

Chern Taong Shang and Others

Vs

Commander S. D. Baijal and Others

Criminal Appeals Nos. 642-656 of 1987

(B. C. Ray, K. Jagannatha Shetty JJ)

13.01.1988

JUDGMENT

RAY, J. –

1. These appeals by special leave are against the judgment and order dated April 24, 1987 passed by the High Court of Bombay dismissing Criminal Appeal No. 636 of 1986 filed by masters of two trawlers against their conviction and sentence and allowing Appeal No. 496 of 1986 filed by Commander S. D. Baijal against the acquittal of accused 3 and 4, i.e. the charterer company and its Managing Director and also releasing the trawlers. The High Court convicted accused 3 and 4 for contravention of sub-section (6) of Section 5 of the Maritime Zones of India Act, 1981 read with Section 7 thereof and Rule 16 of Maritime Zones of India Rules, 1982. The High Court also ordered confiscation of the two trawlers and to vest the same in favour of Central Government under Section 13 of the Maritime Zones of India Act.

2. The trawlers in question which are foreign vessels are chartered by respondents 4 and 5 of this appeal for the purpose of fishing in maritime zone of India after obtaining permit under Section 5 of Maritime Zones of India Act, in Short M.Z.I. Act. These two trawlers along with three other pairs of trawlers were apprehended and seized by Coast Guard Ship Vikram commanded by Commander S. D. Baijal for fishing operations in the exclusive economic zone of India in violation of the terms and conditions of permit and the letter of intent granted to that company by the Government of India under Section 5(4) of M.Z.I. Act and in violation of Maritime Zones of India Rules in short M.Z.I. Rules, 1982 as amended. They were prosecuted by Additional Chief Metropolitan Magistrate, 8th Court Ballard Estate, Bombay on the complaint of Commander S. D. Baijal filed as authorised officer under Section 19 of the M.Z.I. Act. The master of the two trawlers, respondents 2 and 3 of this appeal were convicted and sentenced to pay a fine of Rs. 60,000 and Rs. 40,000 respectively and the other accused respondents 4 and 5 were acquitted and the trawlers and the fishes thereon were ordered to be released on payment of the detention charges. Of the other three pairs of foreign trawlers chartered by Indian company for fishing in the maritime zone of India under permit granted under M.Z.I. Act which were seized and prosecuted, two pairs of trawlers with fishes thereon were ordered to be confiscated while one pair of these trawlers with fishes thereon were ordered to be confiscated while one pair of these trawlers were directed to be released. The masters of each pair of trawler were similarly convicted and sentenced to pay fine for violation of provisions of the said Act and the Rules framed thereunder.

3. The masters of the pair of trawlers filed Criminal Appeal No. 636 of 1986 against their conviction and sentence while the complaining Commander S. D. Baijal filed Criminal Appeal No. 496 of 1986 against the order of acquittal of respondents 4 and 5 i.e. the Managing Director of the

Company and the Company and also against the release of the pair of trawlers in spite of conviction of the masters under Section 12(b) of M.Z.I. Act be the Magistrate. These two appeals were heard together and disposed of by a common judgment by the High Court, Bombay whereby Criminal Appeal No. 636 of 1986 was allowed in part by modifying the sentence of the masters of the trawlers from RI for one year to SI for 9 months and from RI for 9 months to SI for 6 months. In Criminal Appeal No. 496 of 1986 the accused respondents 3 and 4 i.e. the Managing Director and the Company were convicted and sentenced to pay a fine of Rs. 30,000 each and the trawlers were ordered to be confiscated with the fishes thereon or in case of sale of the same the proceeds thereof. The High Court also held the masters of trawlers guilty under Rule 8(1)(q) and they were convicted under Section 12(a) instead of Section 12(b) of the M.Z.I. Act but maintained the sentence of penalty.

