import or the bringing of gold into India could be effected only subject to the general or special permission of the Reserve Bank. Added to this, and this is of some significance, there is the provision in s. 24(1) of the Act which throws on the accused in a prosecution the burden of proving that he had the requisite permission, emphasising as it were that in the absence of a factual and existent permission to which he can refer, his act would be a violation of the law. In pursuance of the provision in s. 8(1), Central Government published a notification on August 25, 1948 in which the terms of s. 8(1) regarding the necessity of permission of the Reserve Bank to bring gold into India were repeated. On the issue of this notification the position was that everyone who "brought" gold into India, in the sense of the Explanation to s. 8(1), was guilty of an offence, unless he was able to rely for his act on permission granted by the Reserve Bank. We therefore start with this : The bringing of gold into India is unlawful unless permitted by the Reserve Bank, - unlike as under the Singapore Ordinance, where an entry was not unlawful unless it was prohibited by an order made by the Minister. In the circumstances, therefore, mens rea, which was held to be an essential ingredient of the offence of a contravention of a Minister's order under the Ordinance, cannot obviously be deduced in the context of the reverse position obtaining under the Act.

There was one further circumstance to which it is necessary to advert to appreciate the setting in which the question arose before the Privy Council. The charge against the appellant was that having entered Singapore on or about May 17, 1959 he remained there while prohibited by an order of the Minister under s. 9 and thereby contravened s. 6(2) of the Immigration Ordinance. At the trial it was proved that the order of the Minister was made on May 28, 1959 i.e., over 10 days after the appellant had entered the colony. It was proved that the Minister's order which prohibited the appellant, who was named in it, from entering Singapore was received by the Deputy Assistant Controller of Immigration on the day on which it was made and it was retained by that official with himself. The question of the materiality of the knowledge of the accused of the order prohibiting him from entering the colony came up for consideration in such a context. The further question as to when the order would, in law, become effective, relates to the second of the submissions made to us

by the respondent and will be considered later.

Reverting now to the question whether mens rea - in the sense of actual knowledge that the act done by the accused was contrary to the law - is requisite in respect of a contravention of s. 8(1), starting with an initial prescription in favour of the need for mens rea, we have to ascertain whether the presumption is overborne by the language of the enactment, read in the light of the objects and purposes of the Act, and particularly whether the enforcement of the law and the attainment of its purpose would not be rendered futile in the event of such an ingredient being considered necessary.

We shall therefore first address ourselves to the language of the relevant provisions. Section 23(1-A) of the Act which has already been set out merely refers to contravention of the provisions of the Act or the rule etc., so that it might be termed neutral in the present context, in that it neither refers to the state of the mind of the contravener by the use of the expression such as 'wilfully, knowingly' etc., nor does it, in terms, create an absolute liability. Where the statute does not contain the word 'knowingly', the first thing to do is to examine the statute to see whether the ordinary presumption that mens rea is required applies or not. When one turns to the main provision whose contravention is the subject of the penalty imposed by s. 23(1-A) viz., s. 8(1) in the present context, one reaches the conclusion that there is no scope for the invocation of the rule of mens rea. It lays an absolute embargo upon persons who without the special or general permission of the Reserve Bank and after satisfying the conditions, if any prescribed by the Bank bring or send into India any gold etc., the absoluteness being emphasised, as we have already pointed out, by the term of s. 24(1) of the Act. No doubt, the very concept of "bringing" or "sending" would exclude an involuntary bringing or an involuntary sending. Thus, for instance, if without the knowledge of the person a packet of gold was slipped into his pocket it is possible to accept the contention that such a person did not "bring" the gold into India within the meaning of s. 8(1). Similar considerations would apply to a case where the aircraft on a through flight which did not include any landing in India has to make a force landing in India - owing say to engine trouble. But if the bringing into India was a conscious act and was done with the intention of bringing it into India the mere "bringing" constitutes the offence and there is no other ingredient that is necessary in order to constitute a contravention of s. 8(1) than that conscious physical act of bringing. If then under s. 8(1) the conscious physical act of "bringing" constitutes the offence, s. 23(1-A) does not import any further condition for the imposition of liability than what is provided for in s. 8(1). On the language, therefore, of s. 8(1) read with s. 24(1) we are clearly of the opinion that there is no scope for the invocation of the rule that besides the mere act of voluntarily bringing gold into India any further mental condition is postulated as necessary to constitute an offence of the contravention referred to in s. 23(1-A).

