

CALCUTTA HIGH COURT

Additional Collector of Customs

Vs.

Sitaram Agarwalla

A.F.O.O. No. 100 of 1960

(H.K. Bose, C.J. and Debabrata Mookerjee, J.)

23.11.1961

JUDGMENT

Debabrata Mookerjee, J.

1. This appeal is brought from a decision of G.K. Mitter, J., dated March 25, 1960*, Reported in AIR 1960 Calcutta 676 , by which the learned Judge directed the issue of Writs in the nature of Certiorari, Mandamus and Prohibition in respect of an order made by the Additional Collector of Customs on the 15th June of 1959.

* Reported in AIR 1960 Calcutta 676 .

2. The respondent was proceeded against under Section 167 (8) of the Sea Customs Act and a personal penalty of Rs. 60,000/- was imposed upon him by the Additional Collector of Customs on the finding that he was a person concerned in smuggling gold of foreign origin into India. A sum of Rs. 49,320/- found upon his person was directed to be detained in order to be applied towards realization of the penalty in the event of its remaining unpaid,

3. It appears that besides the respondent two other persons Bholanath Gupta and a Chinese national named Wong Chit Khaw were proceeded against; Bholanath was dealt with in the same proceeding with the respondent but the Chinese national Khaw was dealt with separately in another proceeding. Nothing having been established against Bholanath, no penalty was imposed upon him; but in a separate proceeding the Additional Collector of Customs imposed a personal penalty in the sum, of Rs. 20,000/- on the said Wong Chit Khaw and ordered confiscation of 23 bars of Chinese gold valued at Rs. 40,441/11 nP, found upon him.

4. The respondent Sitaram Agarwalla as well as the said Chinese national were further prosecuted before a Magistrate. The trial ended in conviction of both of them under Section 167 (81) of the Sea Customs Act. The respondent was sentenced to pay a fine of Rs. 2000/- in default to suffer rigorous imprisonment for six months and Wong Chit Khaw was sentenced to rigorous imprisonment for three months and to pay a fine of Rs. 1000/-, in default to suffer rigorous imprisonment for three months.

5. It appears that the convicted men took an appeal to this Court and the appeal (Criminal Appeal No.360 of 1959) was allowed and the convictions and sentences were set aside by an order dated the 11th August, 1961.

6. Wong Chit Khaw also applied under Article 226 of the Constitution challenging the decision of the Additional Collector of Customs imposing personal penalty and directing confiscation of the gold found upon him. That petition (being Matter No.17 of 1960) was dealt with and dismissed by Sinha, J. on July 20, 1961. See 1962 (1)Cri LJ 317 (Cal).*

* See 1962 (1) CriLJ 317 (Cal).

7. We have, therefore, before us at the moment the appeal of the Additional Collector of Customs and others against the respondent Sitaram Agarwalla. We are not aware if any appeal has yet been preferred by the Chinese national against the decision of Sinha, J. whereby he upheld the order of the Additional Collector of Customs.

8. The facts shortly stated are that on receipt of some information a constable attached to the Detective Department of the Calcutta Police was maintaining watch on the movements of the respondent Sitaram and the aforesaid Bholanath Gupta. On August 25, 1958, at about 11-30 a.m. these two men were seen to move together and eventually to station themselves on the western pavement of Jatindra Mohan Avenue near a certain temple. A baby taxi was seen shortly thereafter to proceed in that direction. At its approach, a signal was flashed when its occupant, the said Chinese national Wong Chit Khaw alighted from the taxi, shook hands with them and all the three men boarded the taxi. At this point of time, the constable raised an alarm which attracted public notice and he was able to secure the respondent Sitaram Agarwalla and his companion Bholanath Gupta. They were immediately taken to the police station for purposes of interrogation. In the confusion that prevailed, the Chinese national ran away but was given a chase by members of the public. While attempting to elude apprehension, the Chinese was seen to drop three packets which were picked up from the road by three men which they at once made over to a police Seargent who arrived on the scene. The packets had newspaper wrappers on them which were found to contain 23 bars of gold. These gold bars were seized; the Chinese national and the witnesses who picked up the packets were taken by the Seargent to the police station where the respondent and his associate Bholanath were found waiting. A list was made of the seizures and in it the packets containing gold bars were duly entered. Another seizure list was prepared in respect of a sum of Rs. 49,320/- which was recovered from the possession of the respondent. The gold bars bore marks of foreign origin. After sometime the police made over the matter to the customs authorities who thereafter proceeded with the investigation.

