

## **Sheikh Mohd. Omer vs Collector Of Customs, Calcutta & Ors on 4 September, 1970**

**Equivalent citations: 1971 AIR 293, 1971 SCR (2) 35, AIR 1971 SUPREME COURT 293**

**Author: K.S. Hegde**

**Bench: K.S. Hegde, A.N. Grover**

PETITIONER:  
SHEIKH MOHD. OMER

Vs.

RESPONDENT:  
COLLECTOR OF CUSTOMS, CALCUTTA & ORS.

DATE OF JUDGMENT:  
04/09/1970

BENCH:  
HEGDE, K.S.  
BENCH:  
HEGDE, K.S.  
GROVER, A.N.

CITATION:  
1971 AIR 293                      1971 SCR (2) 35  
1970 SCC (2) 728

ACT:  
Customs Act, 1962, s. 111(d)-"Any prohibition" if includes restrictions-Mare imported for breeding, if pet animal.

HEADNOTE:  
The appellant, a breeder of horses imported into India a mare "Jury Maid", for purpose of breeding. The customs authorities objected on the ground that the mare had been imported in contravention of the provisions of the Imports and Exports (Control) Act. 1947 and confiscated the mare. On the questions, (i) whether the mare was a "pet animal" within the meaning of that expression in the notification dated January 2, 1961 issued by the Government and therefore exempt as personal baggage and (ii) whether the expression "prohibition" contained in s. 111(d) of the Customs Act,

1962 includes prohibition of imports Coupled with it power to permit importation under certain conditions,

HELD : (i) The mare "Jury Maid" was not a 'pet animal'. A pet is "any animal tamed and fondled". There was no evidence to show that jury maid was tamed or treated with fondness by the appellant. He obtained that animal on lease for certain specified purpose and in respect of that animal he had only a business connection.

(ii) The expression "any prohibition" in s. 111 (d) of the Customs Act, 1962, includes restrictions. Merely because s. 3 of the Imports and Exports (Control) Act, 1947, uses three different expressions "prohibiting", "restricting" or "otherwise controlling," the amplitude of the word any prohibition in s. 111 (d) of the Act cannot be cut down. "Any prohibition" means every prohibition and restriction is one type of prohibition. From item (1) of Sch. I Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions are provided for. But none the less the prohibition continues.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION :** Civil Appeal 1645 of 1966. Appeals from the judgment and order dated February, 7, 1966 of the Calcutta High Court in Appeal No. 114 of 1965. A. N. Sinha and P. K. Mukherjee, for the appellant. B. Sen and S. P. Nayar, for the respondent. The Judgment of the Court was delivered by Hegde, J. In this appeal by certificate two questions of law arise namely (1) whether on the facts of this case the mare "Jury Maid" can be considered as a "pet animal" within the meaning of that expression in the notification issued by the Government of India, Ministry of Commerce and Industries, Import Trade Control Public Notice No. 1 I.T.C.(PN)/61 dated 2nd January 1961 and (2) whether the expression "prohibition" contained in S. 111 (d) of the Customs Act 1962 (which will hereinafter be referred to as the Act) includes prohibition of imports coupled with a power to permit importation under certain conditions.

The facts relevant for the purpose of deciding the points in issue are not many. They may now be stated. The appellant, Sheikh Mohd. Omer, as found by the High Court was a dealer 'in horses especially in racing horses. He was breeding horses out of mares owned by him. He owned two stallions by name "Pieta" and "Rontgen". He claimed to have had a considerable reputation as race horse owner and for racing with horses bred by him races. In September, 1964, the appellant went to Europe. While he was in Switzerland he received a letter from M/s. British Blood-stock Agency Ltd., London informing him that one of its clients was interested in obtaining a foal by stallion "Pieta" from the said client's Brood Mare. After some correspondence it was agreed that the Glasgow Stud Farm would lease a brown English mare to the appellant which would be shipped to India and would be kept there pending her producing two foals by the appellant's breeding race horse "Pieta" after which the mare will be returned to with on,,- foal. The appellant returned to Calcutta on November 7, 1964 by air. At the Dum Dum Airport he gave a declaration showing that his seven

unaccompanied bagages will follow by sea or by air. 'Eventually, "Jury Maid" was shipped to Calcutta by s.s 'Chinkoa" which reached Calcutta port on December 25, 1964. When the appellant tried to take delivery of the same, the Customs authorities objected on the ground that the mare had been imported in contravention of the provisions of the imports and Exports (Control) Act, 1947. After due enquiry the Customs authorities confiscated the mare. At this stage, it may be mentioned that when the mare came to India, it was pregnant. After its arrival in India it gave: birth to a foal and thereafter it died. The foal given birth by it is alive.

The first question that arises for decision is whether by importing the mare in question the appellant contravened the provisions of the Act.

Section 111 (d) of the Act provides:

"The following goods brought from a place out- side India shall be liable to confiscation:--

(d)any goods which are imported or attempted to be imported or are brought within the Indian customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force."

"Prohibited goods" is defined in S. 2(33) of the Act. That definition reads :

" "prohibited goods" means any goods the import or export of which is subject to any prohibition under this Act or any other law for the time being in force but does not include any such goods in respect of which the conditions subject to which the goods are permitted to be imported or exported have been complied with."

