Ranchhoddas Atmaram vs The Union Of India on 3 February, 1961

Equivalent citations: 1961 AIR 935, 1961 SCR (3) 718, AIR 1961 SUPREME COURT 935, 1961 3 SCR 718 2 SCJ 529, 2 SCJ 529

Author: A.K. Sarkar

Bench: A.K. Sarkar, Bhuvneshwar P. Sinha, S.K. Das, N. Rajagopala Ayyangar, J.R. Mudholkar

PETITIONER:
RANCHHODDAS ATMARAM

Vs.

RESPONDENT:
THE UNION OF INDIA.

DATE OF JUDGMENT:
03/02/1961

BENCH:
SARKAR, A.K.
BENCH:
SARKAR, A.K.
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1961 AIR 935 1961 SCR (3) 718
CITATOR INFO :
F 1962 SC1559 (4)
RF 1966 SC 197 (43)

ACT:
Sea Customs--Import of prohibited goods--Maximum Penalty--Whether can be levied in excess of Rs 1,000/- Sea Customs Act, 1878 (VIII of 1878), ss. 167, item No. 8.

HEADNOTE:
Item 8 of the schedule to s. 167, Sea Customs Act, 1878, provides that any person concerned in the importation or exportation of prohibited goods shall be liable to a penalty

"not exceeding three times the value of the goods, or not exceeding one thousand rupees." The petitioner was found to have imported gold of the value of Rs' 25,000/- and the Customs authorities imposed a penalty of Rs. 5,000/-. The petitioner challenged the validity of the order imposing the penalty on the ground that the. maximum penalty that could be imposed under item 8 of s. 167 was Rs. 1,000/-.
Held, that the orders imposing the penalty was valid. It is open to the Customs authorities to impose any of the alternative penalties provided though the amount of it exceeds the amount of the maximum in the other alternative. None of the previous decisions of the Supreme Court were authority for the proposition that the maximum penalty which can be imposed under item 8 of s. 167 is Rs. 1,000/- as this question did not arise in those cases. On the plain language of the provision which was in the affirmative form it gave ail option to the Customs authorities to impose any one of the two penalties provided. The relevant words could not be read as "shall not be liable to a penalty exceeding three times the value of the goods, or exceeding one thousand rupees. "
Maqbool Hussain v. State of Bombay [1953] S.C.R. 730, Babulal Amthalal Mehta v. The Collector of Customs [1957] S.C.R. 1110 and F.N ' Roy v. The Collector of Customs. Calcutta [1957] S.C.R. 1151, explained and distinguished.
The Metropolitan Board of Works v. Steed (1881) L.R. 8 Q.B.D. 445, referred to.

JUDGMENT:

ORIGINAL JURISDICTION 1. Petition No. 300 of 1960. Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights and Criminal Appeal No. 107 of 1958, Appeal by special leave from the judgment and order dated April 5, 1957, of the Bombay High Court in Criminal Revision Application No. 1100 of 1956.

Porus A. Mehta, S. J. Sorabjee, S. N. Andley, J. B. Dadachanji, Rameshwar Nath and P. L. Vohra, for the petitioners.

C. K. Daphtary, Solicitor-General of India, H. B. Khanna, Y. S. Parmar and G. Gupta, for respondents (In Petn. No. 300 of 1960).

N. C. Chatterjee and B. L. Aggarwal, for the appellant. H. R. Khanna and R. H. Dhebar, for respondents (In Cr. A. No. 107 of 1958.) 1961. February 3. The Judgment of the Court was delivered by SARKAR, J.-These two matters have been heard together as they raise a common question. One of these matters is a petition under Art. 32 of the Constitution and the other, an appeal from a judgment of the High Court at Bombay. The petitioner and the appellant were found by the Customs authorities in proceedings under the Sea Customs Act, 1878, to have imported goods in breach of s.

