

In Re: P. Bapanaiah

In Re: P. Bapanaiah

SooperKanoon Citation : sooperkanoon.com/426704

Court : Andhra Pradesh

Decided On : Nov-24-1967

Reported in : AIR1970AP47; 1970CriLJ199

Judge : Sharfuddin Ahmed and ;Venkateswara Rao, JJ.

Acts : Defence of India Act, 1962 - Sections 3(1) and 3(2); Defence of India Rules - Rules 126A, 126-L(16), 126-M(20) and 126-P(2); Gold Control Rules, 1962 - Rule 126-P(2) and 126-P(4); [Constitution of India](#) - Articles 14, 20(2), 21, 22, 351(1) and 359(1); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 5(2), 260, 262(2) and 403; ;[Customs Act, 1962](#) - Sections 135 and 135(2); [General Clauses Act, 1897](#) - Sections 26

Appeal No. : Criminal Revn. Case No. 26 of 1967 and Criminal Revn. Petn. No. 24 of 1967

Appellant : In Re: P. Bapanaiah

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : T.V. Sarma, Adv.

Judgement :

Venkateswara Rao, J.

1. This criminal revision petition, which arises out of a prosecution under Section 135 of the Customs Act and Rule 126-P (2) of the Defence of India Rules, 1962 (Part XII-A Gold Control) has been referred to the Bench by our learned brother, Mohammed Mirza, J., for decision 'in view of the important question of law raised' in the case.

2. The factors of the case may briefly be set out here. On receipt of information that Pabbati Bapnaaiah, the petitioner herein, would be leaving Hyderabad for Kothagudem by bus on 3-2-65, with contraband gold, the Deputy Superintendent, Customs and Central Excise, Hyderabad, with some members of his staff, lay in wait at the Gowliguda Bus Dept. in Hyderabad. The petitioner arrived there at 9 A. M. with a holdall in his hand. On a search of his person and belongings, it was found that he concealed in a pillow, four gold slabs with foreign markings 'Johnson Mathey 999-O London 10 tolas'. Those slabs were seized and further investigation revealed that no permit was issued to the petitioner, who is a licenced dealer in gold, to import them from abroad. After necessary enquiry, the Deputy Collector, Central Excise, Guntur, imposed a penalty of Rs. 5,000/- on the petitioner under Rule 126-L (16) (aa) of the same Rules, on 24-7-65. The Assistant Collector, Central Excise, thereafter preferred a complaint against the petitioner before the 4th City Magistrate, Hyderabad for contravening the provisions of section 135 of the [Customs Act, 1962](#) and Rule 126-P (2) of the Defence of India Rules, 1962 (Part XII-A Gold Control). A preliminary objection was raised before the learned Magistrate that the prosecution is untenable in view of the mandatory provisions of Article 20(2) of the [Constitution of India](#) and Section 403, CR. P. C. as the Deputy Collector of Central Excise, Guntur, had already imposed a penalty of Rs. 5000/- on the petitioner besides confiscating the gold by his order dated 24-7-1965. It was further urged before him that the prosecution is barred by clause 26 of the General Clauses Act also. The learned Magistrate overruled those objections whereupon the petitioner carried the matter in revision to the Principal Sessions Judge, Hyderabad at Secunderabad. In addition to the pleas raised before the Magistrate, it was urged before the learned Sessions Judge that the prosecution of the petitioner under Rule 126-P (2) of the Defence of India Rules infringes the right guaranteed to him under Article 21 of the Constitution and is consequently bad. The learned Sessions Judge dismissed the petition negating all the contentions

urged for the petitioner and hence this petition.

3. It may be stated at the outset that besides the pleas urged in the Courts below, the learned counsel for the petitioner has raised before us yet another contention that Rules 126-A to 126-Z contained in Part-XII-A of the Defence of India Rules, which will hereinafter be referred as Gold Control Rules, are in express of the rule-making powers of the Central government and are therefore liable to be struck down.