4. It is against this judgment and order the instant appeals on special leave have been filed.

5. Cri. A. Nos. 646-47/87 and Cri. A. Nos. 650-51 of 1987 arise out of a common judgment made by the High Court of Bombay on April 24, 1987 modifying in part the judgment and order made by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Estate, Bombay in Criminal Case No. 28 of 1984 passed in Criminal Appeal Nos. 497 and 637 of 1986. The Additional Chief Metropolitan Magistrate convicted the masters of the trawlers i.e. accused 1 and 2 for contravention Rule 8(1)(q) read with Rule 16 and Section 20(b) of M.Z.I. Act and sentenced them to pay a fine of Rs. 60,000 and Rs. 40,000 respectively; in default of payment of fine to suffer RI for 1 year and 9 months respectively. The Magistrate also made an order confiscating the trawlers Jiann Tai No. 301 and Jiann Tai No. 302 along with the fishing gear, equipments, stores, cargo and fish and directed that the same shall vest with the Central Government together with the proceeds of the sale of fish, if any, under order of the court. The Magistrate however, acquitted accused 3 and 4, i.e. the Charterer Company and its Managing Director. Cri. A. No. 497 of 1986 filed by Cdr. S. D. Baijal against the order acquitting accused 3 and 4, i.e. Charter Company and its Managing Director was allowed by the High Court of Bombay and they were convicted and sentenced to pay a fine of Rs. 30,000 each; in default to suffer SI for 4 months. The order of confiscation of the two trawlers was also maintained. Cri. A. No. 637/86 filed by the masters of the trawlers was dismissed with the modification that the conviction made under Section 12(b) was altered to Section 12(a) of M.Z.I. Act and the sentence of RI for 1 year and 9 months respectively in default payment of fine were modified as SI for 6 months and 5 months respectively.

6. Cri. A. Nos. 648-49/87 and Cri. A. Nos. 652-53 of 1987 arise out of a common judgment passed in Criminal Appeal Nos. 495 and 634 of 1986 by the High Court of Bombay on April 24, 1987 dismissing the appeals of the masters of the vessels and allowing the appeals filed on behalf of the prosecution. All these aforesaid appeals were filed against the judgment and order passed by the Additional Chief Metropolitan Magistrate in Criminal Case No. 27 of 1984 wherein the Magistrate convicted and sentenced the masters of the trawlers with the imposition of fine of Rs. 60,000 and Rs. 40,000 on accused 1 and 2 respectively for contravention Rule 8(1)(q) and Rule 16 of the M.Z.I. Rules and also of the offence under Section 5 of the Act and imposing penalty under Section 12(b) of the M.Z.I. Act. The Magistrate, however, acquitted accused 3 and 4 i.e. the Charterer Company and its Managing Director and directed the release of the trawlers in favour of the masters of these trawlers. The Cri. A. No. 634 of 1986 filed by the masters of the vessels was dismissed by the High Court of Bombay and the conviction and sentence under Section 12(b) of M.Z.I. Act was altered to one under Section 12(a) of the said Act. Cri. A. No. 495 of 1986 filed on behalf of the prosecution was allowed and accused 3 and 4 i.e. the Charterer Company as well as the Managing Director of the Company were convicted and sentenced to pay a fine of Rs. 30,000. The vessel as well as the

fishing equipment were confiscated and the safe were directed to vest in favour of the Central Government.

7. Cri. A. Nos. 654-55/87 and Cri. A. No. 656 of 1987 arise out of a common judgment and order passed by the High Court of Bombay in Cri. Appeal Nos. 660 and 635 of 1986. These criminal appeals were filed against the judgment and order passed in Criminal Case No. 26 of 984 made on May 21, 1986 by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Estate. The Magistrate convicted and sentenced accused 1 and 2 i.e. the masters of the vessel to pay a fine of Rs. 60,000 and Rs. 40,000 respectively; in default to undergo RI for 1 year and 9 months respectively. The Magistrate also made an order confiscating the trawlers BWA Sheng No. 21 and HQA Sheng No. 22 together with fishing gear, equipment, stores cargo and fish therein. Cri. A. No. 660/86 was filed by the Charterers and Cri. A. No. 635 of 1986 was filed by the masters of the trawlers. Cri. A. No. 635 of 1986 was dismissed with the modification that conviction and sentence passed under Section 12(b) of the M.Z.I. Act was altered to one under Section 12(a) of the said Act and Cri. A. No. 660 of 1986 was dismissed with the modification on the appellant was altered to SI for 4 months instead of RI for 6 months. The order of confiscation of trawlers passed by the Magistrate was also confirmed.

