Kalipada Dalal Vs. the State

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Court : Kolkata

Decided On : Apr-22-1955

Reported in : AIR1955Cal470,1955CriLJ1243

Judge : J.P. Mitter and ;Guha Ray, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Section 439; ;Land Customs Act, 1924 - Sections 5(3) and 9; ;Sea Customs Act - Section 169; ;Former Act - Section 9; ;Indian Penal Code (IPC), 1860 - Section 353

Appeal No. : Criminal Revn. No. 1123 of 1954

Appellant : Kalipada Dalal

Respondent : The State

Advocate for Def. : J.M. Banerjee, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee and ;Kishore Mukherjee, Advs.

Disposition : Petition dismissed

Judgement :

Guha Ray, J.

1. The petitioner Kalipada Dalai was convicted under Section 353, Penal Code, and sentenced to two months' rigorous imprisonment and a fine of Rs. 200/- in

default of payment of the fine to rigorous imprisonment for two months more. On appeal the conviction was maintained but the sentence was reduced to one month's rigorous imprisonment and a fine of Rs. 100/- or in default of payment of the fine to rigorous imprisonment for one month more.

2. The case for the prosecution briefly is that on the night of 18-9-1953 at about 9-30 P. M. the petitioner Kalipada Dalai got down at Majdia railway station from an uptrain from Calcutta and was going out of the station platform with luggages some of which he himself carried and others were being carried by some coolies when the Land Customs Inspector Raghunath Das, P. W. 1, who was no duty on the station platform challenged the petitioner and asked him to stop, saying that he wanted to examine the bundles which he suspected contained cotton yarn. The petitioner refused to stop or allow the bundles to be inspected by the Inspector.

As the Inspector insisted on opening the bundles the petitioner pushed him aside and went away to the bazar with his coolies. The Inspector followed the petitioner and saw that he entered the shop belonging to one Hazu Hore in the bazar and bolted the door be the room from inside. At 2-15 A. M. that very night the Lands Customs Inspector submitted a written complaint to the Officer-in-charge of Krishnagunj P. S. The Sub-inspector searched the shop in question on the 19th and recovered amongst other things 30 Ibs. of cotton yam in 3 bundles.

The case for the prosecution briefly is that the Land Customs Inspector who was a public servant and who wanted to inspect the luggages of the petitioner in the discharge of his official duty was assaulted by the petitioner and prevented from carrying out his official duty. The defence of the petitioner was a plea of not guilty. It is his specific case that he never used criminal force to theLands Customs Inspector and that he was falsely implicated by the Land Customs Inspector.

The learned trial Court and the learned Appellate Court both found that the petitioner pushed the Land Customs Inspector when he insisted on inspecting the luggages of the petitioner and that in doing so he used criminal force to a public servant in the discharge of his official duty and prevented him from carrying out his duties.

3. Mr. Mukherjee on behalf of the petitioner first argues that although some of the witnesses say that the Inspector was pushed by the petitioner some other do not say anything about the pushing and he points out that although the learned trial Court took into consideration the evidence of all the witnesses the learned Appellate Court confined itself to those only of the witnesses who spoke of the petitioner having pushed the Land Customs Insepctor but it has not considered at all the evidence of those who did not say anything about the push.

It is true that the learned Appellate Court has not referred to the evidence of those witnesses who do not say anything about the push although they claim to have been eyewitnesses and it has based its conclusion that the petitioner was guilty of pushing the Land Customs Inspector on the evidence of 5 witnesses, namely, the Land Customs Inspector himself P. W. 1, his peons P. Ws. 2 and 3 and two shop-keepers of the local bazar, viz., P. Ws. 5 and 6.

The learned Judge should undoubtedly have considered the fact that some of the eye-witnesses do not speak of the pushing but merely because he has not considered the evidence of those witnesses, the findings of fact arrived at by him need not be disturbed for there is clear evidence of some of the witnesses to the effect that the Inspector was pushed by the petitioner.

