Dalip Singh Vs. Union of India and Others

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Court : Delhi

Decided On : May-15-1987

Reported in : AIR1988Delhi169; 1989(43)ELT415(Del); [1988]70STC264(Delhi)

Judge : H.C. Goel and; S. Ranganathan, JJ.

Acts : Gold (Control) Act, 1968 - Sections 71 and 82B; Customs Act, 1962 - Sections 111, 112, 113 and 130; Arms Act - Sections 25; Opium Act; Excise Act - Sections 61; Evidence Act - Sections 25; Constitution of India - Article 20(3)

Appeal No. : Customs Act Case No. 1 of 1987 with Gold Control Case No. 1 of 1987

Appellant : Dalip Singh

Respondent : Union of India and Others

Advocate for Pet/Ap. : Mr. Harjinder Singh

Judgement :

H.C. Goel, J.

1. The facts giving rise to this petition under section 130(3) of the Customs Act, 1962 (for short 'the Act'), briefly stated are that on December 14, 1980, the CIA police staff of Amritsar intercepted one Ramesh Kumar near the house of Dalip Singh, the petitioner, and recovered from his pant pockets 2.075 kg. of silver. The

police party then searched the house of the petitioner and recovered 25 pieces of gold weighing 1.600 kg. including one piece of gold biscuit of foreign origin weighing 10 tolas valued at Rs. 2,16,400, 21 pieces of silver weighing 18.990 kgs. approximately and 150 wrist watches of foreign make valued at Rs. 36,740 from the almirah of the drawing room of the petitioner. The seized goods were handed over to the Customs Department by the police on December 20, 1980. The Customs Officers recorded the statements of the petitioner, his father, Mangal Singh, and his sister-in-law, Smt. Jaswant Kaur, under section 108 of the Act. Smt. Jaswant Kaur stated that the seized gold, silver and the wrist watches were kept by the said Ramesh Kumar, a friend of the petitioner, Dalip Singh, in a gather (package) on the evening of December 13, 1980, that at that time Dalip Singh was not present in the house and that she had allowed Ramesh Kumar to keep the package in the almirah of the drawing room of the house. She further stated that she did not enquire about the contents of the package nor did she have any knowledge about its contents and that she did not inform Dalip singh about Ramesh Kumar having kept the gather there. It was further stated by her that Ramesh Kumar along with the police came to her house the next day, i.e., on December 14, 1980, and took away the gather from the almirah and handed over the same to the police. Dalip Singh, the petitioner, and his father, Mangal Singh, also corroborated the statement of Smt. Jaswant Kaur. Dalip Singh stated that he did not know about the keeping of the gather there and had no concern with the seizure of the gold, silver and the wrist watches. Ramesh Kumar, in his statements dated December 31, 1980, and May 4, 1981, denied having dept. the said goods at the said place on December 13, 1980, and further stated that he had no concern with the goods.

2. The Collector of Customs, Chandigarh, by his order dated July 2, 1983, confiscated absolutely the aforesaid gold and silver, etc., under section 111 and section 113, respectively, of the Act and imposed a penalty of Rs. 3 lakhs on the petitioner under section 112 of the Act. He also held that the said gold was liable to absolute confiscation under section 71 of the Gold (Control) Act, 1968, but since the said gold had already been absolutely confiscated under section 111(d) of the Act, it was not available for confiscation under the Gold (Control) Act and that in case it became available, it would stand absolutely confiscated under section 112

of the Act. The Collector also imposed a penalty of Rs. 1 lakh on the petitioner under the Gold (Control) Act. The petitioner preferred two separate appeals against the said two orders, both dated July 2, 1983, to the Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi. It was urged before the Tribunal that the contraband goods were kept by Ramesh Kumar, that they had also been seized on the pointing out by Ramesh Kumar, that the petitioner had nothing to do with the goods and that his exclusive and conscious possession of the goods was not established. On these averments, it was contended that the two orders of the Collector whereby he imposed the said two penalties on the petitioner, and while he dropped the proceedings against Ramesh Kumar, Mangal Singh and Jaswant Kaur, were illegal. It was submitted that the petitioner ought to have been given the benefit of doubt as was given to his three accomplices. In the alternative, it was submitted that the penalties imposed were highly excessive. The Tribunal, on an appreciation of the material before it, held that the adjudicating officer had correctly fixed the ownership of the goods on Dalip Singh (petitioner) and was justified in holding that the petitioner was the person concerned in acquiring, keeping, concealing or dealing with the goods. It was, however, held that the imposition of penalty of Rs. 3 lakhs under section 112 of the Act was excessive and he reduced the same to Rs. 2 lakhs, however maintaining the penalty of Rs. 1 lakh imposed under the Gold (Control) Act. The petitioner preferred two separate petitions, viz., under section 130(1) of the Act and section 82B of the Gold (Control) Act, seeking reference of six questions each in the two petitions. The following questions were sought to be referred in the petition under section 130(1) of the Act :

'I. Whether the proceedings initiated by the Collector of Customs are void ab initio and a nullity in law because the statements allegedly recorded under section 108 of the Customs Act are not admissible in law, because the First Information Report had been registered with regard to the alleged incident being FIR No. 352 dated December 14, 1980, under section 308 S. Act, 25 Arms Act, 9-1-78 Opium Act, 61-1-14 Excise Act by the Police Station 'A' Division, Amritsar. In view of the fact that the FIR had been registered, the investigation/enquiry made by the customs authorities is hit by section 25 of the Evidence Act and article 20(3) of the Constitution of India. If these statements are excluded, there is absolutely no material to connect the petitioner with the alleged incident.