4. We will first take up for consideration the learned counsel's argument that the Central government exceeded the rule-making power conferred on it by sub-section (1) of S. 3 of the Defence of India Act in promulgating the gold Control Rules. It will be useful to extract here the relevant provisions of S. 3 of the Act.

3. Power to make rules:

'(1) The Central Government may, by notification in the official gazette, make such rules as appear to it necessary or expedient for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters, namely:

XX XX XX (33) controlling the possession, use or disposal of, or dealing in coin, bullion, bank notes, currency notes, securities or foreign exchange.'

It might be recalled that the President of India declared, on the 26th of October, 1962, that a grave emergency existed whereby the security of India was threatened by external aggression, as, by then, there was large scale Chinese invasion against the Indian borders. On the same day he promulgated 'The Defence of India Ordinance,' in exercise of his powers under Art. 123. This Ordinance was later replaced by the Defence of India Act, 1962 (51 of 1962). It is in exercise of the powers conferred by S. 3 (1) of this Act that the impugned rules

were made.

5. As already stated, Sri T. V. Sarma, the learned counsel for the petitioner contends that the Gold Control Rules, including Rule 126-P (2) which renders possession of any quantity of gold in contravention of any of the provisions of Part XII-A (Gold Control Rules, 1962) punishable with imprisonment and fine are in excess of the rule making powers vested in the Central Government by virtue of Section 3(1) of the Act. The learned Public Prosecutor has, on the other hand, argued that the rules in question are perfectly within the competence of the Central Government as, according to him, they are made with the avowed object of securing one or more of the purposes specified in Section 3 (1) of the Defence of India Act and that the validity of the rules cannot, in any view, be questioned in view of the fact that the Legislature, in enacting sub-section (2) of Section 3, has declared its intention that rules made under any one or more of the clauses of that sub-section would necessarily be for securing the purposes mentioned in sub-clause (1) of Section 3 and as item 33 listed under sub-section (2) of S. 3 provides for framing rules for controlling possession, use, disposal etc, of bullion which includes primary gold, gold ornaments and gold in any of its forms. We will now proceed to examine the respective merits of these contentions.

6. Going back to Section 3 (1) of the Act, it will be seen that the power conferred thereunder to make rules can be exercised by the Central Government if only it is necessary or expedient to do so for securing any one or more of the objects specified therein viz., the defence of India, civil defence, the public safety, maintenance of public order, or the efficient conduct of military operations and for maintaining supplies and services essential to the life of the community. It is urged by Sri Sarma that the Gold Control Rules do not in any way contribute to the realisation of any one of the objects specified in Section 3 (1) and that Rule 126-P (2), in particular, which seeks to control possession of gold even by individuals for their personal use such as making ornaments is totally unrelated to the purposes to achieve which alone the Central Government is empowered to make rules. There is no gain saying that 'the connection that is required to be established between the rules framed and the purposes prescribed under S. 3 (1) of the Defence of India Act must be a one and not far-fetched, problematical,

hypothetical or too remote though it need not necessarily be proximate.' But it must at the same time be remembered that the burden of providing the invalidity of the impugned rules lies heavily on the petitioner in view of the inclusion of item 33 under sub-section (2) of S. 3, indicating that: the Legislature considered framing of rules for controlling the possession etc., of bullion and the other subjects mentioned in item 33 to be necessary or expedient for securing one or the other of the objects specified in Section 3 (1).

In the first blush, the contention put forth by Sri Sarma that control over possession of gold by individuals for their personal use has absolutely no connection or bearing on the objects sought to be secured by Section 3 (1). But a careful examination of the matter would reveal that there is a real connection between the purposes mentioned in Section 3 (1) and the objects sought to be achieved by the gold Control Rules. The control or possession etc, of gold even by private individuals may not directly promote the defence of India or the other objects enumerated in Section 3 (1) of the Act but it does certainly and substantially help the government in securing some at least of those objects as was held by their Lordships of the Bombay High Court, in *Amichand v. C. B. Kotak*, : AIR1966 Bom70 . After referring to the contentions raised before him and advertent to the observations of their Lordships of the Supreme Court in *Collector of Customs v. Sampathu Chetty*, : 1983ECR2198D(SC) about the need for stringent methods, both legal and administrative, to minimise the evil of smuggling which has a deleterious effect on the national economy by adversely affecting India's position relating to foreign exchange, Tambe, J., made the following observations at page 86 of the decision referred to above.

