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Union of India Vs. B. Sorabjee

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Court : Mumbai

Decided On : Jul-12-1991

Reported in : 1992LC19(Bombay); 1991(56)ELT46(Bom)

Judge : M.F. Saldhana and; S.P. Bharucha, JJ.

Acts : Central Excise Act

Appeal No. : Writ Petition No. 121 of 1987

Appellant : Union of India

Respondent : B. Sorabjee

Advocate for Def. : Mr. N.A. Thanekar, Av.

Advocate for Pet/Ap. : Mr. Manoj Sanklecha and ;Mr. K. C. Sidhwa, Advs.

Judgement :

Bharucha, J.

1. This appeals is filed by the Union of India and the Customs authorities against the order of Jahagirdar, J. dated 21st January, 1987 whereby he directed them, upon the writ petition purported to be filed by M/s. B. Sorabjee, to refund the amount 'due to them as per Exhibit 'E' do the petition'. Exhibit E to the petition was a statement that the refund amount of Rs. 28,609,05 was due on the bill of entry

whose date and number was set out. The order was passed by Jahagirdar, J. following the judgment of Pendse, J. in writ Petition No. 2840 of 1986, reported in : 1987(27)ELT617(Bom) , Raman Kantilal Bhandari v. Union of India. The Judgment of Pendse, was upheld by a Division Bench, Appeal No. 24 of 1987, Union of India v. Raman Kantilal Bhandari, decided on 26th July, 1990 by Mookerjee, C. J. and S. P. Bharucha, J.. In normal circumstances, therefore, this appeal would have failed.

2. The circumstances here are far from normal.

3. We have before us an affidavit filed in the appeal by Yudhvir Singh Shahrawat, Assistant Collector of Customs. It state that while investigating other cases of refund of additional duty of customs on alcohol and carrying out as search of the residence of one Kumar Prabhulal Shah and his employees, material relevant to the present writ petition was discovered. The aforesaid bill of entry had been filed by M/s. B. Sorabjee, a partnership firm which had its force at Parvex Lodge, Khar, 16th Road, Bombay. On 16th November, 1987 a partner of M/s. B. Sorabjee & Co., by name Malcolm M. Mowdawala, had made a statement before the customs authorities. He stated that the aforesaid bill of entry had been filed by his firm by denied that his firm had filed a writ petition for refund of the additional duty of customs paid in respect thereof. He stated that no refund of such additional customs duty had been received by him. On 7th and 10th October, 1988 the said Kumar Shah had made statements before the Customs authorities. He stated that he had filed the present writ petition in the name of M/s. B. Sorabjee and had shown one Harshad Jayantilal Shah as its some proprietor and its office at Raut Chambers, Samuel Street, Wadgadi, Bombay. He had received the refund of Rs. 28,609.05 that was ordered to be made the order under appeal. The affidavit of Shahrawat added that the customs authorities had in February, 1988 seized from the premises of the said Kumar Shah the original of the writ petition that was lodged and filed in this court and which ought to have been in this court's records. (We shall now refer to it as 'the original writ petition.') The affidavit prayed that the respondents to the appeal should be directed to deposit the sum of Rs. 28,609.05 with further interest at 15% per annum from 10th April, 1987.

4. A perusal of the statement of the said Mowdawala shows that it has been accurately summarised in the affidavit of Shahrawat.

5. The statement of the said Kumar Shah needs to be set out in some detail. He stated that this writ petition was filed in the name of B. Sorabjee of Raut Chambers, Samuel Street, Wadgadi, Bombay, and showed the name of Harshad Jayantilal Shah as the sole proprietor thereof. This writ petition was filed by the said Kumar Shah through Mr. Nitin Kantawala, Advocate, for refund of the sum of Rs. 28,609.08 covered by the aforesaid bill of entry. Though the writ petition was Purported to be filed by the said Harshad Shah, the said Harshad Shah had not seen Mr. Kantawala or come to the High Court for affirming the same Pursuant to the order under appeal the said Kumar Shah had received the sum of Rs. 28,609.05 and he had signed across the revenue stamp appearing on the receipt therefor. The rubber stamp of M/s. B. Sorabjee placed upon the receipt had been prepared under his instruction. He had opened an account in the name of M/s. B. Sorabjee with Punjab and Sind Bank, Fort Branch, for the purpose of encashing the cheque issued for the refund. He had there shown the name of one Jaisukh Maganlal Joshi of 73, Ameer Street, Bombay, as the sole proprietor of M/s. B. Sorabjee. This account had been opened upon the introduction of the said Kumar Shah himself. After the cheque for the refund was deposited in the account the amount thereof was withdrawn by the said Kumar Shah. No payment had been made by the said Kumar Shah either to M/s. B. Sorabjee or to the said Harshad Shah. Mr. Kantawala had not verified the aforesaid bill of entry or asked the said Kumar Shah to bring the importer to him. The address of M/s. B. Sorabjee was shown in the bill of entry as Perverse Lodge, Khar, 16th Road, Bombay, whereas it was shown in the writ petition as Raut Chambers, Samuel Street, Wadgadi, Bombay. Again, the bill of entry showed M/s. B. Sorabjee to be a partnership firm while the writ petition showed it to be the sole proprietary concern of Harshad Shah. Mr. Kantawala did not verify these details. The import of the goods the additional licence of M/s. B. Sorabjee. The said Kumar Shah had also arranged for the disposal of the imported goods. The goods had been sold in the market by the said Kumar Shah, but he had informed M/s. B. Sorabjee that the goods has been sold to actual users, namely, M/s. Benzo Chemicals, M.I.D.C., Tarapur, on a high sea sale basis. A photocopy of the original writ petition had been obtained by the