9. At the police station the respondent as well as the Chinese national made statements which were recorded; but these statements were not adhered to by them either in the proceeding before the Additional Collector of Customs or before the Magistrate before whom they were prosecuted.

10. Upon these allegations two separate proceedings were taken before the Additional Collector of Customs. The respondent and Bholanath Gupta were served in due course with a notice requiring them to show cause why they should not be proceeded against under Section 167 (8) of the Sea Customs Act. A similar notice was issued against the aforesaid Chinese national who was

proceeded against separately as indicated above.

11. The case made by the Customs authorities against the respondent clearly is that he wanted to purchase smuggled gold from the Chinese national and they met on Jatindra Mohan Avenue or in its vicinity by arrangement, but the police having had previous information, foiled the transaction and the sale did not actually take place. Reliance was placed upon the circumstance that a sum of Rs. 49,000/- and odd was found on the respondent's person at that time which would nearly be the amount requisite for the purpose of acquiring the gold which the Chinese was found carrying but was obliged to drop in consequence of the chase by members of the public. It was also the case that the Chinese had upon him a jacket with special devices for secreting the bars of gold. The manner of meeting, the flashing of the signal in consequence of which the taxi in which the Chinese drove stopped as well as the find of a slip of paper cut in two on which were inscribed the letters "O.K." suggested that the meeting was a result of arrangement, the details of which had been decided upon beforehand. These facts have been relied upon by the Customs authorities for the purpose of proceeding against the respondent in support of their case that he was a person concerned in illegal importation of foreign gold and was, therefore, liable under Section 167 (8) of the Sea Customs Act.

12. As indicated above, the respondent made divergent statements on different occasions. Directly after his apprehension he said that he had been entrusted with the sum of money by a lady, whose name and address he gave, for the purpose of purchasing gold for her; after being so entrusted, he had been proceeding along Beadon Street when he was taken into custody. He disclaimed all connection with the Chinese national and denied having signaled to the taxi to stop. Later, he departed from this version and suggested that he had been carrying the sum found upon his person to one P.N. Gagla of B.K. Pal Avenue having been requested to do so by one Laduram Churiwalla. On account of the Tramway strike he had boarded a bus and when he got down near Jatindra Mohan Park, some rowdies pursued him and attempted to snatch the money. A police van was then seen to pass that way and he at once told the police that he had upon him a sum of Rs. 49,320/- and that he was about to be robbed. When he was taken to the police station he wanted to lodge a complaint; very soon thereafter the Chinese was brought to the police station and false charges were brought against the respondent. It is remarkable that his original version that the money had been given to him by a certain lady was completely contradicted by the lady herself and her husband and she said that she never so much as had of any time known him.

13. We are not concerned with the defense of the Chinese national whose case is not before us and we accordingly confine our consideration to the case made against the respondent

14. The respondent showed cause before the Additional Collector of Customs in which he gave a version which was completely discounted. As has already been indicated, the Additional Collector of Customs found that nothing had been proved against the said Bholanath Gupta; but he held that the respondent was a person concerned in the act of smuggling gold into India and accordingly imposed a personal penalty of Rs. 60,000/-.

15. The order made by the Additional Collector of Customs by which the penalty was imposed discloses that although formally the allegation against the respondent was that he had been a person concerned in the illegal importation of foreign gold, the statement of the case as well as the findings show that the real charge brought against the respondent was that he had been

interested in buying smuggled gold. The circumstances relied upon are that the respondent boarded the same taxi in which the Chinese national appeared at the place; as soon as the two met they shook hands; that it was at the respondent's signal that the taxi stopped; that the respondent was seen to loiter in the Park close by and that the money found upon his person was sufficient to cover the price of the contraband gold which the Chinese national carried in a jacket with special devices but he was obliged to drop the gold bars in course of the pursuit as a result of the chase by members of the public. A formal finding was recorded that the respondent was concerned in importing foreign gold into India; but while doing so the Additional Collector of Customs also observed that the respondent's conduct was highly suspicious which revealed his

"guilty knowledge of the gold being smuggled and he went to Sri Wong Chit Khaw with money with the definite intention to buy the smuggled gold and was a party to the commission of the offence of illegal importation."