8. The facts and issues involved in all these appeals being similar we dispose of these appeals by a common judgment.

9. It has been first contended on behalf of the appellant that at the time of apprehension of the trawlers no fish was found on board and the net was not wet. There was no evidence that fish on board was seized nor there was any evidence to show what had happened to fish or who put the fish in the hold of the trawlers. It has, therefore, been submitted that no presumption under Section 22 of the said Act can be drawn that the trawlers were engaged in fishing within the exclusive economic zone of India in contravention of the provisions of the Act and the Rules framed thereunder. This contention cannot be considered in this appeal under special leave as there has been concurrent findings by the Chief Metropolitan Magistrate as well as by the High Court that there was fish on board which includes the hold of the trawlers. The learned Single Judge observed :

I am, however, unable to accept that for a minor omission to make entry of finding of the fish or the net in the officers' diary can by itself negative the evidence of actual finding of the fish and the wet net on the deck and in my view the authority quoted will have no application to the facts of this case.

10. The High Court further held on a consideration of the evidence that the fishing trawlers were fishing in a depth within 40 fathoms and the finding of the Magistrate on this score is unassailable. There has been violation of amended Rule 8(1)(q) of M.Z.I. Rules. Condition 2(5) of the permit provides that any condition could be imposed which would be binding on the characterers, masters of the trawlers. Rule 8(1)(q) requires the trawlers to fish at a depth of more than 40 fathoms. This condition in the permit has been violated. The masters and the charterers have been accordingly convicted under Section 12(a) by the High Court as the violation is with regard to the area of operation specified in the permit and the penalty provided for the same is not exceeding Rs. 5 lakhs. As the Magistrate has exercised his discretion in sentencing the masters to pay lesser amount as penalty the High Court did not consider it proper to interfere with the same.

11. The main argument on behalf of the appellant was focussed on the vital question as to whether the words used in Section 13 of M.Z.I. Act "shall also be liable to confiscation" mandate that the

