

KERALA HIGH COURT

Bernado Steenholf Ultrich

Vs.

Collector of Customs

O.P. No. 577 of 1959

(Ramannayar, J.)

10.11.1959

JUDGMENT

Ramannayar, J.

1. The petitioner a Bolivian National said to be of German Dutch origin and resident in Vienna, was a passenger from Colombo to Genoa on the Italian passenger vessel M. V. Australia which called at Cochin (a regular port of call on its homeward voyages for the purpose of taking on board passengers "bound for Europe) on 5-12-1958. With him was his wife and, as part of his baggage, a Volkswagon motor ear also booked from Colombo to Genoa. Three or four hours after the vessel was moored in the inland waters of the Cochin Port, the Chief Customs Inspector who, on information that the petitioner was engaged in smuggling gold into India and taking out Indian currency had had a watch kept over the petitioner's movements but found that the petitioner was making no attempt to land or get into touch with anyone on shore, boarded the vessel with a few of his subordinate officers as he was entitled to under Section 171 of the Sea Customs Act, 1878. He asked the petitioner whether he had any Indian or foreign currency or gold in his possession and thereupon the petitioner made the oral declaration that he had only \$ 2105 in American currency, \$ 60 worth of travellers' cheques and Rs. 250/- in Indian currency. The petitioner and his wife and their cabin were searched (under Sections 169 and 171 of the Act), but nothing was found in excess of what the petitioner had declared. The Chief Inspector thereupon decided to search the car of the petitioner (under Section 171), but since this would have meant the detention of the vessel beyond the scheduled time for sailing, the Master of the vessel "agreed to off-load the car and to leave the petitioner at Cochin for enabling him to be present during the search of his car." Accordingly, the petitioner and his car were taken off the vessel (whether by force as alleged by the petitioner or by persuasion as stated by the Customs authorities does not very much matter), but, before doing so, the Chief Customs Inspector obtained from the petitioner a written declaration to the effect that he had U.S.A. \$. 1605 and Indian Rs. 250/- in his possession. (He had given \$ 500 to his wife who was allowed to continue her voyage). It was late by then, and the petitioner was lodged for the night in the Malabar Hotel while a proper guard was kept over the car. The next day the car was searched by the Customs officers with the aid of a mechanic in the presence of the petitioner and one Mr. Gnehm, a German knowing representative of the local agents of M. V. Australia, who acted as an

interpreter since the petitioner could speak very little English. Concealed in a secret, specially constructed chamber in the central channel of the chassis of the car were found 37 bundles of Indian currency notes of the value of Rs. 322,000 and U.S.A. currency notes of the value of \$ 44,900. These were seized under a mahazamama (Ext. D 1) attested by the petitioner, by Mr. Gnehm, and by the mechanic. Mr. Gnehm further certifying that he had translated its contents to the petitioner and the petitioner appeared satisfied with the correctness thereof.