Clearly, this is a finding which cannot support a charge of the respondent having been interested or concerned in importation of foreign gold. Indeed, in the affidavit-in-opposition affirmed by Sri Ramesh Chandra Misra, Assistant Collector of Customs and Superintendent of Preventive Service, it was stated that the facts made it plain that the "petitioner" (meaning the respondent) and the "other persons" (meaning Bholanath Gupta and the Chinese national) "were dealing in contraband and dutiable goods (i.e. gold) and but for the timely intervention of the police, the dealing would have been translated into complete sale". Thus, on the case made and found the real charge against the respondent was that he had been concerned not in illegally importing foreign gold but in illegally dealing with it.

16. In the Writ application which the respondent preferred, he alleged in his defense certain facts to which we need not refer again. We have indicated that there is considerable divergence between the statements he made from time to time. That apart, he challenged the order of the Additional Collector of Customs on the ground that the case made and found against him was one of attempted illegal acquisition of smuggled gold and that there were no circumstances from which it could reasonably be said that he had been concerned in importation of gold.

17. On behalf of the Customs authorities, it was sought to be established that the circumstances to which we have referred proved the respondent's participation in the act of importing foreign gold. The learned trial Judge addressed himself to this question and came to the clear finding on a review of the facts disclosed by the parties that it could not be held that the Customs authorities had been able to establish that the respondent had been concerned in importation of foreign gold. The learned Judge found that on the facts alleged, the worst that could be said to have been proved against the respondent was that he had been concerned in dealing with smuggled gold. In this view, the learned Judge allowed the respondent's application under Article 226 of the Constitution and directed the issue of appropriate writs quashing the order of the Additional Collector of Customs imposing a personal penalty of Rs. 60,000/- upon the respondent and prohibited the Customs from giving effect to that order.

18. Being dissatisfied with this decision, the Customs Authority have brought this appeal and have urged that the learned Judge failed to appreciate the facts properly and to draw the inference that they established the case that the petitioner had been concerned in importation of foreign

gold.

19. The only point that has been argued before us is the question whether upon the facts alleged, the respondent could be said to have been concerned in importation of foreign gold. As is well known, the importation of gold coin, gold bullion, gold sheets etc. is prohibited except with the general or special permission of the Reserve Bank. By virtue of the Notification issued under Section 8 of the Foreign Exchange Regulation Act, no one can import or export gold without the necessary permission. Section 167 of the Sea Customs Act provides for punishment of certain offences specified in the schedule attached to the section. Item (8) of that schedule provides that if any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of the Act, be imported into or exported from India contrary to such prohibition or restriction, the goods themselves shall be liable to confiscation and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding Rupees one thousand. We leave out of account the other parts of item (8) which do not directly fall to be considered. It is plain that the offence contemplated in Section 167 (8) of the Act is the offence of importation or exportation of prohibited goods. If a person imports gold into the country in violation of the prohibition or restriction spoken of in item (8), he commits an offence and lays himself open to punishment. If the person responsible for such importation is known then he may be proceeded against and a personal penalty imposed upon him; but in any event, the goods so imported are liable to confiscation. The real question then is whether the facts alleged against the respondent could by any means give rise to a reasonable inference that he had been concerned in the importation of the gold. That the gold was foreign gold, that it had been imported in violation of the law, there is no question. The whole question is whether the Customs Authorities have been able to establish in this case that the respondent was concerned in the offence of such importation.