'The import of gold into India has been stopped from the year 1939. There is very little production of gold in India. Gold available in the internal markets in India is gold which has been brought from countries other than India. People of India have the habit of preparing ornaments and articles of gold as well as of hoarding gold. The prices of gold in India are, therefore, necessarily very high and lucrative as compared with prices of gold in other countries, and that is an incentive and inducement to people to acquire gold in sufficient quantity at prices prevailing in other countries to meet the demands, the Central Government would have to

expend about 50 to 60 crores of rupees per year. That would result in expending foreign exchange to that extent for the purchase of gold. The various legislations made have not been sufficiently effective to check smuggling of gold. Smuggling of gold is adversely affecting to a great extent of India's foreign exchange reserves. For arresting these mischiefs, it was necessary to control the internal market and business in gold for the purpose of conservation of foreign exchange which was very essential in the times of emergency, for the defence of India as well as for maintenance of essential commodities and services, and it is for this reason and to achieve these objects that the Gold Control Rules have been promulgated. In other words, the said rules which, inter alia, drastically restrict dealings in gold have been framed to arrest the root cause that has made gold smuggling such a lucrative business and thereby conserve foreign exchange which is so essential for the defence of India.'

It is thus clear that there is a reasonable nexus between the object sought to be achieved by the Gold Control rules and the purposes mentioned in Section 3 (1) of the Act as the rules do promote, though indirectly but not remotely, the defence of India and the maintenance of supplies essential to the life of the community as indicated in : AIR1966 Bom70 .

7. We feel unable to agree with Sri Sarma that control or possession of gold by individuals for their personal use such as making ornaments can, by no stretch of imagination, be considered necessary for securing the objects specified in Section 3 (1) of the Act, as so long as the unabated demand for gold, consequent on the lure which the people of India have for it, continues unchecked, the smuggling operations would go on merrily and affect the defence of India by causing a drain on the foreign exchange potentialities of the country besides involving the nation in loss of considerable revenue by way of customs duty and also avoidable expenditure on a vast establishment for the purpose of preventing smuggling. The amount that could be saved in the absence of smuggling could be utilised with advantage for the defence of the country and maintenance of supplies and services essential to the life of the community as contemplated by Section 3 (1) of the Act. It will be useful in this context to extract the observations of Naik, J., also who, by a concurring though separate judgment, held in : AIR1966 Bom70 , that

the validity of the Gold Control Rules is not open to question (Page 106).

'It is undisputed that smuggling of gold involves a heavy drain on the foreign exchange resources of India. Smuggling, therefore, has to be checked. The measures undertaken under the Sea Customs Act and the Foreign Exchange Regulations have not achieved the purpose of checking smuggling. Once gold is successfully smuggled into this country, it is very easy for the same to find a place in the internal market. It can be easily turned into ornaments and once transformed in the shape of ornaments, it is impossible to recognise that the ornaments have been prepared out of the smuggled gold. The ornaments thus prepared can easily pass off as having been made out of the existing stock or out of indigenous gold. This capacity for quick transformation into ornaments is the principal difficulty in the way of preventing smuggling. Smuggling will continue notwithstanding the enactment of stringent measures so long as it is profitable to smuggle. The trade of smuggling will continue to be profitable so long as the people have a hankering or a lure for gold. The best method of preventing smuggling, therefore, is to bring about a shrinkage in the demand for gold. It is for that purpose that the control and restriction on the manufacture and sale of gold ornaments appears to have been devised.'

8. We have therefore no hesitation in agreeing with the learned Public Prosecutor that the gold Control Rules do serve some at least of the purposes mentioned in Section 3 (1) of the Act and are consequently not in excess of the rule-making powers of the Central Government.