4. Mr. Mukherjee raised a point of Jaw viz., that the Land Customs Inspector had no legal authority to inspect the luggages of the petitioner. It is unfortunate that this point does not appear to have been raised either before the trial Court or before the lower Appellate Court. The trial Court refers to a notification issued by the District Magistrate of Nadia on 6-9-1953 under the West Bengal Security Act 1950 prohibiting movement of cotton yam within a depth of 3 miles along the entire Nadia and Eastern Pakistan border.

This notification is practically useless for the purpose of this case for it does not confer on the Land Customs Inspector 'any authority to search. As the point is not canvassed before the trial Court or the Appellate Court we had to look into it for ourselves and the relevant provisions of the Land Customs Act and the Sea Customs Act were placed before us on both sides.

By Section 3(1) of the Land Customs Act the Central Government is empowered by notification in the official gazette to appoint for any area adjoining a foreign frontier a person to be the Controller of Land Customs and such other persons as it thinks fit to be Land Customs Officers. Under Section 3 (1) of the Land Customs Act there is a notification at pages 231-232 of the Indian Sea Customs Manual, 5th Edition, 1952, by which the Central Government appointed the Collectors ofCentral Excise, Calcutta to be the Collectors of Land Customs within its Jurisdiction.

This notification is M. F. (R. D.), notification No. 55 Cus. dated the 24th of July 1951. The next notification is C. B. R. Notification No. 56 Customs, dated the 24th of July 1951 and No. 33 dated the 31st March, 1952. By this notification, the Inspectors of Land Customs were appointed to be Land Customs Officers within the jurisdiction of their respective Collectors of Land Customs under whom they were working.

The expression 'Land Customs Area' has been defined in Section 2 (g) of the Land Customs Act as an area adjoining a foreign frontier for which a Collector of Land Customs has been appointed under Section 3. Section 2 (e) defines 'Foreign Frontier' as the frontier separating any foreign territory from any part of India. Section 4 of the Land Customs Act provides for the establishment of land customs stations for the levy of land customs in any land customs area and prescribes the routes by which alone goods may pass by land out of or into any foreign territory.

The relevant notification is at pages 239-248 of the Manual. On page 241 under the heading 'Land Customs areas under the jurisdiction of the Collector of Laud Customs, Calcutta', several districts are mentioned of which Krishnagar district in one and under each district there are on the lefthand side the customs stations and on the right hand side the routes.

Mr. Mukherjee on behalf of the petitioner argues that by this notification only the^ land customs stations and the authorised routes by which the goods were to pass were prescribed and it did not define the limits of the land customs areas, and if on top under the main heading 'Land Customs areas under the jurisdiction of the Collector of Land Customs, Calcutta,' certain districts were mentioned it was to fix the identity of the Land Customs stations and for no other purpose.

It seems to us that Mr. Mukherjee cannot possibly be correct on this. The notification establishes not merely land customs stations and the routes by which the goods are to pass but the fact that the land customs stations are mentioned under certain districts go to show that the entire area within the jurisdiction of the Collector as Land Customs Collector was divided into several districts and for each district certain land customs stations and certain routes were prescribed. The districts mentioned must be the districts as actually established in fact.

Of course, so far as Krishnagar district which is mentioned is concerned, there is no district of that name at all. The district of which the head-quarters station is Krishnagar is known as Nadia. Mr. Mukherjee wanted to argue at one stage that by Krishnagar district is mentioned the town of Krishnagar. It is obvious from the fact that Banpur and Ranaghat Railway stations are mentioned as land customs stations within the district, the notification could not possibly have referred to the Krishnagar town only as the district and what must have been referred to here is the district of Nadia of which the head-quarters town is Krishnagar.

Majdia is a station in between Banpur and Ranaghat Railway stations. Although in the notification Majdia is not mentioned as a land customs station it is obviously comprised in Krishnagar district of the notification and therefore lies within the land customs areas under the jurisdiction of the Collector of Land Customs, Calcutta. That being so, the Land Customs Inspector had jurisdiction at Majdia railway station where the occurrence admittedly took place.

5. It is now to be seen whether the Land Customs Inspector is empowered to search. Under Section 5 (3) of the Land Customs Act, any Land Customs Officer duly empowered by the Chief Customs authority in this behalf may require any person in charge of any goods which such officer has reason to believe to have been imported, or to be about to be exported, by land from, or to any foreign territory to produce the permit granted for such goods, any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit produced, shall be detained and shall be liable to confiscation.

