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Court : Chennai

Decided On : Jan-20-1948

Reported in : AIR1948Mad503; (1948)1MLJ452

Appellant : The Public Prosecutor

Respondent : Jeevarathnam and ors.

Advocate for Def. : Mr. V. Rajagopalachari

Judgement :

Govinda Menon, J.

1. The Public Prosecutor, Madras, appeals against the acquittal of the respondents by the learned Sessions Judge of East Tanjore in Criminal Appeal No. 39 of 1946 on his file. The respondents had been convicted by the Additional First Class Magistrate, Negapatam, of an offence punishable under Rule 84 (vi) of the Defence of India Rules in that they contravened the provisions of Rule 84 (iv) of the same enactment. On appeal, the learned Judge holding that the Customs Union agreement between the Government of India and the Governor-General of the French Establishments in India has not been proved properly, concluded that the respondents were entitled to acquittal and accordingly directed the same.

2. So far as the facts are concerned, there is no complication. On the 10th October, 1945, at about 8-30 p.m., when the respondents were carrying by sea

bundles of piecegoods in a catamaran bound for Jaffna, a party of Customs officials, including P.Ws. 1 and 2 sighted the craft some distance east of the Kodikkarai lighthouse, chased the catamaran and seized the goods. According to the prosecution the respondents were exporting cloth from India in contravention of the Government of India Notification No. 91 CW 1/44, dated the 26th August, 1944.

3. Two points were raised on behalf of the respondents in their appeal before the learned Sessions Judge. The first of them was that the catamaran was not within the Indian territorial waters and therefore the trial Court at Negapatam had no jurisdiction to entertain the complaint. The learned Judge found that it was not proved that the catamaran was within the territorial waters of British India and so held that the sailing craft was intercepted and seized only on the high seas. On this finding, according to the learned Judge, if the matter had stood there, the Court which tried the respondents had no jurisdiction to do so.

4. The second question was that if the export had been from any place in India within the jurisdiction of that Court, the trial and conviction are correct. On the evidence it is clearly proved--and there is no doubt about it--that the respondents were taking these eleven bundles of cloth from Karaikkal to Jaffna. Karaikkal is a portion of the French Republic Settlements in India and unless it is proved that this place comes within the term ' British India ' for the purpose of export, it cannot be held that any offence has been committed. In order to substantiate the case that the trial Court had jurisdiction, the prosecution relied upon certain documents some of which according to the learned Judge, had not been properly proved. The crucial document in the case was the Customs Union Agreement entered into between the Governor of French Establishments in British India and His Britannic Majesty's Consul General in the said establishments acting on behalf of the Governor-General of the Government of India. The lower appellate Court states that P.W. 4 filed an extract which was marked as Ex. P-7 in the trial Court. Before the learned Sessions Judge a typed copy which does not contain or mention the signatures was produced purporting to have been made at Pondicherry and there was no evidence to prove the same under Section 78(6) of the Evidence Act. Holding that the Customs Union Agreement has not been proved, as stated

already, the learned Judge acquitted the respondents.

5. The learned Public Prosecutor has before me filed Cr. M.P. No. 57 of 1948 supported by an affidavit sworn to by the Assistant to the Collector of Central Excise, Madras, praying that the printed copy of the Customs Union Agreement mentioned above containing both the English and the French versions and printed by the French Government in Pondicherry may be admitted as additional evidence in appeal. There is a further prayer that Notification No. 25, dated 13th February, 1941, in the Gazette of India dated 15th February, 1941, called the French Establishments in India (Application of Laws) Order, 1941, should also be admitted. It has to be decided whether this application should be granted. At the hearing of the appeal by my Order dated 9th January, 1948, I admitted these documents as additional evidence for the reasons stated in this judgment. Section 428, Criminal Procedure Code, lays down that, in any appeal, the appellate Court, if it thinks additional evidence to be necessary shall take such evidence either by itself or by a Court subordinate to it. In *M.P. Narayana Menon In re* : AIR1925 Mad106 , Odgers, J., dealing with the powers of the appellate Court to take additional evidence observes that the word ' necessary ' in Section 428, Criminal Procedure Code, does not import that it is otherwise impossible to pronounce judgment without the additional evidence. There is no restriction in the wording of the section either as regards the nature of the evidence or that it has to be taken for the prosecution only or that the provisions of the section are only to be invoked when formal proof alone is necessary. This case is clear authority for the position that where formal proof of a document is the only thing necessary, the appellate Court is perfectly justified in admitting additional evidence. In *Jeremiah v. Vas* (1911) 22 M.L.J. 73 : I.L.R. 36 Mad. 885, Sundara Iyer, J., was of the opinion that additional evidence under Section 428, Criminal Procedure Code, can be ordered to be taken only if the appellate Court thinks it necessary. The language seems to indicate cases where there being already evidence on record, the Court considers it to be unsatisfactory or where the evidence on record leaves the Court in such a state of doubt that it considers it necessary to enable it to decide the case to have further evidence. There is another decision of this Court in one *Varadarajulu Naidu v. King Emperor* : (1919)37MLJ81 , where Wallis C.J., was of the view that the failure to prove the sanction of the Provincial Government for a prosecution under