foreign vessel used in connection with the commission of the offence as soon as the masters have been convicted under Section 10 or 11 or 12 of the said Act, shall be confiscated or it is the discretion of the court to order either for release of the vessel or for confiscation of the vessel together with the fish and other equipment, cargo and fishing gear considering the graveness of the offence. It has been strenuously urged before us that the object of the M.Z.I. Act is to prevent poaching of fishes in the exclusive economic zone of India by foreign vessels without any licence or permit as required under the said Act. Section 10 provides that where a vessel contravenes the provisions of Section 3, the owner or master of the vessel shall be punishable for imprisonment for a term not exceeding 3 years or with a fine not exceeding Rs. 15 lakhs; where the contravention takes place in an area within the exclusive economic zone of India, the punishment of fine will not exceed Rs. 10 lakhs. Similarly for contravention of licence the punishment of fine will not exceed Rs. 10 lakhs whereas in case of contravention of the provisions of the permit in respect of the area of operation or method of fishing, the punishment of fine will not exceed Rs. 5 lakhs and in any other case the punishment of fine will not exceed rupees fifty thousand. Referring to these provisions providing for different kinds of penalty, it has been urged that the confiscation of the vessel for contravention of the permit is not warranted inasmuch as the punishment provided for such contravention under Section 12 is much less than the punishment provided for in respect of contravention of licence as well as contravention of Section 3 of the said Act. It has, therefore, been submitted that the provisions of Section 13 of the said Act are not mandatory but directory. This leaves option to the court to use its discretion to pass an order of confiscation of vessel in the facts and circumstances of the case. The trawlers in question were chartered by the company and the company duly obtained permit under Section 5 of M.Z.I. Act, 1981 for fishing in economic zones of India at a depth of not less than 40 fathoms. It has been submitted that it is not possible to fish at the said depth as depth varies from place to place and for such a minor infringement the penalty of confiscation of the vessel i.e. the fishing trawlers should not be awarded as the trawlers are fishing in the maritime zone of India under permit granted by the Government of India in favour of the Indian company which chartered those trawlers. Moreover, different penalties are prescribed for different offences committed under Sections 10, 11 and 12 of M.Z.I. Act according to the graveness of the offence. The penalty of confiscation of the vessel under Section 13 if found to be imperative, the provisions will be arbitrary. The words "shall also be liable to confiscation" in Section 13 of the said Act have been to be interpreted as not mandatory in the context they have been used but discretionary. It is left to the discretion of the court to award this sentence of confiscation in case of commission of grave offences. In support of this submission the decisions in *State of Madhya Pradesh v. Azad Bharat Finance Co.* (1966 Supp SCR 473 : AIR 1967 SC 276 : 1967 Cri LJ 285), *Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh* ((1964) 6 SCR 594 : AIR 1964 SC 1140 : (1964) 2 Cri LJ 234) and *Superintendent and Remembrancer of Legal Affairs to the Govt. of West Bengal v. Abani Maity* ((1979) 3 SCR 472 : (1979) 4 SCC 85 : 1979 SCC (Cri) 902 : AIR 1979 SC 1029) have been cited at the bar wherein similar words "shall also be liable to confiscation" have been used.

12. It is convenient to ascertain the legal position before deciding the question raised. In the Statement of Objects and Reasons of the Maritime Zones of India (regulation of Fishing by Foreign Vessels) Act, 1981 it is stated :

There has been an increase in poaching activities of foreign fishing vessels in our exclusive economic zone. There have also been instances of foreign fishing vessels chartered by Indian parties indulging in such activities. To prevent such activities and to protect our fishermen from the hardship caused by poaching vessels, it is necessary to regulate fishing activities by foreign fishing vessels and to provide for

deterrent punishment by way of heavy fines and confiscation of foreign fishing vessels engaged in such activities.

13. Section 2(a) defines "exclusive economic zone of India" as meaning the exclusive zone of India in accordance with the provisions of Section 7 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

14. According to Section 2(i) "owner" of a vessel includes any association of persons whether incorporated or not, by whom the vessel is owned or chartered.

15. Section 2(j) defines "permit" meaning a permit granted or deemed to have been granted under Section 5.

16. Section 3 states that subject to the provisions of the Act, no foreign vessel shall, except under and in accordance with -

(a) a licence granted under Section 4; or

(b) a permit granted under Section 5.

by the Central Government, be used for fishing within any maritime zone of India.

17. Section 4 provides for procedure for making application for licence by the owner of a foreign vessel for fishing within any maritime zone of India and grant of licence by Central Government.

18. Section 5 prohibits fishing by Indian citizens using foreign vessels within any maritime zone of India without obtaining permit and the procedure for grant of permit to charterer has been specified therein.

19. Sub-section (6) of Section 5 of the Act provides :

A person holding a permit under this section shall ensure that every person employed by him complies, in the course of such employment, with the provisions of this Act or any rule or order made thereunder and the conditions of such permit.

20. Section 10 says that for contravention of provisions of Section 3, the owner or master of the vessel -

(a) in case of contravention of territorial waters of India shall be punishable with imprisonment for a term not exceeding three years or with fine not exceeding rupees fifteen lakhs or with both; and

(b) in a case where contravention takes place in any area within the exclusive economic zone of India, shall be punishable with fine not exceeding rupees ten lakhs.