Next we have to have regard to the subject-matter of the legislation. For, as pointed out by Wills J. in R. v. Tolson ((1889) 23 Q.B.D. 168) :

> "Although, prima facie and as a general rule, there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such a subject-matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not".

The Act is designed to safeguarding and conserving foreign exchange which is essential to the economic life of a developing country. The provisions have therefore to be stringent and so framed as to prevent unauthorised and unregulated transactions which might upset the scheme underlying the controls; and in a larger context, the penal provisions are aimed at eliminating smuggling which is a concomitant of controls over the free movement of goods or currencies. In this connection we

consider it useful to refer to two decisions - the first a decision of the Privy Council and the other of the Court of Criminal Appeal. The decision of the Privy Council is that reported as Bruhn v. The King ([1909] A.C. 317) where the plea of mens rea was raised as a defence to a prosecution for importation of opium in contravention of the Straits Settlements Opium Ordinance, 1906. Lord Atkinson speaking for the Board, referring to the plea as to mens rea, observed :

> "The other point relied upon on behalf of the appellant was that there should be proof, express or implied, of a mens rea in the accused person before he could be convicted of a criminal offence. But that depends upon the terms of the statute or Ordinance creating the offence. In many cases connected with the revenue certain things are prohibited unless done by certain persons, or under certain conditions. Unless the person who does one of these things can establish that he is one of the privileged class, or that the prescribed conditions have been fulfilled, he will be adjudged guilty of the offence, though in fact he knew nothing of the prohibition."

The criteria for the construction of statutes of the type we have before us laid down by the Court of Criminal Appeal in Regina v. St. Margarets Trust Ltd. ([1958] 1 W.L.R. 522) is perhaps even nearer to the point. The offence with which the appellants were there charged was a violation of the Hire Purchase and Credit Sale Agreements (Control) Order, 1956 which, having been enacted to effectuate a credit-squeeze, as being necessary for the maintenance of British-economy, required by the rules made under it that every Hire Purchase agreement should state the price of the article and fix the maximum proportion thereof which a hirer might be paid by a Financing Company. The appellant-company advanced to the hirer of a motor-car more than the permissible percentage but did so as it was misled by the company which sold the motorcar as regards the price it charged to the customer. The plea raised in defence was that the Finance Company were unaware of the true price and that not having guilty knowledge, they could not be convicted of the offence. Donovan J. who spoke for the Court said :

> "The language of article 1 of the Order expressly prohibits what was done by St. Margarets Trust Ltd., and if that company is to be held to have committed on offence some judicial modification of the actual terms of the article is essential. The appellants contend that the article should be construed so as not to apply where the prohibited act was done innocently. In other words, that mens rea should be regarded as essential to the commission of the offence. The appellants rely on the presumption that mens rea is essential for the commission of any statutory offence unless the language of the statute, expressly or by necessary implication, negatives such presumption."

The learned Judge then referred to the various decisions in which the question as to when the Court would hold the liability to be absolute and proceeded :

> "The words of the Order themselves are an express and unqualified prohibition of the acts done in this case by St. Margarets Trust Ltd. The object of the Order was to help to defend the currency against the peril of inflation which, if unchecked, would bring disaster upon the country. There is no need to elaborate this. The present generation has witnessed the collapse of the currency in other countries and the consequent chaos, misery and widespread ruin. It would not be at all surprising if Parliament, determined to prevent similar calamities here, enacted measure which it intended to be absolute prohibition of acts which might increase the risk in however small a

> degree. Indeed, that would be the natural expectation. There would be little point in enacting that no one should breach the defences against a flood, and at the same time excusing anyone who did it innocently. For these reasons we think that article 1 of the Order should receive a literal construction, and that the ruling of Diplock J. was correct.
>
> It is true that Parliament has prescribed imprisonment as one of the punishments that may be inflicted for a breach of the Order, and this circumstances is urged in support of the appellants' argument that Parliament intended to punish only the guilty. We think it is the better view that, having regard to the gravity of the issues, Parliament intended the prohibition to be absolute, leaving the court to use its powers to inflict nominal punishment or none at all in appropriate cases."

