

BOMBAY HIGH COURT

Mahadev Ganesh Jamsandekar

Vs

Secretary of State

(Norman Macleod, Kt., C.J. Shah, J.)

06.12.1921

JUDGMENT

Norman Macleod C.J.

1. The plaintiffs are the sons of one Ganesh Mahadev Jamsandekar, an inhabitant of Malvan, in whose house certain silver ingots were discovered by the Police. The silver was attached and sent over to a clerk in the Customs Department. It was suspected that silver was being imported into British India without paying duty, and accordingly an inquiry was instituted and a report was made to the Collector of Customs. The Collector, on considering all the papers which were sent to him, came to the conclusion that the silver had been imported without paying the duty, being illicitly landed at Dandi from Goanese territory. Ganesh was, therefore, found guilty of an offence punishable under Clause (3) of Section 167 of the Sea Customs Act VIII of 1878, and was fined Rs. 1,000, while the silver was confiscated.

2. A suit was brought by Ganesh for a declaration that the orders passed by the Collector of Customs were illegal, and to recover the value of the silver and the amount of the fine. The plaintiff's suit was dismissed by the District Judge of Ratnagiri on the ground that he had no jurisdiction to hear the suit. This decision was set aside by this Court: see *Ganesh Mahadev v. The Secretary of State for India*¹ The Court said (page 232): "The real question, therefore, to be determined in this litigation is whether there has or has not been a legal adjudication in accordance with the provisions of the Act. That will involve determining, after evidence has been recorded, what was the exact method adopted for the purpose of the adjudication and whether that method was in accordance with the express or implied provisions of the Act." The suit was, therefore, remanded.

3. No further evidence was called by either side. On behalf of the defendants papers relating to the proceedings before the Customs Officers, Exhibits A 1 to 7, were put in. It is admitted that the Sea Customs Act contains no provisions with regard to the adjudication of confiscation and penalties which can be made by the Customs Officers under Section 182. Therefore, the Customs

Officers must proceed according to general principles, which are not necessarily legal principles, for the purpose of arriving at a conclusion when such inquiries, as the present one, are instituted. It appears to me, after perusing the papers, which were before the Collector of Customs, and which I presume were taken in accordance with the ordinary procedure, that various statements were recorded by the Sarkarkun, including the statement of Ganesh, there is also a long application on behalf of Ganesh which has been placed before us, but which does not appear in the paper book, and I have no doubt that the Collector, who is not bound to adjudge on confiscation and penalty as if the matter was proceeding in a Court of law according to the provisions of the Civil or Criminal Procedure Code, dealt with the various statements before him in a careful and judicial manner.

4. The learned Judge has referred to the case of the *Local Government Board v. Arlidge*² in which the Court said "that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation"; and again in the *Board of Education v. Rice*³ the Court said: "They have no power to administer an oath, and need not examine witnesses. They can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view."

5. It is obvious from the record in this case that the plaintiff had ample opportunity to correct or contradict any statement prejudicial to his view which had been recorded. I have before me a petition signed by the pleader of Ganesh Mahadev in which all the points that are placed now before us were entered. If it in any way appeared to me that there has been real injustice in this case I would not hesitate to entertain the appellant's claim. But as far as I can see from the provisions of the Sea Customs Act, the appellants have no reason to complain that justice has not been dealt out to Mahadev by the Customs Authorities. Even dealing with the case on the merits, it seems to me absolutely certain that the story put forward by Ganesh with regard to the carriage of this silver from Bombay via Belgaum to Malvan was rightly taken to be a false one. In my opinion, therefore, in this case there has been an adjudication under the Act with which no fault can be found. Therefore the appeal must be dismissed with costs.

Shah, J.

6. I agree.

Cases Referred.

1(1918) I.L.R. 43 Bom. 221; 21 Bom. L.R. 27

2[1915] A.C. 120, 138

3[1911] A.C. 179, 182