From this definition, it is clear that "prohibited goods"

under the Act includes also such goods as may be imported by complying with the prescribed conditions. It is admitted that the import of horses or mares is not prohibited under the Act. Therefore the question is whether such import is prohibited "by any other law for the time being in force."

Section 3(1) of the Imports and Exports (Control) Act, 1947' provides :

"Powers to prohibit or restrict imports and exports.-

(1)The Central Government may, by order published in the Official Gazette, make provision for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases and subject to such exceptions, if any as may be made by or under the order;

(a)the import, export, carriage coastwise or shipment as ships' stores of goods of any specified description;

(b)the bringing into any port or place in India of goods of any specified description intended to be taken out of India without being removed from the ship or conveyance in which they are being carried."

In exercise of the powers conferred by s. 3 of the Imports and' Exports (Control) Act, 1947, the Government of India promulgated an order known as the "Imports Control" Order, 1955 dated 7th December, 1955. Clause 3(1) of the said order reads "Restriction on Import of Certain Goods.-(I) Save as otherwise provided in this order, no person shall import any goods of the description specified in Schedule 1, except under, and in accordance with, a licence or a customs clearance permit granted by the Central Government or by any officer specified in Schedule II."

The relevant Entry is to be found in Item I of Schedule I in part IV which is as follows:--

SL. Name of Article Item of First Schedule to No. Indian Triff Act 1934.

(1)	(2)	(3)
	Part IV	
1.	Animals, sorts.	living all I and I (1).

By the notification dated January 2, 1961 referred to earlier certain exemptions were provided for personal baggage of a passenger. One of the exemptions granted is for clearance of one dog, pet animal and birds in a limited number subject to certain conditions. Now we shall go back to the question whether "Jury Maid" can be considered as a pet animal. A pet is explained in Concise Oxford Dictionary of Current English as "any animal tamed and kept as favourite or treated with fondness." The shorter Oxford Dictionary explains that word thus:

"Any animal that is domesticated or tamed and kept as a favourite or treated with fondness, esp. applied to a lamb reared by hand."

The same word is explained in Chamber's Twentieth Century Dictionary thus "Any animal, tamed and fondled."

There is no evidence to show that "Jury Maid" was tamed. That apart the "Jury Maid" was not fondled or treated with fondness by the appellant. He obtained that animal on lease for certain specified purpose. In respect of that animal he had only a business connection. Rejecting the contention of the appellant that "Jury Maid" is a pet animal, the learned judges of the appellate bench of the Calcutta High Court observed :

"There is no such species of animal known as "Pet animal". What happens is that certain kind of animals or birds are often domesticated and when a particular person

becomes fond of such an animal or bird it may be said to have become a "pet" of that person and may be called a "pet animal". It is a subjective expression. In the present case, the mare "Jury Maid" was not the "pet" of any particular person. So far as the appellant is concerned, -he had not even seen the mare when it arrived in India. It cannot be said that he became fond of it at any relevant point of time. In actual life we find that men have at times fond of strange animals like lions, tigers and even crocodiles. It was not intended to make the baggage rules a warrant for transforming passengers ships into a Noah's Ark. . ."

We entirely agree with those observations and reject the contention of the appellant that "Jury Maid" was a pet animal.

This takes us to the question whether by importing the mare "Jury Maid" the appellant contravened S. 111(d) read with s. 125 of the Act. It was urged on behalf of the appellant that expression "prohibition" in s. 111(d) must be considered as a total prohibition and that expression does not bring within its fold the restrictions imposed by cl. (3) of the Imports Control Order, 1955. According to the learned Counsel for the appellant cl. (3) of that order deals with the restrictions of import of certain goods. Such a restriction cannot be considered as a prohibition under s. 111 (d) I of the Act. While elaborating his argument the learned Counsel invited our attention to the fact that while s. 111 (d) of the Act uses the word "prohibition", s. 3 of the Imports and Exports (Control) Act, 1947 takes in not merely prohibition of imports and exports, it also includes "restrictions or otherwise controlling" all imports and exports. According to him restrictions cannot be considered as prohibition more particularly under the Imports and Exports (Control) Act, 1947 IIs that statute deals with "restrictions or otherwise confolling" separately from prohibitions. We are not impressed with this argument. What cl. (d) of s. 111 says is that any goods which are imported or attempted to be imported contrary to "any prohibition imposed by any law for the time being in force in this country" is liable to be confiscated. "Any prohibition" referred to III that section applies to every type of prohibition". That prohibition may be complete or partial. Any restriction on import or export is to an extent a prohibition. The expression "any prohibition" in s. III (d) of the Customs Act, 1962 includes restrictions. Merely because s. 3 of the Imports and Exports (Control) Act, 1947 uses three different expressions "prohibiting" "restricting" or "otherwise controlling", we cannot cut down the amplitude of the word "any prohibition"

in s. 111(d) of the Act. "Any prohibition" means every prohibition. In other words all types of prohibitions. Restriction is one type of prohibition. From item (1) of Schedule I, Part IV to Import Control Order, 1955, it is clear that import of living animals of all sorts is prohibited. But certain exceptions ire provided for. But rone the less the prohibition continues. In the result this appeal is dismissed with costs. Y. P. Appeal dismissed.