We consider these observations apposite to the construction of the provision of the Act now before us.

This question as to when the presumption as to the necessity for mens rea is overborne has received elaborate consideration at the hands of this Court when the question of the construction of s. 52-A of the Sea Customs Act came up for consideration in The Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh, Addl. Collector of Customs, Calcutta etc. (A.I.R. 1964 S.C. 1140) Speaking for the Court Gajendragadkar C.J. said :

> "The intention of the legislature in providing for the prohibition prescribed by s. 52-A, is, inter alia, to put an end to illegal smuggling which has the effect of disturbing very rudely the national economy of the country. It is well-known, for example, that smuggling of gold has become a serious problem in this country and operations of smuggling are conducted by operators who work on an international basis. The persons who actually carry out the physical part of smuggling gold by one means or another are generally no more than agents and presumably, behind them stands a well-knit organisation which for motives of profit-making, undertakes this activity."

This passage, in our opinion, is very apt in the present context and the offence created by ss. 8 and 23(1-A) of the Act.

In our opinion, the very object and purpose of the Act and its effectiveness as an instrument for the prevention of smuggling would be entirely frustrated if a condition were to be read into s. 8(1) or s. 23(1-A) of the Act qualifying the plain words of the enactment, that the accused should be proved to have knowledge that he was contravening the law before he could be held to have contravened the provision.

Summarising the position, the result would be this. If the Central Government, by notification in the Official Gazette imposed a ban on any person bringing gold into India any person who brought such gold in contravention of the notification would be guilty of an offence under this section. This brings us to the notification of the Central Government dated August 25, 1948 whose terms we have set out. By reason of that notification the bringing of gold into India was made an offence. In this connection it is necessary to bear in mind the Explanation to s. 8(1) which we have already set out. By reason of that Explanation it would be seen that even if the gold continued to remain in a ship or aircraft which is within India without its being taken out and was not removed from the ship or aircraft it shall nevertheless be deemed to be a 'bringing' for the purpose of the section. We are

referring to this Explanation because if the act of the respondent was an offence under the section - s. 8(1) he gets no advantage by his having remained on the aircraft without disembarking at Bombay, for if the carrying on his person of the gold was "the bringing" of the gold into India, the fact that he did not remove himself from the aircraft but stayed on in it would make no difference and he would nevertheless be guilty of the offence by reason of the Explanation to s. 8(1). We would only add that learned Counsel for the respondent did not dispute this. The position, therefore, was that immediately the Central Government published the notification on August 25, 1948 the bringing of gold into India in the sense covered by the Explanation would have brought it within s. 8(1) of the Act. So much is common ground. But by reason of a notification by the Reserve Bank, of even date, gold in through-transit from places outside India to places similarly situated which was not removed from the aircraft except for the purpose of transhipment was exempted from the operation of the notification of the Central Government issued under s. 8(1). If this notification had continued in force and had governed the right of persons to transport gold through India the respondent could not be guilty of a contravention of s. 8(1). The respondent would then have had the permission which saved his act of "bringing" from being an offence. However, as stated earlier, on November 8, 1962 the Reserve Bank of India modified the earlier notification and added an additional condition for exemption viz., that the gold must be declared in the manifest of the aircraft as same bottom cargo or transhipment cargo. Therefore when the respondent was in Bombay with the gold, he had not the requisite permission of the Reserve Bank and so he contravened the prohibition under s. 8(1).