19 of that Act. The petitioner had without authority imported gold of the value of Rs. 25,000/and the appellant, steel pipes 'of the value of Rs. 1,28,182/-. The Customs authorities by independent orders, imposed a penalty of Rs. 5,000/- on the petitioner and of Rs. 25,630/- on the appellant for these offences, under item 8 of the schedule to s. 167 of the Act. The Customs authorities further confiscated the petitioner's gold under the same provision. There was no order of confiscation of the steel pipes for reasons to which it is unnecessary to refer.

The appeal is against an order the result of which was to direct realisation of the penalty imposed on the appellant, by execution of a distress warrant. The petition challenges the validity of the order imposing the pecuniary penalty. Neither the petitioner nor the appellant, however, questions the decisions of the Customs authorities that they had been guilty of breach of a. 19 or that penalties could be imposed on them under item 8 in a. 167. The petitioner does not, further, challenge the order confiscating the gold. The only contention of the petitioner and the appellant is that the orders of the Customs authorities are invalid as they impose penalties in excess of Rs. 1,000/-. They contend that the maximum penalty that can be imposed under item 8 in s. 167 is Rs. 1,000/-. This contention is based on two grounds. First it is said that, it has been so held by this Court. Then it is said that, in any case, on a proper construction, item 8 in s. 167 does not premit the imposition of a penalty in excess of Rs. 1,000/- First, as to the decisions of this Court, we were referred to three. The earliest is Maqbool Hussain v. The State of Bombay (1). That was a case in which the question was whether a person on whom a penalty of confiscation of goods had been imposed under item 8 in s. 167, could later be prosecuted on the same facts for an offence under s. 23 of the Foreign Exchange Regulation Act, 1947, in view of the provisions of Art. 20(2) of the Constitution against, what has been called, double jeopardy. It was held that Art. 20(2) was no bar to the prosecution under the Foreign Exchange Regulation Act for, the authority under the Sea Customs Act imposing the penalty under item 8 in s., 167 was not a judicial tribunal and the proceeding resulting in the imposition of the penalty of confiscation was, therefore, not a prosecution. No question arose in that case as to the maximum penalty that could be imposed under item 8 in s,

167. While discussing whether a Customs authority exercising the power to order confiscation and levy a penalty under s. 167 formed a judicial tribunal, this Court observed at p. 742:

> " Even though the customs officers are invested with the power of adjudging confiscation, increased rates of duty or penalty the highest penalty which can be inflicted is Rs. 1,000/-."

It is quite obvious that this observation was made in a different context and was not intended to decide (1) [1953] S.C.R. 730, that the provision did not permit the imposition of a higher penalty, as to which no question had then arisen. It is clear that if the highest penalty which the Customs officers had the power to impose was in excess of Rs. 1,000/- but subject to another limit, it would not have followed that they were judicial tribunals. The judgment of this Court was not based on ,the amount of the maximum penalty which the Customs authorities could impose. It seems rather to have been assumed that the maximum penalty was Rs. 1,000/-, for the question about maximum penalty was neither argued, nor discussed in the judgment at all.

The second case is Babulal Amthalal Mehta v. The Collector of Customs (1). The only question that arose there was whether s. 178A of the Sea Customs Act, which placed on the person from whose possession any goods mentioned in the section and reasonably believed to have been smuggled were seized, the burden of proving that they were not so, was void as offending Art. 14 of the Constitution. In discussing the scheme of the Act, it was observed in connection with item 8 in s. 167 that "This Court has held that the minimum is the alternative: see Maqbool Hussain v. The State of Bombay "(2) . Here again, it is clear that the Court was not deciding the question that has now arisen before us. It only made a passing reference to the observation in Maqbool Hussein's case(2). It was not necessary for the decision of Babulal's case (1) to have pronounced on the correctness of the observation in Maqbool Hussain's case (2) and no such pronouncement was clearly intended. Nor was it necessary in Babulal's case (1) to express any view as to the maximum penalty that could be imposed under item 8 in s. 167.

