AMBA LAL

v.

THE UNION OF INDIA AND OTHERS.

1960

October 3.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Evidence—Customs authorities recovering articles suspected to have been smuggled—Accused pleading articles brought from Pakistan at time of partition—Burden of proof—Imports Exports Control Act, 1947 (10 of 1947), s. 3—Sea Customs Act, 1878 (8 of 1878), ss. 19, 167(8) and 178-A—Land Customs Act, 1924 (19 of 1924), ss. 5 and 7—Indian Evidence Act, 1872 (1 of 1872), s. 106.

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The appellants house was searched on June 22, 1951, by the Customs authorities and ten articles were recovered therefrom. In the inquiry before the Collector the appellant stated that the first five articles had been brought by him in 1947 from Pakistan after partition and that with respect to the other five articles he was a bona fide purchaser thereof. The Collector held that the appellant had failed to establish his case and held that the goods were imported into India in contravention of s. 3, Import Export Control Act read with ss. 19 and 167(8), Sea Customs Act and ss. 4 and 5 Land Customs Act read with s. 7 thereof. This decision was upheld on appeal by the Central Board of Revenue and by the Central Government on revision. The appellant contended that: (1) the onus of proving that the first five articles were smuggled goods was on the department which it had failed to discharge, and (2) even if the other five articles which he purchased were smuggled goods he was not concerned with their importation.

Held, that the onus was on the authorities to establish that the first five articles were imported into India after March 1948, when the customs barrier was put up for the first time between India and Pakistan, and that the authorities having failed to adduce any evidence to prove this fact the appellant could not be held guilty of any of the offences charged. The onus did not shift by virtue of s. 178A, Sea Customs Act or s. 5, Land Customs Act, as the former section was not in operation at the relevant time and the latter section was not applicable to the facts of this case; nor did the onus shift by virtue of s. 106, Evidence Act, as that section could not be used to undermine the well established rule that the burden was on the prosecution and never shifted.

Shambu Nath Mehra v. *The State of Ajmer*, [1956] S.C.R. 199, followed.

With respect to the other five articles even if the appellant was right in his contention that he was not concerned in their importation he was liable to the penalty under s. 7(1)(c), Land Customs Act, 1924, for keeping the articles knowing them to be smuggled goods.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 153 of 1956.

Appeal from the judgment and order dated November 3, 1954, of the Punjab High Court in Civil Writ No. 253-D of 1954.

Veda Vyasa, *S. K. Kapur*, *K. K. Jain* and *Ganpat Rai*, for the appellant.

H. N. Sanyal, *Additional Solicitor-General of India*, *H. R. Khanna* and *T. M. Sen*, for the respondents.

1960. October 3. The Judgment of the Court was delivered by

SUBBA RAO J.—This appeal by certificate is directed against the order of the High Court of Judicature of the State of Punjab dismissing the petition filed by the appellant under Art. 226 of the Constitution.

The facts giving rise to this appeal may be briefly stated. The appellant is at present a resident of Barmer in the State of Rajasthan. But before 1947 he was living in a place which is now in Pakistan. On June 22, 1951, the Deputy Superintendent, Land Customs Station, Barmer, conducted a search of the appellant's house and recovered therefrom the following ten articles:

Articles seized.	Weight	Estimated value.
		Rs.
1. Silver slab.	2600 tolas	5,200/-
2. 29 Sovereigns (King Ed. VII).		2,262/-
3. 9 pieces of gold bullion	201 tolas and 9 mashas.	22,193/-
4. 4 pieces of silver bullion	114 tolas.	230/-
5. Uncurrent silver coins numbering 575.		865/-
6. Gold bars.	49 tolas and 9 mashas	5,475/-
7. 255 Phials of liquid gold.		9,875/-
8. Torches 23.		
9. Playing cards 3 Dozens		400/-
10. Glass beads 48 packets.		
	Total ...	46,500/-

On July 14, 1951 the Assistant Collector, Ajmer, gave notice to the appellant to show cause and explain why the goods seized from him should not be confiscated under s. 167(8) of the Sea Customs Act and s. 7 of the Land Customs Act. The appellant in his reply

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stated that items 1 to 5 supra were brought by him from Pakistan after the partition of the country in 1947 and that items 6 to 10 were purchased by him *bona fide* for value in Barmer. On October 27, 1951, the appellant appeared before the Collector of Central Excise, who made an enquiry, and admitted before him that items 6 to 10 were smuggled goods from Pakistan, but in regard to the other items he reiterated his plea that he originally brought them from Pakistan in the year 1947. The Collector of Central Excise held that the appellant had failed to establish that items 1 to 5 had been brought by him to India in the year 1947 and he also did not accept the plea of the appellant in regard to items 6 to 10 that he was a *bona fide* purchaser of them. In the result he held that all the goods were imported into India in contravention of, (i) s. 3 of the Import Export Control Act read with ss. 19 and 167(8) of the Sea Customs Act, (ii) ss. 4 and 5 of the Land Customs Act read with s. 7 thereof. He made an order of confiscation of the said articles under s. 167(8) of the Sea Customs Act and s. 7 of the Land Customs Act; but under s. 183 of the Sea Customs Act he gave him an option to redeem the confiscated goods within four months of the date of the order on payment of a sum of Rs. 25,000. In addition he imposed a penalty of Rs. 1,000 and directed the payment of import duty leviable on all the items together with other charges before the goods were taken out of customs control. Aggrieved by the said order, the appellant preferred an appeal to the Central Board of Revenue. The Central Board of Revenue agreed with the Collector of Central Excise that the onus of proving the import of the goods in question was on the appellant. In regard to items 1 to 5, it rejected the plea of the appellant mainly on the basis of a statement alleged to have been made by him at the time of seizure of the said articles. In the result the appeal was dismissed. The revision filed by the appellant to the Central Government was also dismissed on August 28, 1953. Thereafter the appellant filed a writ petition under Art. 226 of the Constitution in the High Court