The next submission of Mr. Sorabjee was that even assuming that mens rea, which in the present context was equated with knowledge of the existence and contents of the notification of the Reserve Bank, dated November 8, 1962, was not necessary to be established to prove a contravention of s. 8(1)(a) of the Act, the notification of the Reserve Bank, dated November 8, 1962, could not be deemed to have been in force and operation on November 28, 1962, when the respondent was alleged to have committed the offence of "bringing" gold into India. Accepting the general rule that ignorance of law is no excuse for its contravention and the maxim that everyone is presumed to know the law, learned Counsel submitted an elaborate argument as regards the precise point of time when a piece of delegated legislation like the exemption notification by the Reserve Bank would in law take effect. There is no provision in the General Clauses Act as regards the time when subordinate legislation enacted under powers conferred by Acts of the Central Legislature shall come into effect. There is no provision either in the particular Act with which we are concerned determining the point of time at which orders made, or permission granted by virtue of powers conferred by the parent statute would come into operation. In the absence of a statutory provision such as is found in s. 5(1) of the General Clauses Act, learned Counsel submitted that such orders or notifications could have effect only from the date on which the person against whom it is sought to be enforced had knowledge of their making. In support of this position he relied strongly on the decision of the Privy Council already referred to - Lim Chin Ail v. The Queen ([1963] A.C. 160).

We have dealt with that decision in regard to the point about mens rea, and have also pointed out that one of the grounds on which the appeal was allowed was that there had been no publication of the order of the Minister, banning the entry of the appellant, so as to render the appellant's act a contravention of s. 6(2) of the Singapore Ordinance. We have adverted to the circumstance that the order of the Minister there in question was communicated only to the officer in the Immigration department from whose custody it was produced at the trial. In that situation Lord Evershed observed :

> "It was said on the respondent's part that the order made by the Minister under the

> powers conferred by section 9 of the Ordinance was an instance of the exercise of delegated legislation and therefore that the order, once made, became part of the law of Singapore of which ignorance could provide an excuse upon a charge of contravention of the section. Their Lordships are unable to accept this contention. In their Lordships' opinion, even if the making of the order by the Minister be regarded as an exercise of the legislative as distinct from the executive or administrative function (as they do not concede), the maxim cannot apply to such a case as the present where it appears that there is in the State of Singapore no provision, corresponding, for example, to that contained in section 3(2) of the English Statutory Instruments Act of 1946 for the publication in any form of an order of the kind made in the present case or any other provision designed to enable a man by appropriate inquiry to find out what 'the law' is. In this connection it is to be observed that a distinction is drawn in the Ordinance itself between an order directed to a particular individual on the one hand and an order directed to a class of persons on the other; for sub-section (3)(b) of section 9 provides in the latter case both for publication in the Gazette and presentation to the Legislative Assembly."

Based on this passage, it was urged that the notification of the Reserve Bank, dated November 8, 1962 could not deemed to be in force, at least not on November 28, 1962 when the respondent landed in Bombay and that consequently he could not be held guilty of the contravention of s. 8(1). This argument cannot, in our opinion, be accepted. In the first place, the order of the Minister dealt with by the Privy Council was never "published" since admittedly it was transmitted only to the Immigration official who kept it with himself. But in the case on hand, the notification by the Reserve Bank varying the scope of the exemption, was admittedly "published" in the Official Gazette - the usual mode of publication in India, and it was so published long before the respondent landed in Bombay. The question, therefore, is not whether it was published or not, for in truth it was published, but whether it is necessary that the publication should be proved to have been brought to the knowledge of the accused. In the second place, it was the contravention of the order of the Minister that was made criminal by s. 6(2) of the Immigration Ordinance. That is not the position here, because the contravention contemplated by s. 23(1-A) of the Act is, in the present context, of an order of the Central Government issued under s. 8(1) of the Act and published in the Official Gazette on November 25, 1948 and this order was in force during all this period. No doubt, for the period up to the 8th November, the bringing of gold by through passengers would not be a contravention because of the permission of the Reserve Bank exempting such bringing from the operation of the Central Government's notification. It was really the withdrawal of this exemption by the Reserve Bank that rendered the act of the respondent criminal. It might well be that there is a distinction between the withdrawal of an exemption which saves an act otherwise criminal from being one and the passing of an order whose contravention constitutes the crime. Lastly, the order made by the Minister in the Singapore case, was one with respect to a single individual, not a general order, whereas what we have before us is a general rule applicable to every person who passes through India. In the first case, it would be reasonable to expect that the proper method of acquainting a person with an order which he is directed to obey is to serve it on him, or so publish it that he would certainly know of it, but there would be no question of individual service of a general notification on every member of the public, and all that the subordinate law-making body can or need do, would be to publish it in such a manner that persons can, if they are interested, acquaint themselves with its contents. In this connection reference may be made to rule 141 of the Defence of India Rules 1962 which runs :