20. Much would, in our view, depend upon the meaning we give to the word "importation" and to the expression "concerned in" occurring in item (8) of Section 167 of the Sea Customs Act. It has been debated before us on behalf of the Customs that the act of importation is not concluded merely when the gold reaches this country. The process of importation, it has been said, continues until it reaches the hands of the first taker who comes to acquire it for value. We have no hesitation in saying that this contention cannot prevail. A thing is imported when it reaches the borders of the country. If it is imported by water then, as soon as the vessel reaches an Indian port, the process of importation is complete. There is not the faintest suggestion in this case as to how, when or by whom the stuff was imported into this country. It is true that for the purpose of proceeding against the gold itself, it is enough to show that it has been imported without a valid permit and immediately that is established, the gold becomes liable to confiscation. But before a person can be proceeded against under Section 167 (8) and a personal penalty imposed upon him for being concerned in the commission of the offence of such importation, it is essential to prove that he did take some part in the series of steps which culminated in the gold being brought into the country. It may well be that a person without coming into physical contact with the smuggled gold, may yet be held liable for having been concerned in its importation. For example, if a man writes to an agent in a foreign country advising importation of foreign gold without the necessary permit and he does nothing else, he will still be guilty if the gold reaches the limits of India although he may have been a thousand miles away from the smuggled gold. The view which we take seems to have been taken by the Bombay as well as the Madras High Courts. In the case of *Devichand Jestimal and Co Bangalore v. Collector of Central Excise, Madras*¹, it was

held that the person dealing in smuggled gold is not necessarily a person who is concerned in its importation. In that case, the gold was received by a firm from several persons and the books of account of the firm as well as the facts proved, suggested that the gold received, was smuggled gold. It was held that in order to establish an offence under Section 167 (8) of the Act it was necessary to prove that the persons proceeded against had actually imported the gold or were concerned in its importation. The learned Judge observed :

"It must be shown that they (the petitioners) had arranged for the import of the gold or abetted the import of the gold or received it immediately after the import, the receipt being the final step in the process of importation." Mr. Kar appearing on behalf of the appellants, has argued that even though the learned Judge emphasized the necessity of proof that the person proceeded against in a case of this kind must be shown to have been concerned in importation, the 'receipt' of the thing so imported was primary consideration. If one reads the observations of the learned Judge with care, one can have no doubt that what the learned Judge meant to say was that in a given case such receipt might be just a step in a series of steps which constituted the act of importation. Undoubtedly, smuggled gold has, in that sense, to be "received" into India before it could be said that there has been importation of such gold. We do not think that the effect of the learned Judge's finding is in any way whittled by "receipt" being mentioned as the final step in the act of importation. It was held in that case that the gold had already been imported into the country and the only thing proved was that the persons proceeded against had merely dealt with the smuggled gold.

21. A similar conclusion was reached by the Bombay High Court in the case of *Gopal Mayaji v. T.C Seth*², In this case the petitioner had been helping another person in destroying the evidence of the gold being of foreign origin by melting it at his shop. It was said that the act of such destruction or defacement of gold imported into the country was a link in the chain and consequently the person so engaged was guilty of the offence of importing gold. The learned Judge repelled the contention and held that the act of importation was complete when the goods crossed the Customs barriers. It was at that moment that the restriction or prohibition was violated and whatever was done with reference to such goods subsequent to that point of time would merely be dealing with smuggled gold. The contention raised that the act of melting to destroy evidence of foreign origin was an essential step which could clearly be connected with the Series of steps taken to prove illegal Importation was repelled.

¹ AIR 1960 Mad 281

² AIR 1960 Bom 479

22. With these decisions we find ourselves in complete agreement and we think it was never the intention of the legislature that a person who dealt with smuggled gold which had already been imported into the country would be put on the same footing as a person concerned in its illegal importation.

23. Mr. Kar has strenuously argued on behalf of the Customs Authorities that the process of importation cannot be complete unless the thing improperly imported is dealt with in consequence of such importation; in any event, the first act of acquisition in consequence of such illegal importation has to be held to be one of the series of acts which make up importation. By

way of illustration, he asked us to hold that in this case the attempted transfer of the illicitly imported gold bars was an essential step in fulfillment of the object of such importation. According to Mr. Kar it would be technical in the extreme to draw a line between the person actually bringing a thing into India and the person who receives it directly thereafter. We are wholly unable to accept this argument. One can well conceive of a man not having anything to do physically with importation of gold and yet he may be a person concerned in illegal importation. But in order that a person may be said to be so concerned, some facts have to be proved which will establish that he was in conscious relation with the gold in one or other of the several successive steps preceding its actual receipt into the country. If there is no such evidence, as there is none in this case, it is impossible to agree that since the respondent was going to be the first taker of the smuggled gold, he is to be deemed to be a person concerned in illegal importation of the bars. It may be argued that the respondent was about to put through a transaction in smuggled gold; it may be said that the divergences disclosed in his defense established his guilty mind in the matter of obtaining gold which had already been imported. But even assuming Mr. Kar's premises to be correct that the respondent was going to be the first taker of the smuggled gold, his act cannot be considered as a link in the chain of acts which resulted in importation of the gold.