2. On 11-12-1958, the Chief Inspector questioned the petitioner with the help of Mr. Gnehm and recorded from him the signed statement (Ext. D2) in which he admitted that the car was his, but disowned the currency notes found in it and further suggested that the secret chamber must have been constructed and the notes concealed therein by one Alexander Bauchner whose acquaintance he had made at his Colombo hotel and who had borrowed his car on the 30th of November and returned it the following day saying that he would probably meet the petitioner at Genoa where he was going by air and take a lift in the car from Genoa to Vienna. (In this statement also Mr. Gnehm has certified that it was read out to the petitioner in German and was admitted by him to be correct.) On 15-12-1958 the petitioner was served with a show cause notice (Ext. P1 dated 13-12-1958) by which the Customs Collector asked him to show cause within seven days why the currency notes "recovered from his car should not be confiscated under clauses 8 and 73 of Section 167 of the Sea Customs Act and penal action taken against him under Section 167 (8) and 167 (73) *ibid*". Also why his car should not be confiscated under Section 168 of the Act. On 16-12-1958 the petitioner was arrested (under Section 173 of the Act) and taken before a magistrate. (It would appear that some time before this, but when exactly does not appear, the \$ 1605 in U.S.A. currency and Rs. 250/- is Indian currency which the petitioner was carrying on his person were seized and detained by the customs officers). He was remanded to custody and was in custody till 21-1-1959 when he was released on bail. In the meanwhile, on 28-12-1958, Mr. Bhaskara Menon, an advocate, had entered appearance on his behalf before the Customs Collector and by a letter (Ext. D3) of the same date asked for copies of certain records in the case (which were duly granted) and also questioned the Collector's authority to hold an inquiry while the criminal trial against the petitioner was proceeding. Mr. Bhaskara Menon also informed the Customs Collector that he had received the show cause notice Ext. P1 only on 18-12-1958 and had been able to obtain instructions from his client through an interpreter only on the 26th. He explained that for these reasons it had not been possible to submit any explanation within the time allowed. On 6-1-1959 the petitioner was served with a second show cause notice requiring him to show cause within five days why action should not be taken against him under clause (8) of Section 167 of the Sea Customs Act read with Section 23A of the Foreign Exchange Regulation Act, 1947 and why the currency notes found in the car and the car itself should not be confiscated under clauses (34) and (35) of Section 167 and under Section 168, of the former Act. (The earlier notice Ext. P1 proceeded on the basis that the petitioner was unlawfully taking the currency notes out of India whereas the later notice, Ext. P2, alleged further that the petitioner had unlawfully brought the American currency notes into India). There was no response to either notice, and on 15-1-1959, the Customs Collector, acting under Section 182 of the Sea Customs Act, passed an order (Ext. P4) by which he imposed a penalty of Rs. 6000/- on the petitioner under clauses (8) and (73) of Section 167 of that Act and confiscated the currency notes found in the car under clauses (8), (34), (35) and (73) of Section 167 and the car itself under Section 168. On 22-4-1959 the petitioner brought the present petition against the Customs Collector under Article 226 of the Constitution praying for a writ of certiorari quashing the proceedings, Ext. P4, and for a writ of

mandamus directing the Customs Collector to restore his motor car with all its contents (including the Indian currency notes to the value of Rs. 3,22,000/-and the American currency notes to the value of \$ 44,900) as also his personal papers and the \$ 1605 and Rs. 250/- seized from his person. (On a misreading of the Collector's order which, in pursuance of Section 183 of the Sea Customs Act, gave the petitioner the option of paying a fine of Rs. 5.46,000/- and taking back the currency notes for local consumption (but not for export without a permit from the Reserve-Bank) the petitioner has also asked for "a writ of prohibition prohibiting the Collector of Customs from releasing the notes for local consumption". There was never any question of releasing the notes for local consumption to anyone but the petitioner).

3. The petition alleges that the petitioner was under duress from the time he was taken off the ship until the time of the order of the Custodian Collector and even thereafter, that he was not allowed to consult a lawyer as freely as he would have liked, that his ignorance of the English language in which the show cause notices were couched and the absence of facilities for translation prevented him from understanding these notices or giving proper instructions to Mr. Bhaskara Menon who had been engaged for him, that he was compelled by the Customs Officers to make the statement Ext. D2,. and that in the circumstances the opportunity given to him by the show cause notices was illusory and so-called adjudication by the Customs Collector, a mere one-sided farce enacted without hearing him. All this has been denied by the respondent, and the facts I have set forth above - and I have set them out at some length for this purpose-are sufficient to show that there is no substance whatsoever in the petitioner's allegations. A lawyer entered appearance for him on 28-12-1958 after, according to the letter Ext. D3 written by the lawyer to the Customs Collector, taking instructions from the petitioner through an interpreter on the 26th, and the lawyer also obtained copies of all the documents he thought relevant to the petitioner's defence. Both the show cause notices, Ext. P1 dated 13-12-1958, and Ext. P2 dated 6-1-1959, asked the petitioner whether he desired to be heard in person and also told him that he could produce with his reply any evidence in his possession to show that the currency notes seized from his car had been legally acquired and exported from the country and also in support of any other contention he might have. They gave him sufficient time for a reply but there was no reply and no request for a hearing or for time. It was only on 15-1-1959, nine days after the second show cause notice, that the impugned order Ext. P4 was passed, and it is quite apparent that the charge that the adjudication was one-sided and did not give the petitioner sufficient opportunity to defend himself, is a baseless charge. And the charge that the petitioner was compelled to make the statement, Ext. D2, becomes : meaningless when we find the very case put forward in Ext. D2, put forward now on his behalf. There is nothing in Ext. D2 that the petitioner wishes to disown.

