

Emperor Vs. De Sylva

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Court : Mumbai

Decided On : Feb-03-1909

Reported in : 1Ind.Cas.343

Judge : Chandavarkar and ;Heaton, JJ.

Appellant : Emperor

Respondent : De Sylva

Judgement :

Heaton, J.

1. The questions which we are asked to answer are these:

1. Whether the conveying of a parcel of cocaine in a ship with the intention that such cocaine shall be landed in Bombay amounts to an importation within the meaning of Section 43, Bombay Act V of 1878, if the ship containing such cocaine

(a) enters Bombay harbour

(b) is tied up against the Bombay Dock wall?

2. Whether the Bombay harbour is a part of the Bombay Presidency within the meaning of Section 43 of Bombay Act V of 1878?

3. Whether a person who has committed the act referred to in question (1) has a locus poenitentite while the cocaine remains on board the ship and no attempt has been made to land it?

2. The first question involves a consideration of the meaning of Section 43 of Bombay Act V of 1878. That section makes penal the import of cocaine in contravention of this Act or of any rule or order made under this Act.' It does not appear that anything has been done in contravention of any rule or order made under the Act. No rule or order thereunder exists, so far as we are informed, prohibiting or restricting the import of cocaine. There may have been a contravention of an order made under Section 19 of the Sea Customs Act. With that, however, we are not concerned. In the absence of any rule or order relating to the import of cocaine and made under Bombay Act V of 1878, all we have to do is to determine whether the bare provisions of the Act have been disobeyed. It is said they have and Section 9 of the Act is referred to. The Act may or may not give power to make a rule or order prohibiting or restricting the import of cocaine, but Section 9 does not, it seems to me, prohibit importing that drug generally; it merely prohibits its importation unless duty has been paid, because cocaine is a thing liable to the payment of duty under the Indian Tariff Act. Having only the words of the Act itself, having no rule or order made under that Act, that is the only conclusion at which I can arrive. The intention and requirement of Section 9 in the case of articles liable to duty under the Tariff Act are that the duty shall be paid. That intention and requirement can only be contravened when reasonable opportunity to pay the duty has been afforded and has been evaded. So the import with which, we are dealing is not an import within the meaning of Section 43, unless it is an import in contravention of the Act, that is, in the particular case put to us, in contravention of the obligation to pay duty. Ordinarily, we are told, duty is required to be paid on shore usually after the ship conveying the dutiable goods has come to rest in the harbour or dock. If this be so, the mere entry into the harbour or tying up against the dock wall, is not importing goods in contravention of the obligation to pay duty. Further discussion of the point is useless because the facts have not been found by the Magistrate.

3. So far I have assumed that on the facts stated there is an import and have only considered whether such import is in contravention of the Bombay Abkari Act. There is not, in my opinion, any doubt that the facts stated do amount to an import. That word is stated in the Act to include the conveying into any part of the Presidency of Bombay from any other part of India, and therefore by implication and having regard to the common meaning of the word, must include the conveying into any part of the Presidency of Bombay by sea. The Bombay Presidency is defined in the Bombay General Clauses Act 1904, to mean the territories within the British India for the time being under the administration of the Governor of Bombay in Council.

4. It does not seem to be really doubted that the Bombay harbour is under the administration of the Governor of Bombay in Council but were doubt on this point to arise, it could be set at rest by ascertaining as a question of fact whether the harbour in whole or in part is or is not under the administration of the Governor of Bombay in Council,

5. The facts have not been rally stated to us. They may show that there has been such an evasion of opportunity to pay duty as to make the import punishable. That, however, is for the Magistrate to decide. He has referred abstract questions to us and not questions arising out of facts fully ascertained and stated.

6. In my opinion it is impossible to answer the third question in a general form, and in any set of facts the answer would be so dependent on the facts as to be a matter which the Magistrate should decide for himself.

7. The other questions referred do not, it seems to me, admit of more precise answers than those here given.

8. I would advise the Chief Presidency Magistrate for the future to refer questions only after he has found what the facts are.

Chandavarkar, J.

9. I concur.