24. It seems plain that when in violation of a prohibition or restriction, gold is imported into this country, the process of importation must be held to be complete as soon as it reaches its borders. If the gold is carried by sea and the vessel reaches an Indian port or the territorial waters, it is the moment of entry of the vessel which must be held to be the moment of importation of the gold. If any one thereafter takes the gold out of the vessel, not having been in any way concerned with it earlier, he cannot be said to have been concerned in importation. It is equally plain that there need be no physical connection between the gold and the person charged. We have said that a man may be miles and miles away from the gold and yet if proof is available that he had an interest in or was concerned in its illegal importation, then surely he would be guilty of the offence described and punished in Section 167(8) of the Sea Customs Act.

25. Mr. Kar attempted to elucidate the position in regard to this question by drawing our pointed attention to the decision of the Supreme Court in the case of *Sewpujanrai Indrasanarai Ltd. v. Collector of Customs*³, That was a case where proceedings were taken against smuggled gold, but there were no proceedings taken against any one for importing the gold. S.K. Das, J. who spoke for the Court drew attention to two kinds of question contemplated in section 167 (8) of the Sea Customs Act. Reference was made also to Section 23 of the Foreign Exchange Regulation Act. The learned Judge observed,

³ AIR 1958 SC 845

"A person may be concerned in the importation of smuggled gold without being a smuggler himself or without himself contravening any of the provisions of the Foreign Exchange Act. In this sense, the scope of Section 167 (8), Sea Customs Act, is different from that of Section 23 of the Foreign Exchange Act. Moreover, in the case under our consideration, the only penalty imposed under section 167 (8) was the confiscation of the gold which indicates that the authorities proceeded with the proceeding in rem and dropped the proceeding in personam; therefore, no question of prejudicing the provisions of Section 23, Foreign Exchange Act, arose in this case." At another place the learned Judge said,

"The point to note is that so far as the confiscation of the goods is concerned, it is a proceeding in rem and the penalty is enforced against the goods whether the offender is known or not known; the order of confiscation under Section 182, Sea Customs Act, operates directly upon the status of the property and under Section 184 transfers an absolute title to Government".

26. These observations have been relied upon for the purpose of inducing us to hold that it would be wholly erroneous approach to view the facts in the way in which the learned trial Judge has viewed them. The contention is that the proceedings were comprehensive in that there were not only proceedings against the persons concerned but also against the gold itself. It will be recalled that the Chinese national was also dealt with under section 167 (8) and the gold found on his person was confiscated and a personal penalty was also imposed upon him. That was done in a separate proceeding; but Mr. Kar emphasised the point that the Customs Authorities had proceeded as much against the contraband gold bars themselves as against the persons who are obviously, according to him, interested or concerned in their illegal importation. It has not been quite easy for us to follow this argument. It is true that in consequence of another proceeding the gold bars were confiscated; but in the present proceeding, out of which this appeal arises, no question arose of confiscation of the gold bars. The only question is whether the respondent was concerned in the illegal importation of the gold bars. There can be no doubt that Section 167 (8) has two facets, as has been pointed out by the Supreme Court. One is directed against the thing itself and the other against the person concerned; but where as here, the question is whether the person proceeded against was concerned in illegal importation, the court must insist upon proof of facts from which it can reasonably be inferred that at any stage prior to the actual find of the gold in the country, he had anything to do with it. We have already indicated that there is no evidence at all which connects the respondent with any act or acts which might be said to have resulted in the bringing of the gold into this country. The evidence of the conduct of the appellant on the forenoon in question might be gravely suspicious. If the charge against him did not relate to being concerned in importation of the gold, but related to his having something to do with smuggled gold, the position might have been different; but this is another matter. We have not been shown anything on the record from which we could reasonably say that the learned trial Judge erred in thinking that there was no evidence which reasonably connected him with any operation or series of operations which must have preceded the importation of the gold. We do not think in the circumstances that the decision of the Supreme Court, relied upon by Mr. Kar, helps him in founding his contention that even though there is no evidence to connect the respondent with any, act precedent to the attempted acquisition of the gold, still he must be held liable as a person concerned in importation under Section 167 (8) simply because He was going to be the first taker for value.