4. It is further alleged in the petition that the officer who imposed the penalty and the confiscation, namely, the Customs Collector himself took part in the "detection" of the alleged offences, in Other words, that he was himself both the complainant and the Judge. The affidavit filed by the Customs Collector however shows that he had nothing whatsoever to do with the detection or the investigation, and that his only connection with the matter was that when he went on board the vessel in connection with its Port Clearance he told the petitioner that he should declare any gold, bullion or currency he had in the car. This surely cannot make the Customs Collector a party to the proceedings or disqualify him from deciding the case. In fact, this charge of bias was not pressed before me.

5. I may state at the very outset that with regard to the confiscation of the currency notes found concealed in the car, the petitioner has no cause of action to come to this court for relief under Article 226 of the Constitution even if it be assumed that the order of confiscation was illegal. He has at all times disowned these currency notes, and his case now, as in his statement" Ext. D2 is that he knows nothing about the currency notes and that he cannot say how they came to lie concealed in his car. If that be so, the petitioner has suffered no injury; and, so long as he has suffered no wrongful loss he cannot ask this court to interfere on his behalf on the ground that somebody else is making a wrongful gain.

6. What seems to be the main object of the petition thus fails on this short ground, but consistently with the stand taken by the petitioner, the remaining matters have been very strenuously argued. And it has even been suggested that, should I find the order of the Customs Collector illegal. I should restore the status quo ante by directing the Collector to put the currency notes back in the place where they were found and allow the petitioner to proceed with his car to his chosen destination. As I have already said, even if the order of confiscation passed by the Customs Collector be wrong, there can be no question of setting it aside at the instance of the petitioner, in so far as the currency notes found in the car are concerned, since, on the petitioner's own showing, he has no manner of interest in them. It must be left to the true owner to take such steps as he thinks fit to safeguard his rights.

7. Whether the order passed by the Customs Collector under the several provisions of the Sea Customs Act was right or wrong depends on whether the petitioner was aware of the presence of the currency notes in his car, and on whether the currency notes are prohibited or restricted goods within the meaning of that Act. On the first question the Customs Collector came to the conclusion that the petitioner was in possession of the currency notes, and must have been fully aware of their having been kept hidden in his car. It is said that the Customs Collector came to this conclusion without any evidence. That might be true enough if by evidence is meant the direct evidence of somebody who saw the petitioner hide the notes in the secret chamber of his car. But, since the car was admittedly in the immediate possession of the petitioner, and was taken by him on board the ship, it seems to me a legitimate inference that the construction of the secret chamber and the concealment of the currency notes therein could not have been without his knowledge. The suggestion implicit in Ext. D2, and expressly put forward in the course of the argument before me that the casual hotel acquaintance in Colombo who, on occasion, borrowed petitioner's car, should have constructed the secret chamber and concealed therein currency notes worth lakhs of rupees against the off-chance of being able to borrow the car again after it had reached Genoa and remove the notes, did not appear to the Customs Collector to be worthy of a moment's consideration. And I cannot say that I blame him. The contention that, before rejecting this suggestion, the Customs Collector should have had it tested by the officer who, it would appear, had been sent to Ceylon for the further investigation of the case, in fact, that such a suggestion should have been seriously commended for the acceptance of the court, only serves to show the lengths to which the argument has proceeded.

