

HARIVANSH LAL MEHRA

v.

STATE OF MAHARASHTRA**March 19, 1971****[G. K. MITTER, K. S. HEGDE AND P. JAGANMOHAN REDDY, JJ.]**

Prevention of Corruption Act 2 of 1947, s. 5(2) read with s. 5(1) (d)—Official sending goods from Goa to Bombay after Goa had become Part of Indian territory without payment of customs duty—No offence is committed because no customs duty was leviable—Duty can be levied only by law and not by administrative instructions.

The appellant was convicted of a charge under s. 5(2) read with s. 5(1) (d) of the Prevention of Corruption Act. The allegation against him was that by utilising his position as a government servant he sent various articles such as Radios, Transistors, Clothes etc., from Goa to Bombay without paying customs duty thereon. Against the order of the High Court maintaining his conviction appeal was filed in this Court. The question for consideration was whether any customs duty was leviable on goods alleged to have been sent by the appellant to Bombay from Goa which when the goods were sent, had become a part of India.

HELD: Goa was liberated on December 20, 1961. The twelfth amendment to the Constitution which received the assent of the President on 27th March 1962 made Goa a part of India. All territories that this country may acquire in whatever manner become a part of India in view of Art. 1(3) (c). [115G-116C]

According to the prosecution the goods complained of were all sent from Goa to Bombay after March 27, 1962. There was no statute or statutory rule to show that any customs duty had been imposed on the goods transferred from Goa to other parts of India after December 20, 1961. The trial court and the High Court wrongly held that certain customs duties were leviable because of some administrative instructions. No tax or duty can be levied or collected except by authority of law. Moreover no administrative instructions were produced before the court, privilege being strangely claimed for them on the ground that they were confidential documents. [116C-F]

The notification issued in 1950 declaring Goa to be a foreign territory and thus bringing the exports from that country to India within the purview of the Land Customs Act, could not continue to have legal effect after Goa became a part of India, for it then ceased to be a foreign territory. [116G]

Section 5 of the Indian Tariff Act 1934 as it stood in 1950 empowered the Government to declare any territory outside India as a foreign territory for the purpose of that provision. That provision did not empower the government to declare any part of India as a foreign territory. Once Goa became a part of India the Government was incompetent to declare that territory as a foreign territory. Nor did it appear that any such declaration was made after December 20, 1961. [117C-D]

There was thus no legal basis for holding that the appellant had utilised his official position to evade customs duty. His appeal must accordingly be allowed. [117E-G]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 80 of 1967.

Appeal from the judgment and order dated April 17, 1967 of the Bombay High Court in Criminal Appeal No. 1210 of 1965.

B *A.S.R. Chari, M. J. Mirchandani, K. K. Jain, H. K. Puri and R. Nagratnam*, for the appellant.

P. K. Chatterjee, B. D. Sharma and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by

C **Hegde, J.**—The appellant and one R. B. Mathur were tried before the learned Special Judge for Greater Bombay under various charges including a charge of conspiracy. Mathur was acquitted and the appeal against his acquittal was unsuccessful. The appellant was also acquitted of all charges excepting a charge under Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act. For that offence he was sentenced to suffer rigorous imprisonment for two years and pay a fine of Rs. 5,000, in default to suffer further rigorous imprisonment for four months. **D** The substance of the charge under which he was convicted is that he by utilising his position as a Government servant sent various articles such as Radios, Transistors, Clothes etc., from Goa to Bombay without paying customs duty. He was also held guilty **E** of sending his personal articles in the vehicles engaged by the postal department without paying any charge. The trial court supported its conclusion on a further ground namely that the assets of the appellant were more than that he could have acquired by his known sources of income.

F The charges framed against the appellant made no reference to the fact that his assets were more than that he could have acquired by his known sources of income. In appeal the learned judges of the High Court did not go into that aspect of the case. Nor was that aspect of the case pressed before us at the hearing. Therefore it is not necessary to go into that aspect. Even otherwise that accusation appears to be without any solid basis. **G** The learned Judges of the High Court also did not go into the allegation that the appellant utilised his official position in sending his personal goods in the vehicles engaged by the postal department. The accusation is that the appellant sent some of his goods in the vehicles engaged by the postal department from Panjim in Goa to Margoa or Sawanthwadi or Belgaum. These places are not very far from Panjim. **H** The High Court held that the offence committed by the appellant in that regard if true, is of a technical nature and therefore it thought it unnecessary to examine the evidence relating to the same. Evidently in its view the accusation

regarding the sending of some articles in the vehicles engaged by the postal department was of a trifling nature and therefore not worth examining. But the High Court agreed with the trial court that the appellant was guilty of evading payment of customs duty and he did so by utilising his official position. In order to examine the correctness of this finding, it is necessary to set out the material facts.