9. In the view expressed above, it is unnecessary to go into the question as to whether the validity of the gold Control Rules is not open to question, even if it should be found that they do not serve to achieve any one of the purposes mentioned in sub-section (1) of Section 3 of the Act, as the Legislature, by enacting Sub-section (2), has declared its intention that rules made under any one or more of the clauses of that sub-section would necessarily be for securing the purposes mentioned in sub-clause (1) of S. 3; and the gold Control Rules are framed for controlling possession etc., of gold as provided in item 33 of sub-section (2) we may however observe in passing that the rule-making power

conferred by sub-section (2) is subject to the same limitations as are imposed by sub-section (1) of Section 3 as the clauses thereunder are only illustrative of the matters pertaining to which rules could be framed. The Legislature simply sought to give guidance to the Central Government, by means of this sub-section, on the question as to what it can do for securing the purposes mentioned in sub-section (1). Section 3 (2) would neither add to nor take away the powers conferred by Section 3 (1). The mere fact that rules are framed in relation to one or other of the subjects mentioned in sub-section (2) does not by itself render them valid if they are not referable to the powers conferred on the Central Government by sub-section (1). There is however no such difficulty in the instant case as it was already seen that the impugned rules are perfectly within the competence of the Central Government and are not in excess of its powers as they are necessary to secure the defence of India and maintenance of supplies and services essential to the life of the community.

10. It was next contended that R. 126-P (2) read with R. 126-P (4) of the Gold Control Rules would infringe the rights guaranteed to the petitioner by Art. 21 of the [Constitution of India](#). Rule 126-P (4) lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), an offence under (this) Rule, committed after the date of commencement of the Defence of India (7th Amendment) Rules, 1962 shall be tried summarily by a Magistrate. Rule 126-P (2) renders possession or control, purchase, acquisition or acceptance etc, of any quantity of gold in contravention of the provisions of Part, XII-A of the Defence of India Rules punishable with imprisonment for a term not less than 6 months and not more than 2 years and also with fine. But Section 262(2), Cr. P. C. lays down that no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under Chapter XXII of that code relating to summary trials. As Rule 126-P (4) provides for summary trial of offences coming within the purview of Rule 126-P (2) which prescribes for such offences a minimum punishment of six months imprisonment; and as this term of imprisonment is in excess of the maximum sentence that could be awarded under Section 262 (2), Cr. P. C., it is argued that Rules 126-P (2) and (4) cannot be considered to be procedure established by law unless Section 262(2), Cr. P. C. is repealed, altered or amended by a competent legislature as it continues to be

good law till then by virtue of Article 373 of the Constitution and cannot be overridden by rules framed by the executive providing for a minimum sentence of six months under Rule 126-P (2). It was further contended that Rule 126-P (2) prescribing a minimum sentence of six months is violative of the petitioner's rights under Article 13(2) also of the Constitution which lays down that the State shall not make any law which takes away or abridges the rights conferred by Part III of the Constitution and that any law made in contravention of the same shall, to the extent of the contravention, be void.

11. In the first place, the petitioner is not entitled to invoke the aid of article 21 of the Constitution even if the impugned rules should deprive him of his personal liberty otherwise than in accordance with procedure established by law as the President, in exercise of his powers under Article 359(1) of the [Constitution of India](#), declared by a gazette notification dt. 3-11-62 that the right of any person to move any Court for the enforcement of the rights conferred by Article 21 and Art. 22 of the Constitution shall remain suspended for the period during which the Proclamation of Emergency issued under clause (1) of Art. 352 thereof on the 26th October, 1962, is in force, if such person has been deprived of any such rights under the Defence of India Ordinance, 1962 or any rule or order made thereunder. (vide : AIR1966 Bom70 .