8. I shall now consider whether the penalty and confiscation adjudged by the Customs Collector are in accordance with law. Section 8 of the Foreign Exchange Regulation Act. 1947 runs as follows : 8. Restrictions on import and export of certain currency and bullion - (1) The Central Government may, by notification in the official Gazette, order that, subject to such exemption 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 the case may be sending, into India of that article for the purpose of this section".

2. No person shall, except with the general or special permission of the Reserve Bank or the written permission of a person authorized in this behalf by the Reserve Bank, take or send out of India any gold, or precious stones or Indian currency or foreign exchange other than foreign exchange obtained from an authorized dealer. The Central Government has by its notification No. 12 (12), F 1/49 dated 10-9-1949 (printed as item (2) at page 58 of Vakil's Law Relating to Foreign Exchange, 2nd edition) acted under sub-section (1) of the section and prohibited the bringing or sending into India from any place outside India of any currency notes or bank notes except with the general or special permission of the Reserve Bank. The taking or sending out of India of any Indian currency or foreign exchange, other than foreign exchange obtained from an authorized dealer, without such permission is prohibited by the section itself, so that both the import and export of currency whether Indian or foreign is subject to restrictions imposed by subsecs. (1) and (2) of Section 8 of the Act. And, if we turn next to Section 23-A of the Act we find that the restrictions imposed by sub-ses. (1) and (2) of S, 8 of the Act shall be deemed to have been imposed under Section 19 of the Sea Customs Act and that all provisions of that Act shall have effect accordingly. The position then is that, both the bringing or sending into India and the taking or sending out of India, of any currency is subject to restrictions imposed under Section 19 of the Sea Customs Act.

9. Section 167 of the Sea Customs Act enumerates the several offences under that Act and prescribes the penalties therefor. It would be convenient to extract from the tabular statement thereunder the items relevant to the present case :

Offences	Section of this Act to which offence has reference	Penalties
[1]	[2]	[3]
8. If any goods the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act be imported into or exported from India contrary to such prohibition or restriction; or	18 and 19 such goods 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 one thousand rupees.
if any attempt be made so to import or export any such goods; or		
if any such goods be found in any package produced to any officer of Customs as containing no such goods; or		
if any such goods, or any dutiable goods, be found either before or after landing or shipment to have been concealed in any manner on board of any vessel within the limits of any port in India; or		

if any goods, the exportation of which is prohibited or restricted as aforesaid, be brought to any wharf in order to be put on board of any vessel for exportation contrary to such prohibition or restriction.

34. If any goods are found concealed in any place box or closed receptacle in any vessel and are not duly accounted for to the General satisfaction of the customs-house. such goods shall be liable to confiscation.

73. If any person on board of any vessel or boat in any customs port or who has landed from any such vessel or boat upon being asked by any such officer whether he has dutiable or prohibited goods about his person or in his possession declares that he has not and if any such goods are after such denial found about his person or in his possession General such goods shall be liable to confiscation and such person shall be liable to a penalty not exceeding three times the value of such goods.