The Central Board of Revenue by order No. 6036 dated 11-12-1924 at page 250 of the Manual is pleased to empower all Land Customs Officer under Section 3 of the said Act to exercise the powers conferred and perform the duties imposed by Sub-section (3) of Section 5 of the said Act in respect of the permits -referred to therein. Under Section 2 (b) the 'Chief Customs Authority' is the Central Board of Revenue. It is therefore, clear that a Land' Customs Officer is empowered to exercise the powers conferred upon him by Section 5 (3).

The power to search is implied in Section 5 (3) but the actual power of search is conferred by Section 169, Sea Customs Act which is made applicable by Section 9, Laud Customs Act Section 169 of the Sea Customs Acts authorities any Officer of Customs' duly employed in the, prevention of smuggling to search any person on board of any vessel in any port in India or any person who has landed from any vessel provided of Course, that such officer has reason to believe that such perspn has dutiable or prohibited goods secreted about his person.

Under Section 9 (2) of the Land Customs Act for the purpose of applying those provisions of the Sea Customs Act, these provisions which have been made applicable for the purpose of levying of duties etc., of Land Customs under the Land Customs Act may be construed with such alterations as may be necessary or proper for adaptation for the said purpose but not so as otherwise to effect the substance thereof.

Although therefore, Section 169 of the Sea Customs Act empowers an officer to search any person either on board a vessel in any port or any person who has landed from any vessel that section is applied under Section 9 of the Lund Customs Act with necessary changes which means that a Land Customs Officer duly empowered can search a person although he may not be on board a vessel in any port in India or may not be one who has landed from any such vessel.

In other words, reading all these sections together one is led to the conclusion that the Inspector who is vested with the powers of a Land Customs Officer is entitled to search a person, provided he has reason to believe that the person hasdutiable or prohibited goods secreted about his person or that he is about to export by land from India to any foreign territory dutiable goods without a permit.

The question therefore arises whether on the evidence in this case it can be said that the Land Customs Officer had reasons to believe this before he called upon the petitioner to show him the goods. The Officer does not actually say in so many words that before he asked the petitioner to show him the goods lie had reasons to believe that he was carrying dutiable goods without a permit and was about to export the same. From his evidence, however, it is clear that he had reasons to believe that. What he says is as follows:

'On 18-9-53, at about 9/30 P. M. I came to Majdia Ry. Station in my uniform on duty. My duty was to prevent smuggling of cotton yarn, 'Biri' leaves etc., from Indian Union to Pakistan and for checking import and export. I had legal authority to search persons and their belongings and also to detain persons for that purpose.......Kali Charan Jana Sepoy of Ranaghat Circle was also there. Then Kali Charan Jana reported to me that accused Kalipada Dalai was going away with cotton yam from Majdia Railway Station after coming from Calcutta by train and was proceeding towards the Bazar. The Bazar is about 3/4 minutes' walk from Majdia Railway Station. I knew accused Kalipada Dalal from before. I also found that accused was going away towards the Bazar from the Station platform. I caught bold of accused when he was going out of the platform. Some goods of his were with him and some with his cooly Etwari. I wanted to detain him and to see his goods and then accused pushed me and asked what authority I had and he asked the cooly to proceed and then he started to proceed with the cooly and he filthily abused me'.

From this evidence it seems obvious that he must have had reasons to believe, although he does not say so in so many words, that the petitioner was about to export dutiable goods without any permit. It is therefore clear that the Land Customs Officer in this case was a public servant who was empowered to search the petitioner and as the petitioner resisted the search by pushing him he committed an offence under Section 353, Penal Code. The view taken by us is also the view taken in the case of -- 'Land Customs Inspector, Central Preventive Circle v. Jagannath Bhandar', : AIR1953 Cal663 (A).

6. Lastly, Mr. Mukherjee argued on the question of sentence. In our opinion, there is no scope for further reduction of the sentence.

7. The petition must accordingly stand dismissed and the Rule discharged. The petitioner must surrender to his bail forthwith and serve out the sentence.

J.P. Mitter, J.

8. I agree.