

Krishna Iyer Vs. Assistant Collector of Central Excise

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Court : Kerala

Decided On : Aug-11-1961

Reported in : 1962CriLJ662

Judge : S. Velu Pillai and; Anna Chandy, JJ.

Appellant : Krishna Iyer

Respondent : Assistant Collector of Central Excise

Judgement :

ORDER

(Dated 11-8-61) : Our order dated February 21, 1961, had decided certain points-which were raised at the time and the case which was adjourned for further hearing, has now been heard in full. The learned Counsel who now appeared for the petitioner, has pressed only two contentions, first that Section 178A of the Sea Customs Act, 1878, is unconstitutional as imposing an unreasonable restriction on the fundamental right under Article 19(1)(f) and (g) and second, that the confessional statement which was said to have of been made by the petitioner to Pw. 4 a Customs; Officer, is hit by the ban Under Section 25, and in any event, was not voluntary and is therefore irrelevant Under Section 24 of the Evidence Act.

9. On the first contention, a Division 3enpb of the Madras High Court in : AIR1959 Mad142 and a Single Judge of the Bombay High Court in : AIR1961 Bom227 have held, that Section 178A imposes an unreasonable restriction on the fundamental

right under Article 19(1)(f) and (g) and is therefore void. A Division Bench of the Bombay High Court in Pushrod Champalal v. D. R. Kohli 61 Bom L.R 1230 has dissented from this view and has held, that the restriction imposed is reasonable. The judgment of the single Judge had been taken on appeal and in view of the pronouncement in Pukhraj Champalal Jain's case, 61 Bom LR '1230 the issue as to constitutionality was not pressed. Two Division Benches of the Punjab High Court have held in favour of the constitutionality of Section 178A, in S. Balbir Singh V. Collector of Central Excise and Land Customs and State of Punjab v. Krishna Lai and a single Judge of the same court has also held likewise in , In accordance I with the reasoning on 61 Bom LR'230 which was respectfully-adopt and on the preponderance of judicial opinion, we hold, that Section 178A is valid.

It, is therefore unnecessary, to examine the further contention based on Section 24 and Section 25 of the Evidence Act. The conviction of the petitioner under is 167 (81) of the Sea Customs Act is proper and is hereby maintained. His conviction under Section 23 (IA) read with Section 8 (1) of the Foreign Exchange Regulation Act; 1947 has been quashed by our earlier order.

As for the sentence, though' normally, we are not⁵ for reducing the term of imprisonment award had, the circumstances of this case bear, a close analogy to those in Sreeniyasan v. State of Kerala ILR 1961 Kerala 681 decided by a Division Bench of is Court and accordingly, we reduce the term of, imprisonment to the period already, undergone 'by the petitioner and maintain the sentence of flee 'including the direction, that in default of I payment of fine, the petitioner shall suffer rigorous imprisonment for two months. The Criminal Revision Petition is disposed of as above.