> "141. Publication, affixation and defacement of notices. - (1) Save as otherwise

> expressly provided in these Rules, every authority, officer or person who makes any order in writing in pursuance of any of these Rules shall, in the case of an order of a general nature or affecting a class of persons publish notice of such order in such manner as may, in the opinion of such authority, officer or person be best adapted for informing persons whom the order concerns in the case of an order affecting an individual corporation of firm serve of cause the order to be served in the manner for the service of a summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) and in the case of an order affecting an individual person (not being a corporation or firm) serve or cause the order to be served on that person -
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> (i) personally, by delivering or tendering to him the order, or
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> (ii) by post, or
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> (iii) Where the person cannot be found, by leaving, an authentic copy of the order with some adult male member of his family or by affixing such copy to some conspicuous part of the premises in which he is known to have last resided or carried on business or personally worked for gain and thereupon the persons, corporation, firm or person concerned shall be deemed to have been duly informed of the order."

and this which is substantially the same as rule 119 of the Defence of India Rules, 1939, brings out clearly the distinction between orders which are intended to apply to named individuals and orders of a general nature.

Reliance was also placed by Mr. Sorabjee on the judgment of Bailhache J. in Johnson v. Sargant & Sons ([1981] 1 K.B. 101) where speaking of an order of the Food Controller dated May 16 said to have been contravened on the same day, the learned Judge said :

> "I have no reason to suppose that any one in the trade knew about it on May 16 ..... While I agree that the rule is that a statute takes effect on the earliest moment of the day on which it is passed or on which it is declared to come into operation, there is about statutes a publicity even before they come into operation which is absent in the case of many orders such as that with which we are now dealing; indeed, if certain Orders are to be effective at all, it is essential that they should not be known until they are actually published. In the absence of authority upon the point I am unable to hold that this order came into operation before it was known, and, as I have said, it was not know until the morning of May 17."

Referring to this case Prof. C. K. Allen says : (Law and Orders (2nd. ed. p. 132)

"On the face of it, it would seem reasonable that legislation of any kind should not be binding until it has somehow been 'made known' to the public; but that is not the rule of law, and if it were, the automatic cogency of a statute which has received the royal assent would be seriously and most inconveniently impaired. In a solitary case, however, before the passing of the Act of 1946 [The Statutory Instruments Act] Johnson v. Sargant, Bailhache, J. held that an Order did not take effect until it 'became known'. The reasoning was that statute at least received the publicity of Parliamentary debate, and that therefore they were, or should be, 'known', but that this was not true of delegated legislation, which did not necessarily receive any publicity in Parliament or in any

other way.

This was a bold example of judge-made law. There was no precedent for it, and indeed a decision, Jones v. Robson [(1901) 1 Q.B. 673] which, though not on all fours, militated strongly against the judge's conclusion, was not cited; not did the judge attempt to define how and when delegated legislation 'became known'. Both arguments and judgment are very brief. The decision has always been regarded as very doubtful, but it never came under review by a higher court."

We see great force in the learned author's comment on the reasoning in Sargant's case ([1981] 1 K.B. 101). Taking the present case, the question would immediately arise is it to be made known in India or throughout the world, for the argument on behalf of the respondent was that when the respondent left Geneva on November 27 he was not aware of the change in the content of the exemption granted by the Reserve Bank. In a sense the knowledge of the existence or content of a law by an individual would not always be relevant, save on the question of the sentence to be imposed for its violation. It is obvious that for an Indian law to operate and be effective in the territory where it operates viz., the territory of India it is not necessary that it should either be published or be made known outside the country. Even if, therefore, the view enunciated by Bailhache, J. is taken to be correct. It would be apparent that the test to find out effective publication would be publication in India, not outside India so as to bring it to the notice of everyone who intends to pass through India. It was "published" and made known in India by publication in the Gazette on the 24th November and the ignorance of it by the respondent who is a foreigner is, in our opinion, wholly irrelevant. It is, no doubt, admitted on behalf of the prosecution in the present case that the respondent did not have actual notice of the notification of the Reserve Bank, dated November 8, 1962 but, for the reasons stated, it makes, in our opinion, no difference to his liability to be proceed against for the contravention of s. 8(1) of the Act.