21. Section 11 prescribes punishment of fine not exceeding Rs. 10 lakhs in case of contravention of licence.

22. Section 12(a) prescribes punishment of fine not exceeding Rs. 5 lakhs where the contravention relates to the area of operation or method of fishing specified in the permit and; Section 12(b) in any

other case with fine not exceeding rupees fifty thousand.

23. Section 13 which is relevant for deciding these appeals is as under :

13. Confiscation of vessels, etc. - (1) Where any person is convicted of an offence under Section 10 or Section 11 or Section 12, the foreign vessel used in or in connection with the commission of the said offence, together with its fishing gear, equipment, stores and cargo and any fish on board such ship or the proceeds of the sale of any fish ordered to be sold under the second proviso to clause (a) or sub-section (4) of Section 9 shall also be liable to confiscation.

(2) The foreign vessel or other things confiscated under sub-section (1) shall vest in the Central Government.

24. Other provisions of the said Act are not necessary for our purpose and as such they are not stated herein.

25. Thus, it is crystal clear that the M.Z.I. Act has been enacted with the object of preventing illegal poaching of fishes by foreign vessels including foreign vessels chartered by Indian parties by providing deterrent punishment to protect Indian fishermen. The Objects and Reasons of the Act are to be taken into consideration in interpreting the provisions of the statute and not the debates in Parliament on the Bill. This has been observed by this Court in *K. P. Varghese v. ITO* ((1982) 1 SCR 629 : (1981) 4 SCC 173 : 1981 SCC (Tax) 293 : AIR 1981 SC 1922) as under : [SCC p. 184 : SCC (Tax) p. 303, para 8]

Now it is true that the speeches made by the members of the legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible.

26. It is pertinent to mention that in interpreting a statute the court has to ascertain the will and policy of the legislature as discernible from the object and scheme of the enactment and the language used therein. Viewed in this context it is apparent that the said Act has been made with the sole purpose of preventing poaching of fishes by foreign vessels chartered by Indian citizens within the exclusive economic zone of India as specified in Rule 8(1)(q) of Maritime Zone of India Rules as amended in 1982 as well as in breach of the provisions of the said Act and the terms and conditions of permit issued under Section 5 of the said Act.

27. Section 3 under the heading "Prohibition of fishing in Maritime Zone of India by foreign vessels" expressly prohibits foreign vessels from fishing in maritime zone of India except under and in accordance with a licence or permit granted by Central Government and breach of the same has been made punishable under Section 10 of the said Act. Similarly violation of the terms and conditions of licence and permit granted under Section 4 of 5 is punishable under Section 11 or 12 respectively of the said Act.

28. Section 13 of the said Act expressly says that besides conviction and sentence of the masters of

the vessels and charterers, the vessel is liable to be confiscated with fishes therein.

29. The contention on behalf of the appellants is that the words "shall also be liable to confiscation" as used in Section 13 of the said Act do not mean that it is mandatory to confiscate the vessel, i.e. the trawlers as the masters of the vessel have been convicted and sentenced to pay penalty under Section 12 of the Act. As various punishments have been provided for different types of offences, it is left to the discretion of the court to order confiscation of the vessel or to release the vessel.

30. In the case of *Indo-China Steam Navigation Co. Ltd. v. Jasjit Singh* ((1964) 6 SCR 594 : AIR 1964 SC 1140 : (1964) 2 Cri LJ 234) the foreign vessel 'Eastern Saga' arrived at Calcutta from the Far East carrying a legitimate cargo. On its arrival at the port the customs officers on search found a hole in sailors' accommodation which was covered with a piece of wood and over-painted. From the hole the customs officers found out a large quantity of gold in bars valued at about Rs. 23 lakhs. The Additional Collector of Customs found that the vessel had clearly rendered itself liable to confiscation under Section 167(12-A) of Sea Customs Act, 1878 because it had infringed the provisions of Section 52-A of the said Act. He also confiscated the gold bars under Section 167(8) read with Section 23-A of the Foreign Exchange Regulations Act. He also directed that 'Eastern Saga' be confiscated under Section 167(12-A) of the said Act and in lieu of confiscation he gave the owners of the ship an opportunity to pay a fine of Rs. 25 lakhs within a period of 30 days of the despatch of the order. This order was challenged in appeal under special leave before this Court. Section 167(12-A) provides that if a vessel contravenes Section 52-A it "shall be liable to confiscation". It was held :