The last case referred to is F. N. Roy v. The Collector of Customs,Calcutta (1). That was a case where an order had been made under item 8 in s. 167 confiscating certain goods imported without authority and imposing a penalty of Rs. 1,000/- in respect of that import. The importer filed a petition in this Court under Art. 32 (1) [1937] S.C.R. 1110, 1116.

(2) [1953] S.C.R. 730.

(3) [1957] S.C.R. 1151.

of the Constitution challenging the validity of the penalties levied. The main part of the argument of the learned counsel for the petitioner was based on the Imports and Exports (Control) Act, 1947, and raised questions which do not concern us in the present cases.. It appears however that it was also contended that item 8 in s. 167 offended Art. 14 of the Constitution, a point which again does not arise in the cases in hand. That contention was dealt with in the following words at p. 1158:

> "Another similar argument was that s. 167, item 8 of the Sea Customs Act itself offended Art. 14 in that it left to the uncontrolled discretion of the Customs authorities to decide the amount of the penalty' to be imposed. The section' makes it clear that the maximum penalty that might be imposed under it is Rs. 1,000/-. The discretion that the section gives must be exercised within the limit so fixed. This is not an uncontrolled or unreasonable discretion. Furthermore, the discretion is vested in high Customs officers and there are appeals from their orders. The imposition of the fine is really a quasi-
>
> judicial act and the test of the quantum of it is in the gravity of the offence. The object of the Act is to prevent unauthorised importation of goods and the discretion has to be exercised with that object in view. "

It will be observed that the fine imposed was Rs. 1,000/-. It was not therefore a case in which any question could arise as to whether a penalty in excess of Rs. 1,000/-, could be imposed and in fact no such question arose. The question that arose was, whether the section offended Art. 14, so that,

no penalty could be imposed under it at all. It was in this connection that it was observed that item 8 in s. 167 did not leave it to the uncontrolled discretion of the Customs authorities to decide the amount of the penalty because it had imposed a limit on that amount. It is true that the limit was there mentioned as Rs. 1,000/-. But it is clear that the reasoning would have held equally if it .had been said that the limit imposed was either three times the value of the goods or: Rs. 1,000/-. The point that was sought to be made in the judgment was that there was a limit and that that was a reason for saying that the discretion given was not uncontrolled and, therefore, there was no violation of Art. 14. For this purpose, it made no difference what the limit was.

Some of the High Courts have thought that this Court had decided in these cases that the maximum penalty permissible under the provision is Rs. 1,000/-. The fact is that the question was never required to be decided in any of these- cases and could not, therefore, have been, or be treated as, decided by this Court. In Leo Boy Frey v. The Superintendent, 'District JailAmritsar (1), this Court observed that " No question I has been raised as to the maximum amount of penalty that can be imposed under s. 167(8) and we are notcalled upon to express any opinion on that point. " This would show that this Court had taken notice of the fact that the High Courts were interpreting the judgment in F. N. Roy's case(") and the other case,% in a manner which was not intended and desired to strike a note of warning against the misconception. None of these cases is authority for the proposition that the maximum penalty which can be imposed under item 8in s. 167, is RE;. 1,000/-. The argument that this Court has already held that the maximum penalty that can be awarded under it is Rs. 1,000/- must therefore fail.

We now come to the construction of the provision, the relevant portion of which is in these terms:

> S. 167. The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively:
>
> ---
>
> | Offences | Sections of this Act to which offence has reference | Penalties |
> |---|---|---|
> | 8.If any goods, the importation or exportation of which is for the time being prohibited or restricted by or under Chapter IV of this Act. be imported into or exported from India contrary to such prohibition or restriction. . . . . | | |
> | 18 & 19 such goods shall be liable to confiscation; and any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees. | | |

.....

---------- (1) [1958] S.C.R. 822, 827. (2) [1957]S.C.R. 1151.