12. Even otherwise, the contention in question cannot be sustained as there is really no conflict between the provisions of Rule 126-P (2) and Chapter XXII of the Criminal procedure Code relating to summary trials. Section 260, Cr. P. C. enumerates the offences that could be tried summarily to which Section 262(2) thereof limits the maximum sentence that could be imposed in the case of any conviction under Chapter XXII to three months. Section 5 (1) of the Code no doubt provides for all offences under the Indian Penal Code being investigated, enquired into, tried and otherwise dealt with according to the provisions 'hereinafter' contained but clause 2 of this section, which deals with offences under any other law, lays down that they shall be tried etc. according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigating, enquiring into, trying or otherwise dealing with such offences. Rule 126-P (4) specifically says that notwithstanding anything contained in the Code of

Criminal Procedure, an offence under that rule committed after the date of the commencement of the Defence of India Rules, 1962 shall be tried summarily by a Magistrate. This rule thus provides for summary trial of offences under Rule 126-P (2) notwithstanding that Section 262(2), Cr. P. C. limits the sentence to three months. It is further settled law that a special enactment over rides a general enactment.

This part, sentence of imprisonment, not exceeding three months, prescribed by Section 262(2), Cr. P. C., is applicable only to offences enumerated in Section 260, Cr. P. C., and not offences which are rendered summarily triable by virtue of the provisions of special enactments such as the Defence of India Rules. So, when an enactment provides for summary trial of an act or omission which is an offence thereunder, it refers only to the procedure to be adopted and not to punishment also. A similar view was expressed by a Division bench of the Bombay High Court in Emperor v. Narji Bhalji, : AIR1950 Bom273 . That case arose out of a conviction awarded under the provisions of the Bombay Prohibition Act which prescribes a minimum sentence of imprisonment in excess of three months for several offences while providing at the same time that those offences shall be tried summarily. It was therefore contended that the accused could not be awarded a sentence of imprisonment exceeding three months in view of Section 262(2), Cr. P. C. Repelling this contention, Chainani, J. observed as follows at page 274:

'I do not think that this contention is sound. The words 'any conviction under this Chapter' in sub-section (2) of S. 262, show that this sub-section applies only in those cases which are tried summarily by reason of the provision contained in that Chapter XXII, that is, in the case of conviction for any of the offences specified in Ss. 260, 261 of the Code. The question of sentence is also not a matter of procedure. Section 110 prescribes the procedure for the trial of cases arising under the Prohibition Act. Sub-section (2) of S. 262 will, therefore, not apply in such cases.'

It is thus clear that Rule 126.P (4), which lays down that offences punishable under Rule 126-P (2) shall be tried summarily, simply prescribes the procedure and that Rule 126-P (2) cannot be questioned having regard to the fact that the

minimum sentence referred to in S. 262(2), Cr. P. C. is applicable only to offences enumerated in Section 260 of the Code. This inference is further strengthened by the use of the words 'in the case of any convictionk under this Chapter' occurring in Section 262(2) of the Code. The sentence, if any, to be awarded to the petitioner would be one under the provisions of Rule 126-P (2) and not Chapter XXII of the Code of Criminal Procedure and so, Section 262(2) of the Code limiting the term of imprisonment to three months does not in any way conflict with what is contained in Rule 126-P (2) of the Gold Control Rules.

13. In re, Guruviah Naidu, : AIR1954 Mad833 , cited for the petitioner has no application to the facts of the case on hand. It was held in that case that Section 16-A of the Madras General Sales Tax was unconstitutional as it deprived the person brought to book for alleged default in payment of Sales Tax of the right to explain and plead his non liability therefor either by reason of the invalidity of the assessment or on account of his having discharged the liability by payment and the like. The right to be absolved of liability by pleading or explaining in the course of a statement under Section 342, Cr. P. C. is a substantive right and not a matter of mere procedure. It was therefore held that Section 16-A of the Madras General Sales Tax Act should be considered to be void as it hilts against the rights of the accused under the Criminal Procedure Code, the Evidence Act, and the fundamental principles of criminal justice and is also repugnant to Article 14 of the [Constitution of India](#).

14. There is like wise no force in the plea that the provisions of Rule 126-P (2) read with Rule 126P (4) have the effect of taking away or abridging the petitioner's right not to be sentenced to a term exceeding three months as provided in Section 262(2) Cr. P. C. and are consequently repugnant to Article 13(2) of the Constitution as it was already seen that the limit of sentence prescribed by Section 262(2), Cr. P. C. is applicable only to offences enumerated in Section 260 of the Code and not to offences under other Acts which are triable summarily by virtue of the provisions contained in those Acts.

