

In Re : Josiah Decruz

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Court : Chennai

Decided On : Nov-29-1945

Reported in : (1946)1MLJ110

Appellant : In Re : Josiah Decruz

Judgement :

ORDER

Kuppuswami, Ayyar, J.

1. This petition arises out of a prosecution by the Sea Customs Department in respect of an offence punishable under Rule 90-B of the Defence of India Rules. The prosecution case was that gold was exported out of India and thereby the accused committed an offence punishable under Rule 90-B. It was made an offence only under the Defence of India Rules and Rule 90-B as amended, has a proviso, which runs thus:

Provided that where in respect of any contravention of this rule the Customs Collector is of opinion that the penalties provided in the said Act are inadequate he may make a complaint to a Magistrate having jurisdiction....

2. It is urged that in this case the person who filed the complaint is not the proper person who can file the complaint as per that proviso. It is admitted that the complaint was filed by a person who answers to the description ' Customs Collector ' as defined in Section 3 (c) of the Sea Customs Act. But what is urged is

that the person who signed the complaint is not the person who can decide the case if a penalty is to be levied under the Sea Customs Act in respect of the gold said to have been exported in this case and that the person who filed the complaint though he satisfied the description of a 'Customs Collector' according to Section 3 (c) of the Sea Customs Act was not the person who is entitled to assess the penalty leviable in respect of this particular transaction under the Sea Customs Act. This is a case in which the prosecution desires a heavier sentence to be imposed and for deciding what the punishment is that has to be imposed in this case it is not necessary that the person who has to decide it should have the power to levy the penalty. The maximum penalty leviable under the Act is known and, if such penalty is not adequate in the opinion of the person who is empowered to prosecute, it will be open to him without having the power to levy the penalty to decide the point and file the complaint and that is what has been done in this case. I see no reason to interfere. I accordingly dismiss this petition.

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