of Punjab but it was dismissed by a division bench of the High Court on November 3, 1954. Hence this appeal.

It would be convenient to deal with this appeal in two parts—one in regard to items 1 to 5 and the other in regard to items 6 to 10.

The decision in regard to items 1 to 5 turns purely on the question of onus. The Collector of Central Excise as well as the Central Board of Revenue held that the onus of proving the import of the goods lay on the appellant. There is no evidence adduced by the customs authorities to establish the offence of the appellant, namely, that the goods were smuggled into India after the raising of the customs barrier against Pakistan in March 1948. So too, on the part of the appellant, except his statement made at the time of seizure of the goods and also at the time of the inquiry that he brought them with him into India in 1947, no other acceptable evidence has been adduced. In the circumstances, the question of onus of proof becomes very important and the decision turns upon the question on whom the burden of proof lies.

This Court has held that a customs officer is not a judicial tribunal and that a proceeding before him is not a prosecution. But it cannot be denied that the relevant provisions of the Sea Customs Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have been committed by a person under the said Acts, summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect of which the offence is committed and impose penalty on the person concerned; see ss. 168 and 171A of the Sea Customs Act and ss. 5 and 7 of the Land Customs Act. To such a situation, though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal jurisprudence and of natural justice must necessarily apply. If so, the burden of proof is on the customs authorities and they have to

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bring home the guilt to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence. In the present case no such evidence is forthcoming; indeed there is no tittle of evidence to prove the case of the customs authorities. But it is said that the onus shifted to the appellant for three reasons, namely, (i) by reason of the provisions of s. 178A of the Sea Customs Act; (ii) by reason of s. 5 of the Land Customs Act; and (iii) by reason of s. 106 of the Evidence Act.

Section 178A of the Sea Customs Act does not govern the present case, for that section was inserted in that Act by Act No. XXI of 1955 whereas the order of confiscation of the goods in question was made on January 18, 1952. The section is prospective in operation and cannot govern the said order.

Nor does s. 5 of the Land Customs Act apply to the present case. Under s. 5(1) of the said Act, "Every person desiring to pass any goods.....by land, out of or into any foreign territory shall apply in writing.....for a permit for the passage thereof, to the Land Customs Officer incharge of a land customs Station....." By sub-s. (2) of s. 5 of the said Act, if the requisite duty has been paid or the goods have been found by the Land Customs Officer to be free of duty, the Land Customs Officer is empowered to grant a permit. Under sub-s. (3) thereof, "Any Land Customs Officer, duly empowered by the Chief Customs authority in this behalf, may require any person in charge of any goods which such Officer has reason to believe to have been imported, or to be about to be exported, by land from, or to, any foreign territory to produce the permit granted for such goods; and any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation." This section has no bearing on the question of onus of proof. This section obviously applies to a case where a permit is required for importing goods by land from a foreign country into India and it empowers the Land Customs Officer, who has reason to believe that any

goods have been imported by land from any foreign territory, to demand the permit and to verify whether the goods so imported correspond with the specification contained in the permit. If there was no permit or if the goods did not correspond with the specification contained in the permit, the said goods would be liable to be detained and confiscated. The application of this section is conditioned by the legal requirement to obtain a permit. If no permit is necessary to import goods into India, the provisions of the section cannot be attracted. In the present case the customs barrier was established only in March, 1948, that is, after the said items of goods are stated by the appellant to have been brought into India.

We cannot also accept the contention that by reason of the provisions of s. 106 of the Evidence Act the onus lies on the appellant to prove that he brought the said items of goods into India in 1947. Section 106 of the Evidence Act in terms does not apply to a proceeding under the said Acts. But it may be assumed that the principle underlying the said section is of universal application. Under that section, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. This Court in *Shambu Nath Mehra* v. *The State of Ajmer* (1), after considering the earlier Privy Council decisions on the interpretation of s. 106 of the Evidence Act, observed at p. 204 thus:

"The section cannot be used to undermine the well established rule of law that, save in a very exceptional class of case, the burden is on the prosecution and never shifts."

If s. 106 of the Evidence Act is applied, then, by analogy, the fundamental principles of criminal jurisprudence must equally be invoked. If so, it follows that the onus to prove the case against the appellant is on the customs authorities and they failed to discharge that burden in respect of items 1 to 5. The order of confiscation relating to items 1 to 5 is set aside.