Learned Counsel for the respondent also referred us to the decision of the Bombay High Court in Imperator v. Leslie Gwilt (I.L.R. [1945] BOM. 681) where the question of the proper construction and effect of rule 119 of the Defence of India Rules, 1937 came up for consideration. The learned Judges held that there had not been a proper publication or notification of an order, as required by rule 119 and that in consequence the accused could not be prosecuted for a violation of that order. Other decisions of a like nature dealing with the failure to comply with the requirements of rule 119 of the Defence of India Rules or the Essential Supplies Act, or the Essential Commodities Act, were also brought to our notice but we consider that they do not assist us in the present appeal. Where there is a statutory requirement as to the mode or form of publication and they are such that, in the circumstances, the Court holds to be mandatory, a failure to comply with those requirements might result in there being no effective order the contravention of which could be the subject of prosecution but where there is no statutory requirement we conceive the rule to be that it is necessary that it should be published in the usual form i.e., by publication within the country in such media as generally adopted to notify to all the persons concerned the making of rules. In most of the Indian statutes, including the Act now under consideration, there is provision for the rules made being published in the Official Gazette. It therefore stands to reason that publication in the Official Gazette viz., the Gazette of India is the ordinary method of bringing a rule or subordinate legislation to the notice of the persons concerned. As we have stated earlier, the notification by the Reserve Bank was published in the Gazette of India on November 24, 1962, and hence even adopting the view of Baihache, J. the notification must be deemed to have been published and brought to the notice of the concerned individuals on November 25, 1962. The argument, therefore, that the notification, dated November 8, 1962 was not effective, because it was not properly published in the sense of having been brought to the actual notice of the respondent must be rejected.

Before parting from this topic we would desire to make an observation. There is undoubtedly a certain amount of uncertainty in the law except in cases where specific provision in that behalf is made in individual statutes as to (a) when subordinate legislation could be said to have been passed, and (b) when it comes into effect. The position in England has been clarified by the Statutory Instruments Act of 1946, though there is a slight ambiguity in the language employed in it, which has given rise to disputed questions of construction as regards certain expressions used in the Act. We consider that it would be conducive to clarity as well as to the avoidance of unnecessary technical objections giving occasion for litigation if an enactment on the lines of the U.K. Statutory Instruments Act, 1946, were made in India either by an amendment of the General Clauses Act or by independent legislation keeping in mind the difficulties of construction to which the U.K. enactment has given rise. As we have pointed out, so far as the present case is concerned, even on the narrowest view of the law the notification of the Reserve Bank must be deemed to have been published in the sense of having been brought to the notice of the relevant public at least be November 25, 1962 and hence the plea by the respondent that he was ignorant of the law not afford him any defence in his prosecution.