The words which are material to this case are, "Any person concerned in any such offence shall be liable to a penalty not exceeding three times the value of the goods or not exceeding one thousand rupees. " The question is whether, in imposing a penalty, the conditions laid down in both the alternative clauses joined by the word " or " have to be fulfilled or the condition in any one of them only ? It is clear that if the words form an affirmative sentence, then the condition of one of the clauses only need be fulfilled. In such a case ,for " really means It either " "

> or ". In the Shorter Oxford Dictionary one of the meanings of the word " or " is given as " A participle coordinating two (or more)-words, phrases or clauses between which there is an alternative. " It is also there stated, " The alternative expressed by " or " is emphasised by prefixing to the first member or adding after the last, the associated adv. EITHER." So, even without " either ", " or " alone creates an alternative. If, therefore, the sentence before us is an affirmative one, then we get two alternatives, any one of which may be chosen without the other being con- sidered at all. In such a case it must be held that a penalty exceeding Rs. 1,000/- can be imposed. If, however, the sentence is a negative one, then the position becomes different. The word " or " between the two clauses would then spread the negative influence over the clause following it. This rule of grammar is not in dispute. In such a case the conditions of both the clauses must be fulfilled and the result would be that the penalty that can be imposed can never exceed Rs. 1,000/-. The question then really comes to this: Is the sentence before us a negative or an affirmative one ? It seems to us that the sentence is an affirmative sentence. The substance of the sentence is that a certain, person shall be liable to a penalty. That is a positive concept. The sentence is therefore not negative in its import.
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> The learned counsel for the petitioner and the appellant said that the sentence began with a negative, namely,the words not exceeding " and therefore it is a negative sentence and the word " or " occurring later in the sentence must spread the negative influence over that part of the sentence which follows it. This contention is clearly fallacious. The word " not " refers only to the word " exceeding " following it and the two together constitute a qualifying clause limiting the amount of the penalty that can be imposed. There is no negative sense to spread over and influence the rest of the sentence. If the learned counsel were right, the words " not exceeding "

would not have been repeated after the word " or " for the word " or " would have carried the negative influence forward and another negative would not,have been necessary. The acceptance of learned counsel's argument that "or" carried any negative influence forward, would make nonsense of the sentence.

It seems to us that the learned counsel really wants us to read the section as if the words were, " shall not be liable to a penalty exceeding three times the value of the goods, or exceeding one thousand rupees. " So read the sentence would be a negative one and the word "I or " would carry the negative influence forward. To do that would, however, bere-enacting and not interpreting. It is clear that each time the expression " not exceeding " is used, it qualifies the extent of the punishment that is stated after it. That expression is really equivalent to the words " up to " and can be easily substituted by them without affecting the sentence in any way. There is really no negative in the sentence and what we have, is a purely affirm. active provision laying down two alternative penalties to choose from, with a maximum for each.

The distinction between affirmative and negative sentences may be illustrated by the case of The, .Metropolitan Board of Works v. Steed (1). The provision there considered was, " No existing road, being of less width than forty feet, shall be ... formed as a street for the purposes of carriage traffic, unless such road be widened to the full width of forty feet ...or for the purposes of foot traffic only, unless such road be widened to the full width of twenty feet or unless such (1) (1881) L.R. S Q.B.D. 415.

streets respectively shall be open at both ends. " It was held that both the conditions had to be fulfilled and the street had to be of the prescribed width and also open at both ends. One of the reasons given for this view was that the sentence was a negative one and the word " or " (being the one underlined by us*) in it carried forward the negative influence and made it necessary to fulfil both the conditions. 'It was said at pp. 447-48 :

> " We might have referred to authorities by good writers, shewing that where the word 'or' is preceded by a negative or prohibitory provision, it frequently has a different sense from that which it has when it is preceded by an affirmative provision., For instance, suppose an order that 'you must have your house either drained or ventilated. The word I or' would be clearly used in the alternative. Suppose again, the order was that I you must have your house drained or ventilated, that conveys the idea to my mind that you must have your house either drained or ventilated. But supposing the order were that 'you must not have your house undrained or unventilated.' The second negative words are coupled by the word I or', and the negative in the preceding sentence governs both. In a. 98 there is a negative preceding a sentence no existing road' shall be formed."