15. It was next contended that singling out of offenders against Gold Control Rules for being punished with a minimum sentence of six months imprisonment

notwithstanding the provision in Rule 126-p (4) for their summary trial cannot be considered a reasonable classification made on any rational basis and is therefore repugnant to Article 14 of the Constitution which lays down that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. We are however unable to see much force in this contention either. It is now well settled that while Art. 14 forbids class legislation, it does not prohibit reasonable classification subject of course to the condition that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that that differentia has a rational relation to the object sought to be achieved by the statute in question. (vide *Ram Krishna Dalmia v. Justice S. R. Tendolkar*, : [1959]1SCR279 .) It was indicated in the aforesaid decision that a law may be constitutional even though it relates to a single individual if, on account of special circumstances or reasons applicable to him and not applicable to others that single individual may be treated as a class by himself.

The mere fact that certain offences against Gold Control Rules are punishable with imprisonment of not less than six months while under Section 262(2) Cr. P. C. no sentence of imprisonment for a term exceeding three months can be passed in the case of a conviction under Chapter XXII relating to summary trials does not by itself justify the contention that the classification in question is unreasonable as the preamble to the Defence of India Act shows that the provisions of that Act and the rules made thereunder are considered necessary to ensure the public safety and interest, the defence of India and civil defence, and the trial of certain offences and of matters connected therewith during the subsistence of the grave emergency whereby the security of India is threatened by external aggression. It is thus manifest that the Defence of India Act and the rules made thereunder are intended to prevent the commission of certain types of offences during the emergency to ensure the security of the country and the interests of the community. It would not be possible to achieve this object unless higher penalties and deterrent sentences are prescribed for certain types of offences including offences against the Gold Control Rules which, as already stated, are necessary and expedient for securing the defence of India and maintenance of supplies and services essential to the life of the community among other things. We cannot therefore agree that Rule 126-P

(2) of the gold Control rules is discriminatory and offends Article 14 of the Constitution.

16. It was next urged that the prosecution of the petitioner under the provisions of Section 135 of the Customs Act and Rule 126-P (2) of the Defence of India Rules offends Article 20(2) of the Constitution inasmuch as the Deputy Collector, Central Excise, Guntur had already imposed a penalty of Rs. 5,000/- on the petitioner besides confiscating the gold seized from him pursuant to the provisions of Rule 126-L (16) (aa) and Rule 126-M (20) (aa) of the Gold Control Rules. Article 20(2) of the Constitution lays down that no person shall be prosecuted and punished for the same offence more than once. But it cannot for a moment be said that confiscation of the contraband gold would amount to prosecution or punishment of the person viz., the petitioner nor was any such contention put forth by Sri Sarma, the learned counsel, evidently because confiscation of the goods is an order in remdealing with goods and not a punishment imposed on the person as was held in *Sewpujanari indrasanrai Ltd. v. Collector of Customs*, : 1958 CriLJ1355 .

17. The next point that remains to be considered is as to whether the petitioner can be considered to have been prosecuted and punished by the Deputy Collector, Central Excise when he imposed on him a penalty of Rs. 5,000/-. Their Lordships of the Supreme Court, who had occasion to deal with a similar question in *Thomas Dana v. State of Punjab*, : 1959 CriLJ392 held that proceedings before the Sea Customs Authorities under S. 167(8) of the Sea Customs Act are not 'prosecution' within the meaning of Art. 20 (2) of the Constitution and that the fact that in such proceedings the Customs Authorities have confiscated the goods and also inflicted a penalty on the person does not therefore bring into operation the provisions of Article 20(2) so as to prevent his prosecution and imprisonment under S. 167 (81) of the Act read with S. 23 and S. 23-B, Foreign Exchange Regulation Act and under Section 120-B, Penal Code. Their Lordships also observed that the term 'prosecution' means a proceedings either by way of indictment or information in the Criminal Courts in order to put an offender upon his trial, that the Chief Customs officer or any other officer lower in rank than him in Customs department is not a Court, that the legislature was aware of the distinction between a proceedings before the Customs Authorities and the criminal