10. It is under items 8 and 73 that the penalty of Rs. 6000/- has been imposed on the petitioner. Considering first the application of item 8. on the finding of fact that the currency notes concealed in the car were in the petitioner's possession and that he was fully aware of their presence there, there can be no doubt that he imported those goods into India the moment the vessel entered Indian territorial waters on its voyage from Colombo to Cochin. (From Section 19 of the Sea Customs Act it is clear that importation means bringing into India across any customs frontier as defined by the Central Government under Section 3A of the Act. And by such a notification the Central Government has defined the customs frontiers of India as the boundaries of the territories including the territorial waters of India. That apart, the territorial waters, which by a proclamation by the President dated 22-3-1956 have been defined as extending to a distance of six nautical miles measured from the Indian coast line, is an integral part of India, and, in the ordinary sense of the word, "imported", goods are imported into India when they enter the territory of India. In the instant case there can be no doubt whatsoever about the import into India because the vessel which came from Colombo had entered the inland waters of the Cochin Port). I am not impressed with the argument that the petitioner did not voluntarily bring the currency notes into India since the ship's call at Cochin was not a matter within his choice and, left to himself, he would have been glad if the ship had taken him to his destination without touching at any Indian port. As well might well such an argument be addressed regarding any contraband found on the petitioner's own person. The notes having been kept concealed in the petitioner's car to the petitioner's knowledge and the car having been booked by him on the vessel from Colombo to Genoa, there can be no doubt that the petitioner consciously and voluntarily brought the currency notes into India when, in the course of its voyage, the ship entered the territory of India.

11. The ship was due to sail from the Cochin Port within a few hours of its arrival and leave the territory of India across the customs frontier. It would therefore follow that, after having imported the currency notes into India, the petitioner was attempting to take them out of India, in other words. to export them! from India.

12. Both the import and the export are contrary to restrictions imposed under Section 19 of the Sea Customs Act read with Section 23A of the Foreign Exchange Regulation Act, so that the petitioner's case falls squarely within paragraphs 1 and 2 of item 8 under Section 167 of the

former Act. By a notification dated 10-9-1949 the Reserve Bank (see item 4 at page 58 of Vakil); has accorded general permission (the petitioner has no case of any special permission) for bringing into India from any place (other than certain specified territories of which Ceylon is not one Indian currency notes without limit. This is under clause (i) of the notification. Under clause (v) there is a similar general permission regarding foreign currency, but that permission is subject to the proviso that the person bringing in the currency makes a declaration on the appropriate form at the time of arrival to the customs authorities of the total amount of notes brought in. The petitioner, as we have seen, did make an oral, and later, a written declaration within a few hours after the vessel in which he brought the currency notes entered India, but in neither declaration did he mention the U.S.A. \$ 44, 900 which he had brought into India. That the petitioner had no intention of landing himself, or his motor car, or the currency notes therein, on the soil of India and that his intention was only to proceed to Genoa with his car makes no difference to the fact that he did bring the American currency notes into India without making the declaration required by the notification as a condition of the general permission. It is clear that he imported the American currency notes into India contrary to a restriction imposed under Section 19 of the Sea Customs Act, although, with regard to the import of the Indian currency notes there was no such violation. In fact the explanation to Section 8 (1) of the Foreign Exchange Regulation Act makes it abundantly clear that the bringing into any place in India of any article, intended to be taken out without being removed from the ship or conveyance, is nonetheless a bringing into India. (Despite its wording this explanation is not a true deeming provision making something of that which is not that thing, but as its heading shows, only an explanation by way of abundant caution clarifying the position which would be the same even in its absence, namely, that a bringing into India is a bringing into India notwithstanding that the article in question is intended to be taken out of India and is not removed from the ship in which it is brought. The absence of such an explanation to sub-section (2) cannot therefore support the argument which has been advanced on the question of exportation, which I shall presently consider, namely, that the taking out of India of an article brought in with the intention of being taken out is not a taking out within the meaning of the section.) The argument that a declaration as required by the Reserve Bank's notification just referred to can normally be made, and need be made, only on landing, whereas the violation amounting to an offence would have been committed the moment the ship enters Indian territorial waters does not impress me in a case where a declaration suppressing the existence of the restricted currency was, in fact, made. And I might add that I am told that in practice no difficulty can arise since any large quantity of currency is always entrusted to the Master of the vessel and is kept in the vessel's safe and entered" in its manifest which amounts to the declaration required. And the Reserve Bank's notification regarding exportation gives general permission for the taking out of India of currency in the safes of vessel which has been brought into India.