It is obvious that the sentence before us contains, no negative or prohibitory provision. It only contains a positive provision empowering one of the two alternative penalties laid down to be imposed. The fact that the penalties are directed not to exceed a certain limit does not change the sentence from affirmative to negative; the sentence remains permissive and does not become prohibitory. It follows that any of the. alternative penalties provided may be imposed though the amount of it exceeds the amount of the maximum in the 'Other alternative. A consideration of the object of the Act also supports that view. The Act is vital for the country's economic stability. It is: intended to prevent smuggling in goods and such goods may be of large value. A small fine of Rs. 1,000/- would Here printed in italics.

often be quite inadequate to serve these objects. It would be in consonance with such objects if power is given to the authorities concerned to impose a higher penalty when the occasion requires it.

The learned counsel for the petitioner and the appellant then referred us to Webster's New International Dictionary (2nd ed.) where one of the meanings of the word " nor " has been given as " or not ". The learned counsel say that the word " or " and the word " not " following it have to be read together and on the authority of Webster, ask us to substitute for them the word " nor " in order to get at the intention of the Legislature. But we do not have here the word "nor ". Nor are we able to find anything in Webster's Dictionary authorising the substitution of " nor " in all places for the words " or not ". We are clear that here no "

> or not " occurs which can be substituted by " nor without doing violence to the sentence. The wordnot, following the word " or ", is really joined to and qualifies the word "

exceeding " which comes after it and cannot be joined to the preceding word "or" at all. To read the words " or not " as joined to each other, and to substitute them by " nor "

> would be to change the structure of the whole sentence and, therefore, its meaning. An interpretation which so radically alters the meaning of the clause, cannot be accepted.
>
> These were the main arguments advanced by the learned counsel for the petitioner and the appellant. There remain, however, certain other points raised by them to deal with. It was said that the fact that two alternative penalties had been provided would indicate that one of them was the maximum. It is somewhat difficult to comprehend this argument. By itself it does not show that the maximum penalty would be Rs. 1,000/- and that is what the learned counsel want us to hold. We have earlier held that either of the two penalties provided may be chosen by the authorities concerned as they consider fit. Suppose three times the value of the goods with which the offence is concerned, exceeds Rs. 1,000/-. Then that would be larger of the two penalties that can be awarded in that case and the present argument does not establish that this larger penalty cannot be imposed. Which is the maximum in a particular case, would depend on the value of the goods. Further, there seems to us to be good reason why two alternative penalties were provided. Where the value of the goods is very large, it may be that a penalty of Rs. 1,000 /- would be too inadequate a punishment. Again, it may be that three times the value of the goods may be 'Much smaller than Rs. 1,000/-. It may conceivably be necessary in such a case by reason, for example, of the person concerned having on earlier occasions committed the same offence or having shown a determined state of mind to commit the offence, to inflict a penalty higher than three times that value. Then it may also happen that the value of the thing concerned may, in conceivable circumstances, not be properly ascertainable. In such a case the alternative penalty up to Rs. 1,000/- has to be adopted if any penalty at all is to be awarded. The learned counsel then said that if

both the alternatives were available to the authorities concerned to choose from, then the provision would give them a very arbitrary discretion which, whether it offended Art. 14 or not, there is no reason to think was intended by the Legislature. We do not think that this argument is of force. Each of the alternative penalties provided, has a limit attached to it. Therefore the discretion is neither unlimited nor arbitrary. It may be that three times the value may amount to an enormous sum but that will be so only when the value of the goods with which the offence is concerned, is high. If goods of high value are the subject matter of the offence, then there is no reason for saying that the provision for imposing a penalty of three times that value, is not intended by the Legislature.