In 1961, the appellant was working as a Senior Superintendent of Post Offices at Jaipur. On December 20, 1961 Goa was liberated by the Indian Army. Thereafter the appellant was deputed as a Special Duty Officer to Goa. He took charge in Goa on December 25, 1961. He assumed additional charge as Director of Posts and Telegraphs on May 11, 1962 and he held that office till August 11, 1962. Thereafter he went back to Jaipur. It is alleged that during the period of appellant's stay in Goa, he made large purchases of certain luxury articles. Utilising his official position in the Posts and Telegraphs department he transmitted those articles to Bombay where he sold the same at profits. The prosecution relied in support of that charge on four different instances. Voluminous evidence was led in support of the prosecution case. But it is not necessary to go into that evidence as in our opinion the charge under which the appellant was convicted is without any legal basis. The learned Counsel for the appellant, Mr. A. S. R. Chari has assailed the judgments of the High Court and the trial court on various grounds. He contended that the evidence adduced in support of the prosecution case is unreliable and insufficient to support the conviction of the appellant. He also raised various legal pleas in support of the appeal. He contended that as the Prevention of Corruption Act was not in force in Goa at the relevant time, the appellant could not have been held guilty of an offence under that Act. According to him, the investigation of this case was illegal as the required sanction had not been obtained. But the most important plea taken by him is that no custom duty was leviable on the articles said to have been sent by the appellant from Goa to Bombay and as such the entire fabric of the prosecution case must fall to the ground. There is force in this contention. Hence it is not necessary to examine the other contentions.

As mentioned earlier Goa was liberated on December 20, 1961. Twelfth amendment to our Constitution which received the assent of the President on 27th March 1962 made Goa a part of India. It became a Union Territory. The amendment in question is deemed to have come into force on December 20, 1961. Hence Goa must be considered as a part of India from December 20, 1961 and indisputably at any rate from March 27, 1962. Article 1 of our Constitution says :

"1. India, that is Bharat, shall be a Union of States.

A 2. The States and the territories thereof shall be as specified in the First Schedule.

3. The territory of India shall comprise—

(a) the territories of the States ;

(b) the Union territories specified in the First Schedule; and

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(c) such other territories as may be acquired.”

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All the territories that this country may acquire in whatever manner become part of India in view of Article 1 (3) (c). Further in the case of Goa by means of 12th amendment to the Constitution, the same is included in the 1st Schedule. Therefore there is no room for the contention that Goa was not a part of India during the relevant time. It may be noted that according to the prosecution the goods complained of were all sent from Goa to Bombay after March 27, 1962.

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This takes us to the question whether there is any liability to pay customs duty when someone sent goods from Goa to Bombay in 1962. No statute or statutory rule was placed before the Court to show that any customs duty had been imposed on the goods transmitted from Goa to other parts of India after December 20, 1961. The only witness who spoke about the liability to pay customs duties on the goods in question is P. W. 56 Shaikh, the Dy. Superintendent of Central Excise. According to him customs duty on those articles was leviable because of certain administrative instructions. But he refused to place those administrative instructions before the court. He claimed privilege on the ground that they are confidential documents—a strange claim. Stranger still is that the trial court appears to have accepted that plea. No tax or duty can be levied or collected except by authority of law. Hence no customs duty was leviable on the basis of any administrative instruction. Every levy of customs duty or any other tax must be sanctioned by law. It is surprising that both the trial court as well as the High Court were of the opinion that certain customs duties were leviable because of some administrative instructions. It appears that there was a notification issued in the year 1950 declaring Goa to be a foreign territory and thus bringing the exports from that country to India within the purview of Land Customs Act. But that notification cannot continue to have a legal effect after Goa became a part of India. On becoming a part of India Goa ceased to be a foreign territory. The notification in question must have been issued under Section 5 of the Indian Tariff Act, 1934 as it stood in 1950 (that section has been repealed now). That section read :

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“Where a customs duty at any rate prescribed by or under this Act or any other law for the time being in force is

leviable on any articles when imported into, or any article when exported from, a port in India the Central Government may, by notification in the official gazette, direct that a duty of customs at the like rate shall be leviable on any such article when imported or exported, as the case may be, by land from or to any territory outside India which it may, by a like notification, declare to be foreign territory for the purposes of this section.”

The notification under this section could have been issued only in respect of any territory outside India and not in respect of any part of India. That provision empowered the Government to declare any territory outside India as a foreign territory for the purposes of that provision. That provision did not empower the Government to declare any part of India as a foreign territory. But it gave power to the Central Government not to treat any territory outside India as a foreign territory for the purposes of that provision. To illustrate the position, the Central Government could not have declared either Delhi or Bombay as a foreign territory but it could have treated Nepal or Bhutan as not a foreign territory for the purposes of that provision. Once Goa became part of India, the Government was incompetent to declare that territory as a foreign territory. Nor does it appear that any such declaration was made after December 20, 1961.

Unfortunately the High Court allowed itself to be influenced by what it says the practical considerations. It is likely that there were considerable foreign goods in Goa which had been imported into that territory before it was liberated, may be even without paying customs duty and those goods were available for being transmitted to other parts of India. But this circumstance does not change the position in law. It is not necessary for us to consider whether after integration of Goa, the Government could have imposed any duty on the goods that were sent from Goa to other parts of India. Suffice it to say that our attention was not invited to any law imposing such duties. That being so, the conclusion that the appellant had utilised his official position to evade customs duty must fail.

In the result this appeal is allowed and the conviction and sentence imposed on the appellant are set aside. He is on bail. His bail bond do stand cancelled, and fine if paid refunded.

G. C.

Appeal allowed.