said Kumar Shah. This photocopy had been obtained by him from this counts staff. Shown the original writ petition that had been recorded from his premises, the said Kumar Shah State. That while Exhibit E in the photocopy related to only one bill of entry, the refund in respect of which was in the amount of Rs. 28,609.05, Exhibit E to the original writ petition covered 106 bills of entry the refund whereon was in the sum of Rs. 14,83,730.22. It was intended that after the substitution of Exhibition E in, and alteration to the body of the original petition, the original with petition would be refund to the record of the court, but when the said Kumar Shah shifted resident it got mixed up with other documents and remained with him so that it was seized by the Customs authorities. Asked how he had managed to get the original writ petition from the courts record the said Kumar Shah stated that he had got it through Mr. Kantawala. This court's staff would not have entertained him directly so he had to make the approach through the Advocate. As the said Kumar Shah used to received large amount from the Customs authorities by way of substitution of exhibits, it was felt that a substation of the exhibits in the original writ petition filed in court would help him and the Advocate, should the fraud be detected by the Customs authorities. Mr. Kantawala was aware that he, the said Kumar Shah, had been substituting the exhibits of the original writ petitions filed through Mr. Kantawala and, therefore, Mr. Kantawala had agreed to help him. The original writ petition had been received by the said Kumar Shah from Mr. Kantawala. The said Kumar Shah had requested Mr. Kantawala to get the original writ petition from the court. He did not know how Mr. Kantawala had obtained it. The photocopy that he had obtained of the original writ petition had been obtained unofficially with the help of Mr. Kantawala's staff. Both the original writ petition as well as the photocopy had been received by the said Kumar Shah from Mr. Kantawala. The said Kumar Shah had taken Mr. Kantawala into confidence and told him that as he had already substituted the exhibit in the copy of the writ petition submitted to the customs authorities for obtaining a higher amount of refund than that covered by this writ petition, he wanted to make a similar substitution of the exhibit in the original writ petition and make suitable alterations in the body thereof. Mr. Kantawala knew that the said Kumar Shah had been getting larger amounts of refunds from the customs authorities by way of substituting exhibits, and part of the amount that was so received by the said Kumar Shah was paid to Mr.

Kantawala in a lumpsum. After substitution of the exhibits the original writ petition was to be returned to the court's record through Mr. Kantawala.

6. The original writ petition recorded from the premises of the said Kumar Shah was tendered by Counsel on behalf of the authorities. We have impounded it and ordered it to be kept in safe custody of the Prothonotary and Senior Master.

7. The said Harshad Shah was present before us with his Advocate when the appeal was heard. What he stated substantially conformed with the statement of the said Kumar Shah, namely, that he had nothing to do with the firm of M/s. B. Sorabjee and the filing of this writ petition. We asked him to give us sample of his signature and, upon comparing them to the signature upon the original writ petition, we were satisfied that the signature upon the original writ petition was not that of the said Harshad Shah.

8. We must mention that in an order regarding other writ petitions (Writ Petition Nos. 2377 of 1987 to 2392 of 1987) Variava, J. noted the involvement of the said Kumar Shah in obtaining refunds fraudulently from the Customs Authorities. Variava, J. directed the issuance of a notice of the said Kumar Shah to show cause why a prosecution should not be launched against him under Sections 191, 209 and 210 of the Indian Penal Code. That notice was made absolute on 14th December, 1987 by Mrs. Manohar, J. she also directed the issuance of a notice in respect of criminal contempt to the said Kumar Shah and to Mr. Kantawala. By an order dated 19th April, 1988 Pratap, J. held that though Mr. Kantawala did not come out of the affair with honour, he could not be denied the benefit of reasonable doubt. Mr. Kantawala had also tendered his unconditional apology. In view of this, the suo motu contempt notice against him was allowed to be dropped.

9. It is, upon this record, clear that the refund could have been claimed by M/s. B. Sorabjee but that M/s. B. Sorabjee has not claimed it by this writ petition. Therefore, the order under appeal must be set aside.

