

Collector of Customs & Central Excise, Bhubneshwar, District Puri

Vs

Paradip Port Trust and Another

Civil Appeal Nos. 6247-48 of 1983

(K. N. Saikia, S. C. Agarwal JJ)

08.08.1990

JUDGMENT

K. N. SAIKIA, J. -

1. These appeals by special leave are from the Judgment of the High Court of Orissa, Cuttack dated July 3, 1980 in two writ applications under Article 226 of the Constitution of India allowing the applications and quashing the penalty imposed on the writ petitioner under the Customs Act of 1962 (hereinafter referred to as 'the Act').

2. A commercial vessel M. V. Jag Darshan arrived at Paradip Port on March 29, 1976. It was being rummaged by the customs officers from April 6, 1976 to April 13, 1976. In course of the rummage the customs officers recovered various contraband goods worth more than Rs. 1,40,000/- (Rupees one lac forty thousand), seized some quantity and detained the vessel by issue of a proper notice to the Master of the vessel with a copy to the second respondent Sri V. L. Choudhary, Deputy Conservator of Paradip Port Trust. At the instance of Sri V. L. Choudhary and another the vessel was shifted to the reads i.e. far away anchorage of Paradip Port which was far in the high sea. As a result of the shifting, despite the detention order, the rummaging operation was interrupted as the customs staff had to leave the vessel and the vessel had to remain unguarded for nearly 38 hours. It was alleged that the contraband goods then somehow disappeared from the vessel. Sri V. L. Choudhary was asked to show cause as to why for his failure to comply with the provisions of the Act and for abetment of the commission of offence of smuggling by his deliberate obstructions to the customs officers in the recovery of smuggled goods from the detained vessel M. V. Jag Darshan in violation of section 133 of the Act he should not be proceeded against and as to why penalty should not be imposed on him under Sections 117 and 151 of the Act.

3. In reply to the notice the second respondent 2 Sri V. L. Choudhary took the plea that the Collector of Customs and Central Excise had no jurisdiction to initiate proceedings against him as what he had done was in discharge of his duties under the Paradip Port Rules and that the provisions of Section 151 of the Act were not attracted in his case. The Collector rejecting the pleas imposed a penalty of Rs. 1,000/- upon Sri V. L. Choudhary under Section 117 of the Act. The operative part of the order said :-

"I, therefore, impose a penalty of Rs. 1,000/- (Rs. one thousand) on Sri V. L. Choudhary, Deputy Conservator of Paradip Port, under Section 117 of the Customs Act, 1962.

The penalty should be deposited into any Government Treasury/State Bank of India

within a fortnight from the date of receipt of this order under head 1037 - Customs Miscellaneous, Receipts, Fines, Rent, etc."

4. The order of the Collector was challenged in two writ petitions under Article 226 of the Constitution of India in the High Court of Orissa. The High Court quashed the penalty and allowed the writ petitions on two grounds. First, that the impugned order in each case in categorical terms showed that the jurisdiction had been exercised under Sections 133 and 151 of the Act; Section 137 of the Act made provision for cognizance of offences and Section 133 had been included therein, and as such Section 133 must be referring to Court and not to the Collector as the punishing authority, wherefore, the Collector was not competent to impose punishment for the offence under that section. Secondly, Section 151 required the officers mentioned therein to assist the Customs Officers, but the two officers were employees of the Port Trust and were not officers mentioned in Clauses (d) or (e) of that section as the former referred to officers of the Central or State Government employee at any port or airport and Clause (e) referred to such other officers of the Central or State Government or local authority as were specified by the Central Government in this behalf by notification in the official gazette so as to bring the two officers under Clause (e).

5. Mr. Kapil Sibal, learned Additional Solicitor General of India, has not seriously assailed the finding that the officers did not come under Section 151 of the Act. His main submission assailing the finding as to applicability of Section 133 of the Act are that Section 133 both creates an offence and also prescribes a penalty, and though the section is referable to Court in so far as prosecution and punishment is concerned for the offence, there would be no bar to deal with that offence under Section 117 of the Act. Counsel submits that even assuming but not admitting that Section 133 referred only to Court and the offence could not otherwise be dealt with, Sri V. L. Choudhary having abetted the contravention of the provisions of the Act he made himself liable to penalty of not exceeding Rs. 1,000/- under Section 117 of the Act and the penalty was rightly imposed on him by the Collector; and the High Court ought not to have set aside the penalty. Counsel further submits that under the Customs Act there would be no double jeopardy if in an appropriate case one has been prosecuted and punished under the sections in Chapter XVI of the Act and also subjected to penalty under the provisions other than those in Chapter XVI of the Act for offences including those in Chapter XVI of the Act.

6. None appears for the respondents.

7. To weigh the submissions, we may examine the relevant provisions of the Act. Admittedly, 'offence' has not been defined in the Act. Chapter XVI in Sections 132 to 140 deals with 'Offences and Prosecutions'. Section 132 constitutes false declaration, false documents, etc. an offence. Section 133 constitutes obstruction of officer of customs an offence. Similarly, by Section 134, refusal to be x-rayed, by Section 135, evasion of duty or prohibition are constituted offences., It may be noted that Section 135(1) is 'without prejudice to any action that may be taken under this Act.' This clearly envisages any action that may be taken under this Act over and above the prosecution and punishment prescribed under this Section. Section 137 deals with "Cognizance of Offences by Courts". Section 138 says that offences are to be summarily tried, except those stated under the section. Section 138A provides for presuming the existence of culpable mental state where such a state is necessary.