The context seems to require that it is not open to the customs authority to refuse to confiscate the vessel on the ground that there are any extenuating circumstances surrounding the contravention of Section 52-A in a given case and that it would be unfair to impose the penalty of confiscation. Two penalties are prescribed, one is the confiscation of the ship, and the other is a fine against the master. In regard to the latter penalty, it is within the discretion of the customs authority to decide what amount of penalty should be imposed; just as in the case of the first penalty it is not open to it to say that it would not impose the penalty of confiscation against the offending ship, so in the case of the second penalty it is not open to it to say that it will not levy any penalty against the master It must be regarded as an elementary requirement of clause (12-A) that as soon as the offence referred to in column 1 of the said clause is proved, some penalty has to be imposed and clause (12-A) indicates that two penalties have to be imposed and not one, there being discretion in regard to the penalty imposable against the master as regards the amount of the said penalty. Therefore, we do not think it would be possible to take the view that if there are extenuating circumstances attending the contravention of Section 52-A in a given case the customs authority can refrain from confiscating the vessel. Confiscation of the vessel is the immediate statutory consequence of the finding that an offence under clause (12-A) is established, just as the imposition of some penalty against the master is another statutory consequence of the same contravention.

31. Section 183 lays down that whenever an order of confiscation is made the Adjudicating Authority has to give the owner of the goods which includes the vessel, an opportunity to pay fine in lieu of confiscation. Section 183 confers discretion on the Authority to determine what amount of fine should be imposed.

32. Section 11 of the M. B. Opium Act as amended where the words "shall be liable to confiscation" occurred came up for consideration before this Court in the case of State of Madhya Pradesh v. Azad Bharat Finance Co. (1966 Supp SCR 473 : AIR 1967 SC 276 : 1967 Cri LJ 285), a truck hired by one Harbhajan Singh from the respondent company was found on search to have contained contraband opium. Harbhajan Singh was tried for offences under Sections 9-A and 9-B of the Opium Act (10 of 1978). The Magistrate while acquitting him on the ground that he had no knowledge, ordered for confiscation of the truck as the word "shall" occurring in Section 11 of the Act make it mandatory to confiscate. Sessions Judge on revision affirmed the order of the Magistrate. High Court on revision held that the words "shall be liable to confiscation" in Section 11 did not mean that it was mandatory to confiscate. It is the discretion of the court whether to make an order for confiscation of the conveyance or not according to the facts and circumstances of the case. This Court had observed that provisions of Section 11 of the Madhya Bharat Act are permissive and not obligatory. Three factors were taken into consideration in construing Section 11 :

First it would be unjust to confiscate the truck of a person if he has no knowledge whatsoever that the truck was being used for transporting the opium. Secondly it is a penal statute and it should if possible be construed in such a way that a person who has not committed or abetted any offence should not be visited with a penalty. Thirdly, if confiscation was obligatory under the section, the section may have to be struck down as imposing an unreasonable restriction under Article 19 of the Constitution.

Section 11 of the Madhya Bharat Act is not therefore to be construed as obligatory and it is for the court to consider in each case whether the articles in which the contraband opium is found or is being transported should be confiscated or not having regard to all the circumstances of the case.

33. The earlier decision of this court has not been referred to in this case. Moreover what appears to have weighed with this Court was that unless the owner of the truck knew that hirer used the truck in transporting contraband opium it would be unjust to confiscate the conveyance. On the instant case the owner of the vessel has been defined in Section 2(i) of M.Z.I. Act as including any association of persons, whether incorporated or not, by whom the vessel is owned or chartered. The charterer company and its Managing Director, have been convicted for contravention of Section 5 of the Act and Rule 8(1)(q) of the Rules framed thereunder and penalty has been awarded. So the charterer who is deemed to be the owner of the trawler was held guilty of the offence of breach of terms of the permit.