27. We have then been asked to consider the effect of the words 'concerned in' appearing in item 8 of Section 167 of the Act. There can be no question that the expression has a wide import. A person may not be actively transporting gold in violation of the restrictions of the law, yet he may be held liable if he is concerned in its importation. It is true that the width of the expression must be taken into account before we could pronounce upon the question whether in this case the respondent could be said to have anything to do with the importation of the gold. The ordinary acceptance of the words 'concerned in' is well known. If any one is interested or consciously takes any step whatever to promote the object of illegally bringing bullion into the country, then, if no physical connection is established between him and the thing brought, still he will be guilty.

We do not dispute for a moment that the words 'concerned in' appear to have been deliberately used by the legislature for the purpose of punishing everyone who may have anything to do in the process or operation which precedes the bringing of prohibited goods into this country. No useful purpose would be served by resorting to fanciful examples for the purpose of illustrating as to what would or would not amount to a man being concerned in a particular importation. As we have said, a man may well be concerned in the act of bringing gold illegally without having any physical connection with it. He may have done so in very many ways. He may not have touched the gold nor even seen it and yet he may be concerned in its importation. That is a proposition which one can well understand; but it would be entirely academic to direct attention to this aspect of the matter divorcing it completely from the facts! of his case. What are the facts? They are that on a particular day the respondent was seen waiting for the Chinese national. When the latter arrived, he made a signal; they met, shook hands, boarded the taxi and were proceeding when in consequence of intervention by the police and the public, they ran in different directions. On the respondent was found a sum of money which is sufficient to cover the price of the gold bars. On the person of the Chinese national was found a jacket with special devices evidently for the purpose of concealing the contraband gold. In the course of the chase, the gold bars dropped on the road and they were picked up by some members of the public. These are all the facts. But the question is, could we draw from them the conclusion that the respondent was in any way concerned with their importation. The learned trial Judge declined to draw that inference against him and we also do the same.

28. Lastly, Mr. Kar tried to impress upon us the divergence between items 8 and 81 of the schedule to Section 167 of the Act. His contention is that whereas in item 81 the legislature has provided that before a person could be found guilty under that item it has to be proved that he did the acts charged with a guilty mind; for example, if a person knowingly and with intent to defraud the Government acquires possession of or is in any way concerned in carrying, removing or depositing or in any manner dealing with any goods which have been unlawfully removed from a warehouse or which are chargeable with a duty which has not been paid or if a person is in relation to any such goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of duty, then, such person is liable to be sentenced to a term of imprisonment not exceeding two years or to fine or to both. The argument is that the language employed by the legislature in item 81 is significantly different from the language employed in item 8. The contention is that whereas under item 81 it is necessary to prove guilty mind and upon proof of such guilty intention or knowledge a person becomes liable to be imprisoned, under item 8 a person is liable to be penalised with a fine apart from the penalty of confiscation mentioned in it. It has, therefore, been argued that knowledge or intention is wholly immaterial in respect of a charge under item 8; it would be enough if a person is only shown to be concerned in importation. As far as this argument goes, it seems to us to be unexceptionable and we agree that the legislature has deliberately used wide words in item 8. But surely that does not entitle us to hold that even though there is not a scintilla of evidence to justify an inference that a person has been concerned in any way whatever in the act or acts leading to the importation of smuggled gold, still he is to be adjudged guilty of the offence mentioned in item 8. As we have said there is no evidence in this case from which an inference might be made that the respondent had anything to do with any of the acts which must have preceded the importation of the gold bars into this country. Tentatively speaking, it seems to us that item 81 refers to things or goods which have been illegally imported into the country and in that sense also, it is different from item 8. We need not, however, express any final opinion on this aspect of the matter. Suffice it to say that

there is no evidence in this case upon which it could be held that the respondent had taken any part in the act or series of acts which resulted in importation of the gold bars.

29. We, therefore, agree with the conclusions of the learned trial Judge and we think that there is no merit in this appeal which is, accordingly, dismissed.

30. We have been exercised on the question of costs in this case; but taking everything into account we do not think that although the appeal fails, the respondent is entitled to any costs. There will, therefore, be no order as to costs.

Bose, C. J.

31. I agree.

Appeal dismissed.