

PUNJAB AND HARYANA HIGH COURT

Union of India

Vs

Jagdish Singh Ishwar Singh

(D.Falshaw, J.)

04.10.1961

JUDGEMENT

(D.Falshaw, J.)

- (1.) THIS appeal, under clause 10 of the Letters Patent, has been referred to this bench because the learned it, felt that certain observations made in Balbir Singh v. Collector of Central Excise and Land Customs, New Delhi, 62 Pun LR 549: (AIR 1960 Punj 488) needed to be reconsidered.

(2.) THE facts giving rise to the appeal are these: Two postal parcels, one containing 80 and the other 50 watches, were received in the post office at Delhi, both being addressed to Shri Jagdish Singh, a dealer in watches and doing business in Sadar Bazar, Delhi. The customs officials had received information that these parcels contained goods imported in contravention of the Import Trade control Regulations and certain officials, therefore, went to the post office on the 16th of October, 1957, and kept watch there. Shri Jagdish Singh went to the Post office that day and took delivery of both the parcels. He was immediately apprehended. On examination the parcels were found to contain the goods already mentioned. He was questioned and he stated that the parcel containing 80 watches had been sent to him by Messrs New Sardar Watch Co. of Bombay and that he had honestly bought the watches from that company. The collector of central Excise and Land Customs, who ultimately looked into this case, felt satisfied that Shri Jagdish Singh's explanation regarding the parcel of 80 watches was true. He, therefore, ordered those 80 watches to be released. Regarding the second parcel containing 50 watches of foreign origin, however, Shri jagdish Singh failed to offer any satisfactory explanation. He, in fact, denied that the watches belonged to him or had been sent to him, and he pleaded ignorance about the identify of the person supposed to have sent the watches. The name of the consignor appeared as H. K. Lal on the postal parcel, but on enquiries made at Bombay at the mentioned address it was found that no person of that name existed. The Collector of Customs, held that the fifty watches in question had been imported into India in contravention of the Regulations (and?) he ordered those watches to be confiscated. Further he ordered Shri Jagdish Singh to pay a personal penalty of Rs. 7,000/-

under S. 167 (8) of the Sea Customs Act, 1878, read with S. 19 of the same Act. Shri Jagdish Singh, filed an appeal against the decision of the Collector, but as he failed to deposit the penalty the appeal could not be heard on the merits and was dismissed. He made an attempt to approach higher authority, being the Central government, but was unsuccessful. Shri Jagdish Singh thereupon filed in this Court a writ petition under Art. 226 of the Constitution challenging the legality of the order made by the Collector of customs and his attack was mainly against the imposition of the penalty of Rs. 7,000/- . This writ petition was heard by Capoor, J. sitting alone. It was contended on behalf of the petitioner that the Collector for Customs had nowhere found that Shri Jagdish Singh had been concerned in the importation of the watches in question and without such a finding the Collector of Customs was not competent to impose any penalty and in that way the order imposing the penalty was illegal. This argument prevailed as the learned Single Judge felt bound by the observations of the Division Bench in 62 Pun LR 549: (AIR 1960 Punj 488). The result was that the writ petition was allowed by the learned Judge and the order imposing the penalty was quashed. It is against that order that the present appeal under clause 10 of the Letters Patent has been brought on behalf of the Union of India and the Central Board of Revenue and others. Mr. Jindra Lal in support of the appeal contends that a fair reading of the order of the Collector of Customs would show that he had in fact found that the respondent Shri Jagdish Singh had been concerned in the offence described at item 8 of S. 167 of the Sea Customs Act. That item runs thus: "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;" Then follows the penalty in column 3 in these words: "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". It is admitted that if the Collector of Customs did actually find that Shri Jagdish Singh was concerned in the offence of importing into India watches in question, the Collector was in law entitled to impose the penalty which he did. The main question, therefore, is whether the Collector, when considering this case, did or did not come to the conclusion that Shri Jagdish Singh had been concerned in the importation of the watches. It is true, as has been observed by the learned single Judge, that the order of the Collector does not in so many words say that 'he was satisfied that Shri Jagdish Singh had been concerned' in such importation. That, however, was not necessary, for every conclusion arrived at by a Tribunal does not necessarily find verbal expression in the written order, and I am not aware of any rule of law which requires that to be done. It has to be remembered that when a Tribunal considers a dispute certain aspects of it are some times so obvious that they do not have to be mentioned and quite often a conclusion arrived at needs only to be implied, and no decision of a Tribunal can be disturbed merely because it does not in the form of words express a particular conclusion. What has to be seen is whether the order of the Tribunal is sufficiently clear to show that the Tribunal did arrive at a particular conclusion. In the present case the collector of Customs first addressed himself to the question whether the fifty watches in dispute were imported into India contrary to the Regulations. He, in this connection, considered the evidence and the circumstances brought to light. Those very circumstances had a bearing on the second question