8. Chapter XVI in Sections 111-127 deals with confiscation of goods and conveyances and imposition of penalties. Section 120 provides for confiscation of smuggled goods notwithstanding any change in form etc. Section 122 deals with adjudication of confiscations and penalties. Under

this section, in every case under this Chapter in which anything is liable to confiscation or any person is liable to a penalty, such confiscation or penalty may be adjudged by appropriate customs authorities. Section 123 deals with burden of proof in certain cases and in some cases puts it on the owner or possessor of the goods. Section 127 says that the award of any confiscation or penalty under this Act by an officer of Customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI of the Act or under any other law. This clearly shows that there will be no double jeopardy it for the same transaction, act or occurrence there is an award of any confiscation or penalty under the relevant provisions of the Act and also infliction of any punishment under the provisions of Chapter XVI of the Act or under any other law. Section 117, included in Chapter XIV, deals with penalties for Contravention etc. not expressly mentioned. It says :

117. "Any person who contravenes any provision of this Act or abets any such contravention or who fails to comply with any provision of this Act with which it was his duty to comply, where no express penalty is elsewhere provided for such contravention or failure, shall be liable to a penalty not exceeding Rs. 1,000/-."

9. Though included in Chapter XIV, Section 117 provides for penalties for contravention of any provision of the Act, an abetment of any such contravention or failure to comply with any provision of the Act with which it was one's duty to comply but no express penalty is elsewhere provided. For such contravention or failure a penalty of not exceeding Rs. 1,000/- has been prescribed.

10. From the foregoing provisions, we find that for the same transaction, act or occurrence in an appropriate case, there may be prosecution and punishment under Chapter XVI and confiscation of goods and conveyances and also imposition of penalty not exceeding one thousand rupees for contravention of any of the provisions of the Act or abetment of any such contravention and for failure to comply with any provisions of the Act with which it was one's duty to comply where no express penalty is elsewhere provided for such contravention or failure. It may also be possible that an act or event which entails punishment under Chapter XVI may by itself or with other ingredients also amount to a contravention of any of the provisions of the Act or abetment of any such contravention. Where the same act or event constitutes an offence under Chapter XVI and at the same time constitutes a contravention or abetment of contravention of any of the provisions of the Act or failure to perform any duty prescribed under the Act or amounts to non-compliance with any of the provisions of the Act, there will be possibility of prosecution and punishment under Chapter XVI of the Act and any other provision of law and at the same time confiscation and penalty under Chapter XIV of the Act.

11. As regards the allegations in the case, under Section 106(1) of the Act where the proper officer has reason to believe that any vessel in India or within the Indian customs waters has been, is being, or is about to be, used in the smuggling of any goods or in the carriage of any goods which have been smuggled, he may at any time stop any such vessel and (a) rummage and search any part of the vessel (b) examine and search any goods in the vessel. Under Section 110(1) if the proper officer has reason to believe that any goods are liable to confiscation under the Act, he may seize such goods. Section 111 provides for confiscation of improperly imported goods. Under the facts alleged in this case, the vessel could, therefore, lawfully be detained, rummaged and the goods suspected seized. It was alleged that the shifting of the vessel was on order of the second respondent and that because of the shifting to the reads away in the deep sea the proper officers had to leave the vessel with the seized goods and the vessel had to remain unguarded for 38 hours during which period the contraband goods happened to be illegally disposed of.

12. Section 133 reads :

"133. Obstruction of officer of customs : If any person intentionally obstructs any officer of customs in the exercise of any powers conferred under this Act, such person shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

13. There may be scope for holding that there was intentional obstruction on the part of the second respondent if the allegations are proved. In *Santosh Kumar v. State* (AIR 1951 SC 201 : 1951 SCR 303) it was held that where there was an order for seizure it would amount to obstruction under Section 186 I.P.C. if the goods were not allowed to be removed. On the authority of *Hinchliffe v. Sheldon* ((1955) 1 WLR 1207) it can be said that obstruction is not confined to physical obstruction and it includes anything which makes it more difficult for the police or public servant to carry out their duties. But the question is did it also amount to abetment of contravention of any of the provisions of the Act ? Was there any abetment to alleged smuggling of the goods seized and those which could have been seized ?

14. In the Collector's order, though there was discussion of offence under Section 133 and failure to perform duty under Section 151, the order itself was passed ex facie under the provisions of Section 117 of the Act. On perusal of the impugned judgment of the High Court, we do not find any discussion on this aspect of the matter and there is no indication as to whether this was urged or not before the High Court. Since the learned Additional Solicitor General has emphasized this aspect and we are inclined to agree with him to the extent indicated above, and as the second respondent is not represented before us, we are inclined to set aside the impugned order and remand the cases to the High Court for fresh disposal in accordance with law in the light of the observations made here in above after giving opportunities to the parties for making their submissions on the basis of the evidence already on record and we order accordingly.

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