II. That, on the admitted facts, the seizure was made by the police and not under the provisions of the Customs Act. The provisions of section 123 of the Customs Act would not apply and the Department has failed to prove that this was smuggled gold. The petitioner has denied his connection with the alleged contraband.

III. Whether, on the admitted facts, the Department has been able to prove that there was conscious and exclusive possession of the gold recovered by the police and the petitioner had knowledge and reason to believe that the same was liable to confiscation as required under section 112(b) of the Customs Act

IV. (sic)

V. (sic) Whether the Collector could ignore the statements recorded under section 108 of the Customs Act which was relied upon in the show-cause notice by the Department and could a new case be made out by the Collector which was not even there in the show-cause notice ?

VI. Whether there was legal evidence to connect the petitioner with the alleged contraband recovered by the police ?'

3. The following questions were sought to be referred under section 82B of the Gold (Control) Act, 1968 :

'I. Whether the proceedings initiated under the Gold (Control) Act are void ab initio and nullity in law because there was no statement recorded under sections 63/64 of the Gold (Control) Act, and the statements made under section 108 of the Customs Act are not admissible in law, because the First Information Report had been registered with regard to the alleged incident being FIR No. 352 dated December 14, 1980, under section 308 S. Act, 25 Arms Act, 9-1-78 Opium Act, 61-1-14 Excise Act by the Police Station 'A' Division, Amritsar In view of the fact that the FIR had been registered, the investigation/enquiry made by the customs authorities is hit under section 25 of the Evidence Act and article 20(3) of the Constitution of India. If these statements are excluded, there is absolutely no material to connect the petitioner with the alleged incident.

II. That, on the admitted facts, the seizure was made by the police and not under the Gold (Control) Act and no presumption can be drawn under section 99 of the Gold (Control) Act. The Department having failed to prove that it was primary gold, the petitioner has denied his connection with the alleged gold.

III. Whether, on the admitted facts, the Department has been able to prove that there was conscious and exclusive possession of the gold recovered by the police and the petitioner had knowledge and reason to believe that the same was liable to confiscation as required under section 71 of the Gold (Control) Act

IV. Whether, on the facts and in the circumstances of the case, the petitioner was entitled to the benefit of doubt, when, on the same incident, the learned Collector had given the benefit of doubt to the other co-notices Shri Ramesh Kumar and Sardar Mangal Singh

V. Whether, the Collector could ignore the statement recorded under section 108 of the Customs Act which was relied upon in the show-cause notice by the Department and could a new case be made out by the Collector which was not even there in the show cause notice

VI. Whether there was legal evidence to connect the petitioner with the alleged contraband recovered by the police ?'

4. Both these applications were rejected by the Tribunal by its combined order dated July 3, 1986.

5. The petitioner has now filed these two petitions, one under section 130(3) of the Act and the other under section 82B(3) of the Gold (Control) Act, 1968, for directions to the Appellate Tribunal to state the two cases and to refer the aforesaid questions for the opinion of this court.

6. We have heard Mr. Harjinder Singh, learned counsel for the petitioner, in the two petitions. As regards question No. 1 in the two petitions, it was submitted that an FIR, being FIR No. 352 dated December 14, 1980, had been registered in this

case under section 308 S. Act, under section 25 of the Arms Act, under the Opium Act and section 61 of the Excise Act by the police. That being so, the investigation or the enquiry held by the customs authorities was hit by the provisions of section 25 of the Evidence Act and article 20(3) of the constitution of India and further that if these statements are excluded, there is no material to connect the petitioner with the alleged incident. These submissions were admittedly not made on behalf of the petitioner in either of the two appeals before the Tribunal and the Tribunal had no occasion to deal with them and has not referred to any such submission in its appellate order. That being so, this question does not arise out of the order of the Tribunal and hence there can be no question of the Tribunal being directed to refer any such question. Mr. Harjinder Singh was unable to say anything as to how, under these circumstances, a direction could be given to the Tribunal to refer this question. Same is the position regarding question No. 2 in both the cases. No submissions regarding the facts on which reference on question No. 2 is sought were also made before the Tribunal and they have not been dealt with by the Tribunal. As such, question No. 2 also does not arise out of the order of the Tribunal.

7. Questions Nos. 3 to 6 in the two cases relate to the finding of the Tribunal that the Collector (Customs) was justified in coming to the conclusion that Dalip Singh, the petitioner, was the owner of the contraband goods and that he was the person concerned in acquiring, keeping, concealing and dealing with them. This finding of the Tribunal has been arrived at on an appreciation of the material that was adduced before it and is a finding of fact. No question of law arises out of this finding of the Tribunal. Both the petitions are accordingly dismissed in liming.

8. Petitions dismissed.