The last of the points urged by learned Counsel for the respondent was as regards the construction of the new second proviso which had been introduced by notification of the Reserve Bank, dated November 8, 1962. The argument was that the gold that the respondent carried was his personal luggage and not "cargo" - either "bottom cargo" or "transhipment cargo" - and that therefore could not and need not have been entered in the manifest of the aircraft and hence the second proviso could not be attracted to the case. The entire submission on this part of the case was rested on the meaning of the word 'cargo', the point sought to be made being that what a passenger carried with himself or on his person could not br 'cargo', and that cargo was that which was handed over to the carrier for carriage. Reliance was, in this connection placed on the definition of the term 'cargo' in dictionaries where it is said to mean "the merchandise or wares contained or conveyed in a ship." We find ourselves unable to accept this argument. To say that the second proviso refers only to what is handed over to the ship or aircraft for carriage would make the provision practically futile and unmeaning. If all the goods or articles retained by a passenger in his own custody or carried by him on his person were outside the second proviso, and the provision were attracted only to cases where the article was handed over to the custody of the carrier, it would have no have value at all as a condition of exemption. The goods entrusted to a carrier would be entered in the manifest and if they were not, it must owing to the fault of the carrier, and it could hardly be that the passenger was being penalised for the default of the carrier. If the carriage of the goods on the person or in the custody of the passenger were exempt, there would be no scope at all for the operation of the 2nd proviso. We therefore consider that the proper construction of the term 'cargo' when it occurs in the notification of the Reserve Bank is that it is used as contra-distinguished from personal luggage in the law relating to the carriage of goods. The latter has been defined as whatever a passenger takes with him for his personal use or convenience, either with reference to his immediate necessities or for his personal needs at the end of his journey. Obviously, the gold of the quantity and in the form in which it was carried by the respondent would certainly not be "personal luggage" in the sense in which "luggage" is understood, as explained earlier. It was really a case of merchandise not for the use of the passenger either during the journey or thereafter and therefore could not be called personal luggage or baggage. It was, therefore, "cargo" which had to be manifested and its value must have been inserted in the air consignment note. In this connection, reference may usefully be made to certain of the International Air Traffic Association's General Conditions of Carriage not as directly governing the contract between the respondent and the aircraft but as elucidating the general practice of transport by air in the light of which the second proviso has to be understood. Part A

entitled 'Carriage of Passengers and Baggage' by its Art. 8. para 1(c) excludes goods which are merchandise from the obligation of carries to transport as luggage or as baggage, while Art. 3 of Part B dealing with carriage of goods provides that gold is accepted for carriage only if securely packed and its value inserted in the consignment note under the heading "Quantity and nature of goods".

Some point was made of the fact that if the second proviso were applied to the case of gold or articles made of gold carried on the person, a tie-pin or a fountain-pen which had a gold nib carried by a through passenger might attract the prohibition of s. 8(1) read with the exemption by the Reserve Bank as it now stands and that the Indian law would be unnecessarily harsh and unreasonable. We do not consider this correct, for a clear and sharp distinction exists between what is personal baggage and what is not and it is the latter that is 'cargo' and has to be entered in the manifest. If a person chooses to carry on his person what is not personal baggage or luggage understood in the legal sense but what should properly be declared and entered in the manifest of the aircraft there can be no complaint of the unreasonableness of the Indian law on the topic.

The result, therefore, is that we consider that the learned Judges of the High Court erred in acquitting the respondent. The appeal has, therefore, to be allowed and the conviction of the respondent restored.

Now, coming to the question of sentence to be passed on the appellant, it is undoubtedly the settled rule of this Court that it would not interfere with the sentence passed by the courts below unless there is any illegality in it or the same involves any question of principle. The facts of the case before us have, however, presented some unusual features which had led us to technically interfere with the sentence of one year's imprisonment passed by the Chief Presidency Magistrate. The respondent was sentenced by the Presidency Magistrate on April 24, 1963 and thereupon he stated serving the sentence till the judgment of the High Court which was rendered on December 10, 1963. The respondent was released the next day i.e., December 11, 1963. This court granted special leave on December 20, 1963 and thereafter on application made by the appellant-State, this Court directed the arrest of the respondent. The respondent was accordingly arrested and though the Magistrate directed his release on bail pending the disposal of the appeal in this Court, the respondent was unable to furnish the bail required and hence suffered imprisonment, though it would be noticed that such imprisonment was not in pursuance of the conviction and sentence passed on him by the Magistrate. Such imprisonment continued till May 8, 1964 when the decision of this Court was pronounced, so that virtually the respondent had suffered the imprisonment that had been inflicted on him by the order of the Presidency Magistrate. In these circumstances, we directed that though the appeal was allowed, the sentence would be reduced to the period already undergone which was only a technical interference with the sentence passed by the Presidency Magistrate, though in substance in was not.

Appeal allowed.

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