

**In Re: Jagason Das**

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**Court :** Kolkata

**Decided On :** Mar-31-1992

**Reported in :** 1995(77)ELT854(Cal)

**Judge :** J.N. Hore, J.

**Acts :** Customs Act - Sections 11, 110, 110(2), 115, 125 and 126; ;Evidence Act - Section 25; ;Central Excises Act; ;Import and Export (Control) Act, 1947 - Section 3(1); ;[Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 190, 457, 482 and 523; ;[Constitution of India](#) - Article 227

**Appeal No. :** Criminal Revision Application

**Appellant :** In Re: Jagason Das

**Advocate for Def. :** D.K. Sengupta and ;N. Mitra, Advs.

**Advocate for Pet/Ap. :** S.R. Bapuli and ;Saibal Bapuli, Advs.

**Judgement :**

**J.N. Hore, J.**

1. This is an application under Section 482 of the Code of Criminal Procedure alternatively under Article 227 of the [Constitution of India](#) for quashing the impugned proceeding being No. C 79 of 1992 pending before the learned Sub-divisional Judicial Magistrate, Basirhat and also for setting aside the order dated 7-

2-1992 passed by the learned Sub-Divisional Judicial Magistrate, Basirhat in the said case and for return of the seized articles along with the seized fishing trawler named 'M.V. Mina' to the petitioners.

2. Petitioner No. 7 is the owner of the seized trawler 'M.V. Mina'. On 18-1-1992 at about 6 p.m. the Patrol party of Shamser Nagar B.O.P. in course of their patrolling duty in the Jammu Deep area intercepted the disputed fishing trawler 'M.V. Mina' which was proceeding towards Jammu Deep from the near Khal, namely, Narayan Tala. On suspicion the Patrol party apprehended six Bangladeshi nationals along with the trawler and other goods and forwarded the same to the Customs Officer at Hasnabad on 24-12-1992. The Customs Officer arrested those occupants and seized the fishing trawler including a portion of the fishing net and other articles like oil drum, water drum and wrist watch etc. The petitioners were produced before the learned Sub-Divisional Judicial Magistrate at Basirhat and they were granted bail. Petitioner No. 7 owner of the seized trawler, filed an application under Section 457 of the Criminal Procedure Code before the learned Sub-Divisional Judicial Magistrate, Basirhat for return of the seized trawler together with other articles. The learned Sub-Divisional Judicial Magistrate rejected the prayer for release of the seized trawler at this stage as no complaint was filed by the Customs Authority. Hence this application.

3. It may be mentioned at the outset that Mr. Bapuli, learned Advocate for the petitioner has not pressed the prayer for quashing the impugned proceeding. The only point that has been raised before me is that the learned Sub-Divisional Judicial Magistrate erred in law in not considering the application of Petitioner No. 7 for return of the seized trawler before complaint was filed. It has been contended that under Section 457 of the Criminal Procedure Code the Magistrate has jurisdiction to deal with the custody of the seized article even during investigation and the prayer of the Petitioner No. 7 could not be rejected simply because no complaint was filed. Mr. D.K. Sengupta, learned Advocate for the O.P. No. 1, the Collector of Customs, has contended on the other hand, that a Magistrate has no jurisdiction to make orders with respect to the goods seized by the Customs Officers and liable to confiscation under the provisions of the Customs Act at least before the launching of the criminal proceeding and as such the learned Sub-

Divisional Judicial Magistrate has rightly refused to entertain the petition for return of the seized trawler at this stage before launching of the prosecution.

4. The contention raised on behalf of the O.P. No. 1 appears to have force. In *Assistant Collector of Customs v. Tilak Raj Shibdoyal*, : AIR1969 Delhi301 , the contention on behalf of the petitioner was that the Sub-Divisional Judicial Magistrate has no jurisdiction to order the return of the car on superdari to the respondent under the provision of Section 523 (new Section 457), Criminal Procedure Code. The argument was that the Customs Officers were not Police Officers within the meaning of that Section and the provisions of that Section were, therefore, not applicable to the properties seized by the Customs Officers under Sections 110 and 115 of the Customs Act. This contention was accepted. It was held that the expression 'police officer' used in Section 523 (Section 457 new), Criminal Procedure Code, is to be construed strictly and to include only police officers properly so called. The expression is not to be construed [liberally] so as to include officers of other departments on whom certain powers of police officers may have been conferred for certain purposes. In *Badaku Joti Savant v. State of Mysore*, : 1966 CriLJ1353 , the expression 'police officers' used in Clause (b) of Section 190, Cr. P.C., was interpreted to mean, on the scheme of that Code, only a police officer properly so called. The ratio of the decision applies to interpretation of the expression 'police officer' used in Section 523 (Section 457, new), Cr. P.C. The expression will mean only a police officer properly so called. The expression will not include customs officers though the latter have been invested with some powers of a police officer.