34. In the case of Superintendent and Remembrancer of Legal Affairs to the Government of West Bengal v. Abani Maity ((1979) 3 SCR 472 : (1979) 4 SCC 85 : 1979 SCC (Cri) 902 : AIR 1979 SC 1029) the car belonging to Abani Maity was searched and contraband ganja was found concealed in the car owned by Abani Maity. The Magistrate passed order of conviction and sentence against him but he did not make any order for confiscation of the car used for transporting the contraband article. This matter ultimately came up before this Court of Section 63(1) of the Bengal Excise Act, 1909 that the words "shall be liable to confiscation" as used in the context convey an absolute imperative to confiscate the vehicle used for transport of the contraband goods. It was further held that it is incumbent on the Magistrate to pass, at the conclusion of the trial, in addition to the conviction and sentence, an order of confiscation of the car by which such offence has been committed :

... the word "liable" occurring in many statutes, has been held as not conveying the

sense of an absolute obligation or penalty but merely importing a possibility of attracting such obligation, or penalty, even where this word is used along with the words "shall be". Thus, where an American revenue statute declared that for the commission of a certain act, a vessel "shall be liable to forfeiture", it was held that these words do not effect a present absolute forfeiture but only give a right to have the vessel forfeited under due process of law (See *Kate Heron*, 14 Fed Cas 139, 141 : 6 Sawy 106 quoted in *Words and Phrases*, Vol. 25, p. 109, Permanent Edition). Similarly, it has been held that in Section 302, Indian Penal Code, the phrase "shall also be liable to fine" does not convey a mandate but leaves it to the discretion of the court convicting an accused of the offence of murder, to impose or not to impose fine in addition to the sentence of death or imprisonment for life. [SCC pp. 89-90 : SCC (Cri) p. 907, para 16]

35. In the case of *F. N. Roy v. Collector of Customs* (1957 SCR 1151 : AIR 1957 SC 648 : 1957 Cri LJ 1026) the petitioner on the basis of a notification dated March 16, 1953 issued by the Government of India giving general permission to all persons to import into India from certain countries any goods of any of the description specified in the schedule annexed to the notification had placed an order with a company in Japan for supply of certain goods called in the trade Zip Chains. The goods on arrival in Calcutta Port could not be cleared from the Port as a notice was issued by the Collector of Customs for Appraisement stating that the petitioner did not possess valid import licence for the goods and asked him to show cause why the same should not be confiscated and action taken against the petitioner under Section 167(8) of the Sea Customs Act. The petitioner submitted a written answer stating that the Zip Chains imported by him were chains of the kind free import of which has been permitted and as such no licence to import them was necessary. The petitioner was again asked by the customs authorities whether he wanted a personal hearing. The petitioner did not reply to the same. The Collector of Customs made an order confiscating the goods and imposing a penalty of Rs. 1000 on the petitioner. The petitioner thereafter filed an appeal which was dismissed on the ground that it was barred by limitation. The petitioner thereafter made an application for quashing the order of confiscation of goods and imposing penalty on him. This application was dismissed. The petitioner thereafter filed an application under Article 32 of the Constitution challenging the validity of the order made against him. The order of confiscation was questioned on the ground that it did not give the petitioner an option to pay a fine in lieu of confiscation, as provided in Section 183 of the Sea Customs Act. The Imports and Exports (Control) Act, 1947 by Section 3(1) empowers the Central Government to make provisions for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, the import, export, carriage coastwise or shipment as ships' stores of goods of any specified description. Sub-section (2) of that section provided that all goods to which any order under sub-section (1) applies shall be deemed to be goods of which the import or export has been prohibited or restricted under Section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly, except that Section 183 thereof shall have effect as if for the word "shall" therein the word "may" was substituted.