13. We have seen how the petitioner was attempting to take out of India the currency notes, Indian and foreign, kept concealed in his car. This is prohibited by sub-section 2 of S. 8 of the Foreign Exchange Regulation Act unless there is the general or special permission of the Reserve Bank. There is no case that the petitioner had any special permission, and the general permission to export currency is embodied in a notification of the Reserve Bank dated 27-2-1951. (See page 71 of Vakil). The relevant clause in that notification is clause (5), and by that clause permission is given to persons not ordinarily resident in India to take out of India currency not exceeding the amounts brought in provided they have made a declaration of the amounts brought in on the prescribed form to the Customs officer on arrival in India. The petitioner not having declared the

currency kept concealed in his car, the taking out of the currency comes within the prohibition, and the attempt to do so falls within the second paragraph of item 8 under Section 167 of the Sea Customs Act.

14. The petitioner is the person who brought into India and was attempting to take out of India, the currency notes kept concealed in his car, and there can be no doubt that he was concerned with this concealment on board the vessel M. V. Australia within the limits of the Port of Cochin. The currency notes, as we have seen, are goods the importation and exportation of which are restricted under Section 8 of the Foreign Exchange Regulation Act, and, therefore by virtue of Section 23A of that Act. under Section 19 in Chap, IV of the Sea Customs Act. The petitioner is therefore truly caught by paragraph 4 of item 8 under Section 167 of the Sea Customs Act. For, goods of the kind described in paragraph 1 of this item were found to have been concealed by the petitioner on board the vessel M. V. Australia within the limits of the Cochin Port. The fact that this paragraph makes it clear that the discovery might be either before or after landing or shipment does not mean that the offence can be committed only if there is a landing or shipment in the port in question.

15. The petitioner's case comes within paragraphs 1, 2 and 4 of item 8 under Section 167 of the Sea Customs Act and he is therefore liable to the penalty prescribed therefor in column 3 of the tabular statement.

16. I am inclined to agree with the argument advanced on behalf of the petitioner that, if he were unaware of the presence of the currency notes in his car, he could not properly be described as a person concerned in an offence under item 8, and that by the mere physical act of transport without knowledge on the part of person concerned of the presence of the offending article, the person cannot be said to have imported or exported the article contrary to any prohibition or restriction. But on the findings in this case that question does not arise. (Nor do I see much relevance in the citation of the three English cases referred to at pages 447 and 448 of Vakil with regard to an offence similar to that under item 81 under Section 167 of the Sea Customs Act in determining what mens rea, if any, is required for ail offence under item 8).

17. The application of item 73 under Section 167 of the Sea Customs Act seems to be equally beyond doubt. Both on board the vessel and also after landing (even if the landing was involuntary as alleged by the petitioner, he is nonetheless a person who has landed from the vessel) the petitioner was asked by the Chief Customs Inspector whether he had any currency in his possession and he denied that he had any beyond what he was declaring. After this denial, the currency notes kept concealed in the car (and which of course he had not declared) were found in his possession and all the ingredients of an offence under this item are thus present.

18. It is argued that apart from dutiable goods (of which there is no question in this case) this item speaks only of prohibited goods and that therefore it can apply only to goods in respect of which there is an absolute prohibition under Section 18 and not to goods like currency in respect of which there is only a restriction under Section 19 of the Sea Customs Act. It is also pointed out that both the heading of Section 8 of the Foreign Exchange Regulation Act and the body of Section 23A of that Act refer to what is imposed by Section 8 as a restriction and not as a prohibition. But every restriction is a partial prohibition, and in fact, both Section 8 itself and the notification issued under sub-section (1) thereof are worded in the form of a prohibition. They