proceeding before a Magistrate and that in the absence of one of the three essential conditions laid down in clause (2) of Art. 20 of the Constitution viz., prosecution, the prohibition against double jeopardy would not become operative. His Lordship, Subba Rao, J., as he then was no doubt pointed out in his dissenting judgment in : 1959 CriLJ392 that the word 'Prosecuted' is comprehensive enough to take in a prosecution before an authority other than a magisterial or a criminal Court; but we are bound by the majority view which, as already stated, is that imposition of penalty by Customs Authorities does not amount to prosecution contemplated by Art. 20 (2) of the constitution. The learned counsel, Mr. Sarma tried to argue that on the facts of that particular case, their Lordships of the Supreme Court held that the Chief Customs Officer or his Subordinate was not a Court but that the Deputy Collector, Central Excise, who imposed penalty of Rs. 5,000/- has all the trappings of a Court and that it should therefore be deemed that the petitioner was prosecuted and punished by a Court. We however feel unable to appreciate this contention as the Deputy Collector, Central Excise, can, by no stretch or imagination, be equated to a Court for the simple reason that he is vested with certain powers in the matter of effecting searches and seizures, compelling attendance of witnesses and the like by the Rules. It may also be noted that the powers of the concerned authorities both under the Sea Customs Act and the Gold Control Rules are almost similar. It therefore follows that the decision in : 1959 CriLJ392 that infliction of penalty by the Customs Authority does not amount to prosecution of the person so as to attract Article 20(2) of the Constitution holds good in the instant case also. The plea based on Art. 20 (2) of the Constitution is therefore untenable.

18. There is likewise no substance in the contention that the petitioner's prosecution both under the Sea Customs Act and the Gold Control Rules is contrary to Section 26 of the General Clauses Act . Section 26 of this Act reads:

'where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.'

It can be seen from the language employed in this section that the emphasis is on the word 'punishment' and not so much on 'prosecution' as what is ultimately prohibited is imposition of punishment twice for the same offence. The words 'shall be liable to be prosecuted and punished under either or any of those enactments' would show that there is no bar against simultaneous prosecution under more than one enactment. If it is intended to create an absolute bar not only against punishment for an act or omission which constitutes an offence under two or more enactments but also against prosecution, there would be need for the words 'but shall not be liable to be punished twice for the same offence'. If the prosecution is restricted to only one enactment, there would be no question of rendering the offender liable for punishment twice for the same offence. It is therefore obvious that what is intended is prevention of punishment twice for the same act or omission which is an offence under more enactments than one and not prosecution also. It is left to the prosecutor or the authority concerned to choose under which enactment or enactment an offender shall be prosecuted when the act or omission alleged against him constitutes an offence under two or more enactments. But in the event of the prosecution being launched under two or more enactments, the punishments should be under one alone of those enactments. The trial before the Magistrate has not yet commenced in this case and it is still open to the Magistrate to confine trial of the petition to one of the two enactments alone. Even if he should try the petitioner under both the Customs Act and the Gold Control Rules, the propriety thereof can still not be questioned if ultimately the petitioner is not rendered liable for punishment under both the enactments. We are inclined to think that it is enough if the Magistrate is directed to bear this in mind but that the legality of the prosecution both under the Customs Act and the Gold control Rules cannot however be assailed at this stage.

19. Though it was urged in the grounds of revision that Section 403, Cr. P. C. is also a bar to the prosecution of the petitioner under the provisions of the Customs Act and the Gold Control rules, no argument was advanced to this effect obviously because this section comes into play only after the acquittal or conviction of the petitioner of the offences in question and if and when he is thereafter sought to be tried once again for the same offence or on the same facts for a different offence while the acquittal conviction are in force.

20. For the several reasons stated supra, we feel unable to agree with the petitioner that the order sought to be revised is vitiated by any illegality.

21. In the result, therefore, the petition fails and is dismissed.

22. Petition dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com