5. A customs officer will not come within the ambit of the expression 'police officer' as used in Section 523 (old), Cr. P.C., even if the expression be interpreted in a broad way so as to include officer other than police officer properly so called. The powers which the police officers enjoy are powers for the effective prevention and detection of crime in order to maintain law and order. The powers of customs officers are really not for such purpose. [Then] powers are for the purpose of checking the smuggling of goods and the due realization of customs duties and to determine the action to be taken in the interest of the revenues of the country by way of confiscation of goods on which [no] duty had been paid and by imposing

penalties and fines. (Vide *State of Punjab v. Barkat Ram*, : [1962]3SCR338 . It was held by their Lordships that a customs officer is not a police officer within the meaning of Section 25, Evidence Act.

6. In *Badaku Joti Savant v. State of Mysore*, (supra) the question was whether the central excise officer under the Central Excises and Salt Act was a police officer within the meaning of that expression in Section 25, Evidence Act. Their Lordships held that a Central Excise Officer was not a police officer as he had no power to submit a charge-sheet under Section 173, Cri. P.C., though he was empowered to arrest a person and to enquire the charge against him and for that purpose to exercise the same powers as the officer-in-charge of a police station may exercise. A customs officer cannot be regarded as a police officer within the meaning of that expression in Section 523 (old), Cr. PC., as he has no power under the Customs Act to submit a charge-sheet under Section 173 of the Code, though he is invested with the powers of a police officer regarding arrest and search.

7. It follows that a customs officer; under the Customs Act, is not a police officer within the meaning of that expression as used in Section 523 (old), Criminal Procedure Code whether that expression is construed strictly or liberally and the provisions of that section are not applicable to the property seized by a customs officer under the Customs Act, at least before criminal proceedings are launched with respect to the property seized.

8. In the case of *Susanta Kumar Adhikari v. State of West Bengal*, 1983 Cr. L.J. 772 at pp. 772-773 this Court has similarly held that the cumulative effect of the provisions of the Customs Act referring to the provisions of Sections 125, 126 and 110, Sub-section (2) of the said Act is that a Magistrate has no jurisdiction to make orders with respect to the goods seized by the Customs Officers and liable to be confiscated under the provisions of the Customs Act at least before the launching of the criminal proceedings. The impugned order passed by the learned Sub-Division Judicial Magistrate by which he refused to entertain the prayer of the Petitioner No. 7 for return of the seized trawler before launching of the prosecution does not, therefore,...from any illegality.

9. The petitioners have, however, invoked the inherent jurisdiction of the Court under Section 482, Criminal Procedure Code for return of the seized trawler for ends of justice. It appears that no smuggled goods were seized from the disputed fishing trawler. The Petitioner No. 7 has produced the xerox copy of licence issued by the Zila Parishad, South 24-Parganas and Xerox copy of the receipt showing payment of the licence fee to the local Panchayat. Petitioner No. 7, owner of the seized trawler, is a resident of Sultanpur within Police Station Diamond Harbour District 24-Parganas (South). He has also produced old ration card in support of this contention that the machine of the disputed trawler is restricted under Section 3(1) of Import and Export (Control) Act, 1947 and the notification read with Section 11 of the Customs Act. Petitioner No. 7 has produced receipts in support of his case that he purchased a second hand machine from Jogani Traders, Bombay and woods from Satya Narayan Timber company and the trawler was manufactured in India with a second hand machine. It appears that the disputed trawler was seized mainly on suspicion. In these circumstances particularly when the disputed fishing trawler is the only source of livelihood of the Petitioner No. 7 and it is likely to be damaged if detained for long causing considerable hardships to the Petitioner No. 7, I am of the opinion that the disputed trawler along with other articles seized such as fishing net, old drum, water drum etc. should be returned to the interim custody of the Petitioner No. 7 for ends of justice. It may be mentioned here that even the Customs Authority in their forwarding letter stated that the disputed trawler was likely to be damaged and deteriorated and asked for permission of the Magistrate for disposal of the same.

10. The Customs Authority is directed to return the seized trawler.... Mina' to Petitioner No. 7 Shri Chandra Nath Das upon his execution of a bond for Rs. 3,00,000 with two sureties of Rs. 1,50,000 each, one of which must be local, to the satisfaction of the learned Sub-Divisional Judicial Magistrate Basirhat subject to the conditions that the Petitioner No. 7 would not...the disputed trawler beyond the jurisdiction of 24-Parganas (South) and...he would not transfer or dispose of the disputed trawler or any part thereof...produce it to the Customs Authority or the Magistrate, if and when called....Needless to say that this order would not in any way affect the right of the Customs Authority to initiate a confiscation proceeding in accordance with law, if found expedient after enquiry. The revisional application is

disposed of accordingly.

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