Before closing this aspect of the case, some observations have to be made in respect of the manner in

(1) [1956] S.C.R. 199.

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which the statement given by the appellant when the goods were seized was used against him by the customs authorities. It would be seen from the order of the Collector of Central Excise as well as that of the Central Board of Revenue that they had relied upon the statement alleged to have been made by him at the time the search was made in his house in order to reject his case that he brought some of the items of goods into India in the year 1947. The appellant in his reply to the show-cause notice complained that his statement was taken in English, that he did not know what was recorded and that his application for inspection and for the grant of a copy of his statement was not granted to him. It does not appear from the records that he was given a copy of the statement or that he was allowed to inspect the same. In the circumstances we must point out that the customs authorities were not justified to rely upon certain alleged discrepancies in that statement to reject the appellant's subsequent version. If they wanted to rely upon it they should have given an opportunity to the appellant to inspect it and, at any rate, should have supplied him a copy thereof.

Coming to items 6 to 10, we have no reason to reject, as we have been asked to do, the statement made in the order of the Collector of Central Excise dated October 27, 1951, that the appellant accepted that items 6 to 10 were smuggled goods from Pakistan. It would have been better if the customs authorities had taken that admission in writing from the appellant, for that would prevent the retraction of the concession on second thoughts. That apart, it is more satisfactory if a body entrusted with functions such as the customs authorities are entrusted with takes that precaution when its decision is mainly to depend upon such admission. But in this case, having regard to the circumstances under, and the manner in, which the said concession was made, we have no reason to doubt the correctness of the statements of fact in regard to this matter made in the orders of the customs authorities. If so, it follows that the finding of the customs authorities that the appellant purchased the said items, which were smuggled goods, should

prevail. The order of confiscation of these five items will, therefore, stand.

Even so, it is contended by the learned counsel for the appellant that the customs authorities went wrong in imposing a penalty on him under s. 167(8) of the Sea Customs Act. The said section reads:

"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.....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."

The appellant's argument is that though he purchased the said smuggled goods he is not concerned with the importation of the goods contrary to the prohibition or restriction imposed by or under Ch. IV of the Sea Customs Act. The offence consists in importing the goods contrary to the prohibition and, therefore, the argument proceeds, a person, who has purchased them only after they were imported, is not hit by the said section. There is some force in this argument, but we do not propose to express our final view on the matter as the appellant is liable to the penalty under s. 7(1)(c) of the Land Customs Act, 1924. The said section reads:

"*Section 7 (1)*: Any person who—

.....

(c) aids in so passing or conveying any goods, or, knowing that any goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed,

shall be liable to a penalty not exceeding, where the goods are not dutiable, fifty or, where the goods or any of them are dutiable, one thousand rupees, and any dutiable goods in respect of which the offence has been committed shall be liable to confiscation."

In this case the finding is that the appellant with the

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knowledge that the goods had been smuggled into India kept the goods, and, therefore, he was liable to penalty under that section. We hold that the penalty was rightly imposed on him.

It is then contended that the Collector of Central Excise had no jurisdiction to impose conditions for the release of the confiscated goods. The Collector of Central Excise in his order says, "In addition the import duty leviable on all these items together with other charges, if any payable, should be paid and necessary formalities gone through before the goods can be passed out of Customs Control". In *Shewpujanrai Indrasanrai Ltd.* v. *The Collector of Customs* (1), a similar question arose for consideration of this Court. There by an impugned order the Collector of Customs imposed two conditions for the release of the confiscated goods, namely, (1) the production of a permit from the Reserve Bank of India in respect of the gold within four months from the date of despatch of the impugned order, and (2) the payment of proper customs duties and other charges leviable in respect of the gold within the same period of four months. This Court held, agreeing with the High Court, that the Collector of Customs had no jurisdiction to impose the said two conditions. The learned Additional Solicitor General concedes that the said decision applies to the present case. We do not, therefore, express any view whether that decision can be distinguished in its application to the facts of the present case. On the basis of the concession we hold that the conditions extracted above, being severable from the rest of the order, should be deleted from the said order of the Collector of Central Excise.

Learned counsel for the appellant then argues that the option given in the said order to the appellant to redeem the confiscated goods for home consumption within four months of the order on payment of Rs. 25,000 was based upon the validity of the confiscation of all the ten items and, as this Court now holds that confiscation was bad in respect of items 1

(1) [1959] S.C.R. 821.

to 5, the amount of the penalty of Rs. 25,000 should proportionately be reduced. There is justification for this contention. But we cannot reduce the amount, as under s. 183 of the Sea Customs Act the amount has to be fixed by the concerned officer as he thinks fit. But as the basis of the order partially disappears, we give liberty to the appellant to apply to the customs authorities for giving him an option to redeem the confiscated goods on payment of a lesser amount, having regard to the changed circumstances.

In the result, the appeal is allowed in part and the order of the Collector of Central Excise is accordingly modified in terms of the finding given by us. As the parties succeeded and failed in part, they are directed to bear their own costs.

Appeal partly allowed.