also, namely, whether Shri Jagdish Singh was concerned in the importation of the watches. Having mentioned all these circumstances the collector went on to say that there was in his mind no doubt left 'that the watches which were of foreign origin were imported into India through unlawful means'. Having arrived at that conclusion he ordered the confiscation of the watches. The collector then went on to consider the question of Shri Jagdish Singh's personal liability, and he held that Shri Jagdish Singh 'could not be absolved of the liability of having infringed the Import Trade Control Regulations. ' This is what the collector says-"the 50 pieces of watches are of foreign origin and contraband in nature. The evidence brought on record is sufficient to establish that the 50 pieces of Roamer watches in question have been imported through unlawful means. I, therefore, order confiscation of the seized 50 pieces of Roamer watches under S. 167 (8) of the Sea Customs Act, 1878 read with S. 19. " Immediately after this he goes on to consider the second question and he says: "shri Jagdish Singh cannot absolve himself from the infringement of I. T. C. regulation inasmuch as he was in possession of the offending watches. I, therefore, impose on Shri Jagdish Singh a personal penalty of Rs. 7,000/- which should be paid immediately failing which action under section 193 of the Sea Customs Act, 1878 will be taken against him. " In this second part of the order it is, in my opinion, implicit that the collector was fully satisfied that Shri Jagdish Singh was concerned in the offence described in section 167 (8) of the Sea Customs Act. The manner in which the collector dealt with this case leaves no doubt on this point. He was conscious that there was two things he could do (1) the confiscation of the watches, and (2) the imposition of penalty. He was also conscious that the condition precedent to each of them 'them was different and he actually dealt with the two matters separately. The mere circumstance, therefore, that while dealing with the second matter the Collector did not expressly say in words that he was satisfied that Shri Jagdish Singh was concerned in the importation of the watches, cannot make any difference. Before the learned Single Judge, reliance was placed on the decision in 62 Pun LR 549: (AIR 1960 Punj 488), but in that case it was conceded without argument that there was no finding by the Collector that the person proceeded against had been concerned in the offence of importation or exportation of goods, and on that concession that learned Judges concluded that no personal penalty could have been imposed. I take that to mean that there was, in fact, no finding, in the sense that the Collector had not arrived at that particular conclusion and not merely that he had not expressed it in so many words, for I cannot agree that any Tribunal, judicial or other, has necessarily to express every conclusion in the language of the relevant statute. What has to be ascertained is whether the Tribunal's mind was directed to a certain matter and whether the Tribunal did, in fact, arrive at a particular conclusion. In the present case, I have no doubt that the Collector did conclude that Shri Jagdish Singh was responsible for the illegal importation of the watches in question and "could not absolve himself from the infringement of the regulations". Reference was also made to a decision of the Bombay High Court in Pukhraj champalal Jain v. D. R. Kohil, 61 Bom LR 1230. In that case again, the Court arrived at the conclusion that the collector had not arrived at a particular finding of fact and the decision is, therefore, of no assistance. For these reasons, I am unable to accept the view of the learned single Judge that in the present case the collector did not find that Shri Jagdish Singh had been concerned in the offence mentioned in section 167 (8) of the Sea Customs Act and was

for that reason incompetent to impose the penalty. It is urged then on behalf of the respondent that on the evidence before the collector it was impossible to conclude that the respondent had been concerned in the offence, the argument being that the Collector's finding rests, entirely on the circumstance that the respondent was found in possession of the contraband goods. It is quite true that the Collector's order towards its conclusion emphasizes that circumstance but it is not right, in my opinion, to say that there was no other evidence before the Collector. On the other hand, it is clear from the order itself that there were many circumstances present to his mind and those were taken into consideration. The sender of the offending parcel, said to be H. K. Lal, was found to be a nonexistent person. The watches were of considerable value. The respondent, when questioned about the parcel, disclaimed all knowledge as to the source of the parcel, although he could not say that he had not taken delivery of the parcel. In these circumstances, it was, to my mind, not an unreasonable conclusion that the watches, which had certainly been imported into India without a valid permit, had been so imported at the instance of the respondent. He had taken delivery of the watches and he could give no explanation as to how the parcel came to be sent to him. I am, therefore unable to agree that the Collector could not have on the evidence before him, concluded that the respondent was concerned in the importation of the watches. Such a conclusion could reasonably be based on the evidence before the Collector and there is, therefore, no force in the contention that in law the conclusion of the Collector cannot be justified. It is clear that on the findings the Collector was competent to impose the penalty and no case for interference by this Court under Article 226 of the Constitution is made out. Before concluding, I have to state that one matter mentioned by Mr. Narula as a preliminary objection to this appeal, but not seriously pressed in the end, was that the writ petition filed in this Court was in the nature of criminal proceedings and the order of the learned Single Judge, therefore, was in the exercise of the criminal jurisdiction of this Court. Mr. Narula was, however, unable to say anything serious in support of this view and he admitted that the question whether a particular proceedings is in nature criminal or civil depends on the procedure adopted for dealing with it. It is clear that in connection with such writs, as is concerned in the present case, the procedure adopted in this court is that for civil proceedings and there is no reason, therefore, for saying that just because the grievance was against the imposition of penalty the proceedings became criminal in nature. For these reasons, I would allow this appeal, set aside the order made by the learned Single Judge, and dismiss the petition of Shri Jagdish Singh, and discharge the rule issued in this case. In view of all the circumstances, however, I would leave the parties to their own costs in this Court. Appeal allowed. ;