10 Since it is also clear that M/s. B. Sorabjee has not received the refund amount or any part thereof pursuant to the order under appeal the application of the Customs authorities that M/s. B. Sorabjee should be asked to deposit the refund

amount cannot be granted. The Customs authorities that M/s. Sorabjee should be asked to deposit the refund amount cannot be granted. The Customs authorities are free to adopt such proceedings as are in law available to them to recover the refund amount from the said Kumar Shah, who, on his own admission, has received the same.

11. The said Kumar Shah has an used the judicial process. Having arranged for the import of the goods upon the licence of M/s. B. Sorabjee and for the sale thereof, the said Kumar Shah knew the bill of entry's particulars. Upon that alone was this writ petition based. The said Kumar Shah got this writ petition filed. He gave to the Advocate, Mr. Kantawala, the false information that M/s. B. Sorabjee was the sole proprietary concern of the said Harshad Shah as also the false address for it. Since we are satisfied that the signature upon the original writ petition is not that of the said Harshad Shah, someone, whether the said Kumar Shah or another, forged the signature upon, and falsely verified the original writ petition. Having obtained an order thereon which directed the Customs authorities to refund the amount due 'as per Exhibit 'E' to the petition', the said Kumar Shah proceeded to recover from the Customs authorities the sum of Rs. 28,609.05 being the refund amount mentioned in Exhibit 'E'. To receive the cheque for the same, the said Kumar Shah had a rubber stamp bearing the name of M/s. B. Sorabjee prepared. He affixed the stamp upon the Customs receipt and signed it, presumably forging the signature of the said Harshad Shah. The said Kumar Shah then substituted Exhibits E in the copy of the writ petition submitted to the Customs authorities. As substituted, Exhibit E stated that Rs. 14,83.730.22 was due against 106 bills of entry. The complicity of members of the staff of the Customs authorities in the substitution is evident. Whether or not the said Kumar Shah received the said amount of Rs. 14,83,730.22 is not clear the record before us. Having effected the substitution in copy of the writ petitions submitted to the Customs authorities, the said Kumar Shah started to cover his tracks. He obtained the original writ petitions from the court's record. It is the said Kumar Shah Statement that Mr. Kantawala obtained it for him. Whether or not this is correct, the complicity of the staff of this court of this court is evident. The intention was to effect a substitution of Exhibit E in the original writ petition so that it was in accord with the substituted Exhibit E in the Customs copy of the writ petition. Having

regard to the fact that the order on the writ petition required amount of the amount due 'as per Exhibit E', without setting out what the amount was, and the identity of Exhibit E in the Customs copy of the writ petition and in the original writ petition, both as substituted, detection of the fraud was rendered unlikely.

12. There is, with respect, a lesson in this for judges : that, so far as is possible, the decrees and orders they pass should set out what the amount is that is decreed or ordered to be paid. We live in perilous times when the court's records are no longer considered sacrosanct either by the litigant or by the court's employees. Leaving the amount that is decreed or ordered to be paid to be determined by reference to an Annexure to the plaint or petition or to some other document is, as we have discovered, fraught with the risk that the judicial process may be subverted.

13. We direct the Prothonotary and Senior Master to issue to the said Kumar Shah a notice to show cause why he should not be prosecuted under the provisions of Sections 191, 209, 210 and 468 read with 471 of the Indian Penal Code. The Prothonotary shall take the assistance of an Advocate in this behalf. The notice shall require the said Kumar Shah to file a reply thereto within two weeks of the date of service of the notice upon him. The notice shall be returnable on 21st August, 1991.

14. We direct the Prothonotary also to issue to the said Kumar Shah a notice to show cause why he should not be committed for contempt for having prejudiced and interfered with the due course of judicial proceedings and the administration of justice. The said Kumar Shah shall have two weeks from the date of service of the notice upon him to file a reply thereto. The notice shall be returnable on 21st August, 1991.

15. We are horrified that the original papers of this court should have found their way into private premises. There can be no doubt whatever about the complicity of one or more members of this court's staff in this happening. We direct the Additional Prothonotary and Senior Master to forthwith investigate so that the member or members of the staff involved may be identified and proceeded against. He shall make a report as expeditiously as possible and, in any event,

before 21st August, 1991. We direct the Advocate Mr. Kantawala and his staff to render assistance to the Additional Prothonotary and Senior Master in this behalf.

16. It should not be understood, by reason of the fact that we are not taking action against Mr. Kantawala by this order, that we are exonerating him. We are not. We shall consider whether action should be taken against Mr. Kantawala and what that action should be after we have considered the Additional Prothonotary's report.

Order on the appeal accordingly. There shall be no order as to costs. The Prothonotary and Additional Prothonotary shall act on the minutes.

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