impose a prohibition except in cases where the general or special permission of the Reserve Bank has been obtained. Under Section 19 of the Sea Customs Act, the Central Government may prohibit or restrict the importation or exportation of goods, and I see little difficulty in viewing the so-called restrictions under Section 8 of the Foreign Exchange Regulation Act as prohibitions. It is not as if it is importation or exportation above a specified quantity or in a particular manner that is forbidden - all importation and exportation is forbidden unless there is the general or special permission of the Reserve Bank. All this apart, it seems to me that the term, "prohibited goods" in item 73 under Section 167 of the Sea Customs Act is only a compendious way of describing (to borrow the language of the first paragraph of item 8), goods the importation or exportation of which is, for the time being, prohibited or restricted by or under Chapter IV of the Act. The label, of course, attaches to the goods wherever they are and not merely at the stage when they are in the process of being imported or exported, but item 73 makes it clear that the offence can be committed only by a person on board a vessel in a customs-port, or who-has landed from such vessel, and that it applies only to goods in his possession on the vessel.

19. It is said that the maximum penalty prescribed by item 8 under Section 167 of the Sea Customs Act is Rs. 1000 and that the fine of Rs. 6000 imposed by the Customs Collector is, in any case, beyond what the law allows. It would appear from the observations in *Maqbool Hussain v. State of Bombay*¹, *F. N. Roy v. Collector of Customs, Calcutta*². and *Babulal Amthalal v. Collector of Customs Calcutta*³, that,

¹ AIR 1953 SC 325 of page 330 para 10

³ AIR 1957 SC 877 at p. 879 Para 7

² AIR 1957 SC 648 at p. 651 para 9

although it might at first sight appear that under item 8, the adjudging officer can at his option impose either a penalty not exceeding three times the value of the goods or a penalty not exceeding Rs. 1000, the third column of item 8 has to be read as if it contained the words, "whichever is less". But the question is purely academic in this case since the penalty that can be imposed under item 73-is a penalty not exceeding three times the value of the goods. No alternative limit, expressed in terms of rupees, is mentioned. And since the penalty imposed in this case is far less than three times the value of the goods concerned, it follows that the penalty is not higher than what the law allows.

20. The validity of the order confiscating the currency notes found secreted in the car does not really fall for consideration, but I might say that the confiscation is authorized by items 8, 34 and 73 under Section 167 of the Sea Customs Act.

21. The confiscation of the motor car has been ordered under Section 168 of the Sea Customs Act. Although on board the vessel the car was more a receptacle for the concealment of goods liable to confiscation than a conveyance for their removal, I do not think it would be wrong to describe it as a means of conveyance used in the removal of the goods. To be that, it is not necessary that at the time of the detection of the offence it must be actually in use as a conveyance. The confiscation is therefore in order.

22. Regarding the money carried by the petitioner on his person (\$ 1605 and Rs. 250) and admittedly taken into charge by the customs officers, it is claimed that the department has a lien over this money under Section 193 of the Sea Customs Act for. the penalty of Rs. 6000 imposed on the petitioner and it is said that the money will be returned to the petitioner as soon as the

penalty is paid. Since Section 193 authorizes the realization of the penalty adjudged from any goods of the person concerned in the charge of an officer of customs, it seems to me that the department is entitled to keep these currency notes until the penalty is paid. That apart, it was represented in the course of the argument that, as soon as this case is disposed of, the department will send the currency notes to a magistrate for disposal in accordance with law and seek his assistance for recovery of the penalty under the second paragraph of Section 193 of the Sea Customs Act. Even if the currency notes are returned to the petitioner, they would, the very next moment, be liable to attachment for recovery of the penalty. In the circumstances, I think that the proper disposal of these currency notes may well be left to the magistrate; in any event I do not think that a case has been made out for my interference.

23. I might perhaps mention that it was said in the course of the argument that the action of the customs officers in this case was in violation of the right of innocent passage afforded to the vessel by international law. The facts stated by me should suffice to show that there was no such violation, and, in any case, I can decide only in accordance with the municipal law. As I see it, the relevant municipal law is not at conflict with international law, but even if it were, I would have to enforce it and it would be for the legislature to resolve the conflict.

24. I dismiss the petition with costs. (Advocate's fee Rs. 250/-).
Petition dismissed.