Another argument advanced on behalf of the petitioner and the appellant was that no other item in s. 167 provided for a penalty in money, as distinguished from confiscation, in excess of Rs. 1,000/- and this indicated the intention of the Legislature not to impose a higher penalty. It was therefore said that item 8 should be construed in accordance with this intention as not enabling the imposition of a pecuniary penalty higher than Rs. 1,000/-. The first answer to this contention is that the intention in item 8 has to be gathered from the language used in it. If that language is clear, that must be given effect to whatever may have been the intention in other provisions. In our view, the language in item 8 is clear and it permits the imposition of a penalty in excess of Rs. 1,000/-. No question of gathering the intention of the Legislature from the other items arises. The second answer is that the learned counsel are not right when they say that the other items do not provide for a pecuniary penalty in excess of Rs. 1,000/-. Thus under item 29 when goods are found in a boat without a boat-note as required by s. 76 of the Act, the person in charge of the boat shall be liable to a penalty not exceeding twice the amount of the duty leviable on the goods. Now it is conceivable that such duty may be in excess of Rs. 1,000/-. Provisions for similar penalty will be found in items 17, 29, 31, 38, 48 and others. There are also several items which permit the imposition of a penalty calculated at large sums like Rs. 500/- and Rs. 1,000/- per package. In these the amount of the penalty might easily exceed Rs. 1,000/-: see items 17, 36, 49, 56. There is another group of items which permits the imposition of penalty calculated on the value of the goods, and such penalty may, of course, be far in excess of Rs. 1,000/- :

see items 58, 59 and 73. It would indeed be strange if a statute like the Sea Customs Act, on the proper working of which the finances and commerce of the country largely depend, considered a pecuniary penalty of Rs. 1,000/- enough for a breach of any of its provisions. We feel no doubt that the Act did not intend this.

It was also argued that a penal statute like the one before us, must be construed in favour of a citizen and therefore item 8 should be construed as permitting the imposition of a penalty up to Rs. 1,000/- and no more. This rule of construction of a penal statute is applicable only where the meaning of the statute is not clear. This is not the case with the present statute. The appellant and the petitioner can therefore

derive no assistance from this rule.

The learned counsel for the petitioner and the appellant also said that the Sea Customs Act was modelled on 39 and 40 Vict., Ch. 36, an English statute to consolidate the Customs laws, s. 186 of which corresponds to s. 167 of our Act. They said that the English section expressly provided that the authority concerned would have the option to choose any of the punishments specified, but our statute deliberately departed from this and did not use the words " at the election of " which occur in the English statute. In our view, even without these words the meaning in our provision is plain. It also seems to us that the English statute used the words " at the election of " by way of abundant caution. The effect of that statute would have been the same even without those words. It may be that in our statute similar words were not used because it is somewhat differently framed; the use of them may have been considered inappropriate. The English statute gives a choice between two fixed penalties of " treble the value of the goods" and "one hundred pounds." In our statute, each of the two alternative penalties is flexible ; each penalty is not to exceed a certain limit.

The last argument was based on the word " extent appearing in the main part of s. 167 which, it is said, indicated that the third column laid down the extent of the punishment that could be awarded. This argument does not carry the matter further at all for, whichever of the two competing interpretations is accepted, in each case there would be the extent of the punishment specified and that word cannot help in deciding what the correct interpretation is. For these reasons it seems to us that under item 8 in s. 167 a penalty in excess of Rs. 1,000/- can be imposed and so the orders that the Customs authorities had made in these cases are not open to any challenge. It is not in dispute that the penalties imposed did not exceed three times the value of the goods concerned.

The petition and the appeal are accordingly dismissed. There will be no order for costs.

Petition and appeal dismissed.