Section 124-A, Indian Penal Code, can be rectified in the appellate Court by admitting additional evidence to supply the defect in formal proof of the sanction. I feel that the authorities above cited justify my allowing the Public Prosecutor's application. The learned Sessions Judge should have remedied this lacuna in formal proof by directing the Public Prosecutor in his Court to produce the copy of the Gazette of India as well as the printed record of the Customs Union Agreement proved by the affidavit of the Assistant to the Collector of Central Excise in his Court, especially in view of the circumstance that no objection was taken regarding the absence of formal proof of these matters in the trial Court, I think it was eminently a fit case for the learned Sessions Judge himself to have directed the prosecution to supply the defect by proper proof.

6. The result of having admitted these documents as additional evidence in appeal by me is that it follows from Clause 3, French Establishments in India (Application of Laws) Order, 1941, that all the Indian Laws for the time being in force in British India which are relatable directly or indirectly to the imposition and enforcement of prohibitions or restrictions on the import or export of the goods, etc., are applicable *mutatis mutandis* to Karaikkal. It is abundantly clear that the port of Karaikkal shall be deemed to be a part of British India to which the Defence of India Rules regarding the restriction of export of goods are applicable and this Port being situate in the East Tanjore District is within the territorial jurisdiction of the Additional First Class Magistrate, Negapatam. Mr. Rajagopalachari suggested today that the Government of India have not appointed the Additional First Class Magistrate as the Court which should take cognizance of this offence. This objection was raised only just as I was about to deliver judgment. Nothing has been brought to my notice to justify the upholding of the objection especially since no objection had ever been taken to the territorial jurisdiction of the Court till now. I therefore over-rule the objection.

7. The lower appellate Court has not discussed the prosecution and defence evidence in the case and decided the appeal on the merits and therefore the ordinary course which I would have adopted would be to remand the appeal for fresh hearing. Both the Public Prosecutor and Mr. V. Rajagopalachari the learned Counsel for the respondents have requested me that it is unnecessary to remand

the appeal and that I may, myself, give a decision on the merits of the case. There is the clear evidence of P.Ws. 1 and 2 that the catamaran containing M.O. 1 series, 11 bundles of cloth, was seized by them and a mahazar was prepared. That the respondents were on that catamaran in the sea proceeding to Jaffna is not disputed. Having gone through the evidence of P.Ws. 1 and 2, I see no reason not to accept and act upon the same. The witnesses examined for the defence do not in any way lessen the effect of the prosecution evidence because even D.W. 3 states that it was the first respondent that arranged for the carriage of the 11 bundles of cloth from a certain street in Karaikkal to the sea Coast for being loaded in the catamaran. In fact Mr. Rajagopalachari for the respondents did not dispute the fact that the bundles of cloth were loaded in the catamaran from Karaikkal. In these circumstances, the accused have committed an act prohibited by Rule 84 (iv) of the Defence of India Rules punishable under Rule 84 (vi) of the same rules. The appeal is therefore allowed and the respondents are convicted of an offence under Rule 84 (vi) of the Defence of India Rules. But in view of the fact that the occurrence took place more than two years ago I do not consider it necessary that the respondents should be sentenced to any terms of imprisonment. The first respondent who is in fact responsible for the crime is sentenced to pay a fine of Rs. 1,000 or in default to undergo rigorous imprisonment for one year. The other respondents are sentenced to pay a fine of Rs. 50 each or in default to undergo rigorous imprisonment for 15 days each. The order of the learned Sessions Judge setting aside the confiscation of the bundles of cloth will stand.