36. It was held that the goods imported into India contrary to the prohibition or restriction shall be liable to confiscation and any person concerned in such importation shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees. Under Section 167(8) of the Sea Customs Act the provisions of confiscation of goods illegally imported are mandatory. The only question adjudicated before this Court was that as no option was given to pay fine in lieu of confiscation under Section 183 of the Sea Customs Act, the order should be held bad. It was held that in view of the substitution of the word 'may' in place of 'shall' in Section 183 of the

Sea Customs Act, it has been left to the discretion of the customs authorities to give or not to give the option to pay fine. It was held that it was obligatory on the part of the customs authorities to make an order confiscating the goods illegally imported in violation of the provisions of the Act.

37. The Objects and Reasons of the M.Z.I. Act are to prevent illegal poaching of fishes by foreign vessels chartered by Indian citizens in the exclusive economic zone of India at a depth less than 40 fathoms by providing deterrent punishment for contravention of the provisions of the Act in order to protect and safeguard the interests of Indian fishermen.

38. Chapter II of the Act deals with regulation of fishing by foreign vessels. The heading of Section 3 is "Prohibiting of Fishing in Maritime Zones of India by Foreign Vessels". Thus Section 3 prohibits the use of foreign vessels for fishing within any maritime zone of India without licence or permit granted by the Central Government and also in accordance with the terms mentioned in the licence or permit. Section 5 under the caption "Prohibition of Fishing by Indian Citizens using foreign vessels" clearly enjoins in sub-section (6) that a person holding permit shall ensure that every person employed by him complies, in the course of such employment with the provisions of the Act or any rule or order made thereunder and the conditions of such permit. Rule 8(1)(q) inserted by M.Z.I. Rules as amended in 1982 expressly prohibits fishing by foreign vessel chartered by Indian citizens in a depth less than 40 fathoms in any exclusive economic zone of India. Infringement of this rule as well as violation of the provisions of Section 5 of the Act and the conditions of permit will make the masters of the vessel as well as the company and the Managing Director or Secretary of the company chartering the vessel liable to conviction and sentence of penalty expressly provided in Section 12 of the said Act. Section 13 also in clear and unambiguous terms says that on the conviction of the person i.e. the master and the charterer of an offence under Section 10 or 11 or 12 the vessel used in connection with the offence together with the fish on board such ship or the sale proceeds of the sale of such fish, stores, cargo shall also be liable to confiscation. Viewed in the context the words "shall also be liable to confiscation" do not leave any discretion to the Magistrate or the court to make no order of confiscation of the vessel as soon as the masters of the vessel are convicted under Section 10 or 11 or 12 of the said Act. The legislative intent in making this provision is to provide deterrent punishment to prohibit fishing in exclusive economic zone of India by foreign vessel in infringement of the Act and the rules framed thereunder the conditions of permit or licence. Viewed in this context Section 12 mandates that on conviction of the master and charterer of an offence under Section 12 not only penalty of fine shall be imposed but the vessel used in or in connection with the commission of such offence has to be confiscated. It is not open to the court to consider the graveness of the offence and other extenuating circumstances and to make no order for confiscation of the offending vessel concerned. Confiscation of the vessel is the immediate statutory consequence of the finding that an offence either under Section 10 or 11 or 12 has been proved and its master has been convicted. Section 13 is thus mandatory and it is not open to the court as soon as the master of the vessel is convicted of an offence under Section 12 and is awarded penalty to refrain from making an order confiscating the offending vessel.

39. For the reasons aforesaid we dismiss all these appeals and affirm the judgments and order of the High Court. The vessels have been detained in Bombay Port after apprehending them on July 26, 1984 and a huge amount has to be paid as port charges. Considering the facts and circumstances of the case the Port Authorities at Bombay may consider if an application is made by the parties for exemption or partial exemption of the same favourably in view of the order of confiscation of the trawlers. There will be no order for costs.

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