Randhir Singh and ors. Vs. Director of Revenue Intelligence

Randhir Singh and ors. Vs. Director of Revenue Intelligence

SooperKanoon Citation : sooperkanoon.com/689011

Court : Delhi

Decided On : Aug-28-1985

Reported in : 1986CriLJ1208; 1985(9)DRJ218; 1985RLR548

Judge : J.D. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 451

Appeal No. : Civil Revision Miscellaneous (Main) Appeal No. 496 of 1985 and Civil Revision Appeal No. 131 of 1985

Appellant : Randhir Singh and ors.;v.P. Verma

Respondent : Director of Revenue Intelligence;mal Singh

Advocate for Pet/Ap. : J.S. Arora,; Harvinder Singh,; Jagat Singh and S.C. Chaw

Judgement :

J.D. Jain, J.

(1) The facts giving rise to the above mentioned petitions succinctly are that acting on a prior information, the officers of Directorate of Revenue Intelligence, New Delhi, intercepted two trucks bearing registration Nos. CHW-4831 and HRN-2341, which had arrived from Junagarh (Gujarat) at Kapashera Terminal Tax Post, Delhi and recovered assorted textiles of foreign origin wholly or mainly made of synthetic yarns. The textiles were recovered from underneath the bags of onions loaded in

the above-mentioned two trucks. Mal Singh-respondent in Criminal Revision No. 131/85 was driving truck No. HRN-2341 while one Harbans Singh was driving vehicle No. CHW-4831. Some other persons, namely, Mohan Lal @ Sona, Rajender Parkash Sharma, Jagdish Singh etc. were also present in those trucks. However, the occupants of the aforesaid trucks could not produce any evidence documentary or otherwise showing lawful import, acquisition, possession etc. of the goods of foreign origin mentioned above. The value of the said goods was estimated at Rs. 33,87,740.00 approximately. The goods were, thereforee, seized under Section 110 of the Customs Act, 1962 (hereinafter referred as 'the Act') on the reasonable belief that the same were liable to confiscation under the provisions of the Act. Subsequently, a complaint was instituted against Rajender Parkash Sharma, Mal Singh and Harbans Singh under Section 135(1)(b)(i) of the Act.

(2) During the course of inquiry in the complaint, Randhir Singh petitioner inCr. M. (M) 496/85 made an application for release of truck No. CHW-4831 claiming to be the registered owner thereof. He, inter alia, contended that he had no knowledge whatsoever of the smuggled goods having been loaded in the said truck. He further pointed out that the truck had been hypothecated with United Commercial Bank, Chandigarh Branch, against an advance amount ofRs.l,89,000.00 and most of the said amount was still due from him. So, he prayed for release of the truck on Superdari basis. His application was vehemently opposed by the Directorate of Revenue Intelligence. It was eventually rejected by the Additional Chief Metropolitan Magistrate, New Delhi, vide order dated 20th April 1985. The learned Additional Chief Metropolitan Magistrate observed in the course of the order that the truck in question had been involved in smuggling activities in a very clandestine manner and textiles worth Rs. 34,00,000.00 (thirty four lakhs) approximately were allegedly recovered. The second application for release of the truck too was rejected vide order dated 3rd May 1985. Hence, he has filed Cr. M (M) No. 496/85 against the aforesaid order of rejection.

(3) Mal Singh-respondent in Cr. R. No. 131/85 too applied for release of truck No. HRN-2341 claiming to be its registered owner. The said application too was opposed by the Directorate of Revenue Intelligence but he was lucky enough to

get a favorable order and the said truck was directed to be release to him on Superdari on his Furnishing Supercargo Nama in the sum of Rs l,50,000.00 (one lakh and fifty thousand only) till the pendency of the criminal proceedings. This time the learned Additional Chief Metropolitan Magistrate observed that :

'No doubt the amount of the goods recovered is very huge, yet in my view a person cannot be deprived of his source of livelihood especially when the trial is' likely to take pretty long time.........'

Hence, the Directorate of Revenue Intelligence has filed Criminal Revision No. 131/85 against the said order.

(4) 'SINCE common questions of law and fact are involved in both the above petitions, I propose to dispose of the two by this common order.

(5) The learned counsel for the Directorate of Revenue Intelligence has canvassed with great fervour that,a-criminal court has no jurisdiction whatsoever to pass. an order for interim custody of any goods or.a vehicle used, , conveyance.which .have been .seized under Section. 110. of the Act; on the reasonable belief that they are smuggled goods because they are liable to confiscation under the provisions of the Act and the only authority competent to retain the custody of seized goods/vehicle are the officers competent to hold adjudication. proceedings and pass order of confiscation. besides, imposing penalty etc as envisaged in the Act itself. In this context he has .invited my attention to Sections 110. 115, 124 & 125 of the Act. Section 110 deals with seizure of goods, documents and other things by a proper officer .it he has reason to believe that any goods are 'liable' to confiscation under the Act.. Sub-section (2) thereof provides that where any goods are seized under Sub-section (1) and no, notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose, possession they were seized. ' However; '-under the proviso to Sub-section(2)'the aforesaid period of six months may 'on sufficient cause being shown-be 'extended by the Collector of Customs for a period not exceeding-six months. In other words the total period during which 'the seized goods can be retained by the officers of the Customs Department comes to one year where no notice under Section 124 of the Act is under Section

111 provides for confiscation of improperly, imported /smuggled goods 'etc. enumerated therein. Section 115 deals with' the confiscation of conveyance Under 'Sub-section (2) there of any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled' goods is liable to confiscation unless the owner of' the conveyances or animal proves that. it was 'so.used without the knowledge or ' Connivance' of the' owner himself, his agent if any and the person in charge of the conveyance.'Section 124 provides.for issue of show cause notice before order for confiscation of goods etc or imposition of penalty is made It is obviously designed to ensure ' that the principle of natural justice is followed before. any order of confiscation off the smuggled.goods or conveyance used for carriage of smuggled goods is made. Section 125 provides that whenever confiscation of any goods is authorised under the Act, the officer adjudging it may give an option to the owner of the goods to pay in lieu of confiscation such fine as the said officer thinks fit ln other words, it embodies what is commonly called the doctrine of redemption of goods liable to confiscation

(6) The submission made by Shri J.S. Arora,the learned counsel for the Directorate of Revenue Intelligence, precisely is that a combined reading of the above provisions would clearly bring out that if a Customs Officer duly authorised has reason to believe that any goods are liable to confiscation under the Act he can seize those goods and Section 124 lays down the procedure which has to be followed by the authority before' confiscating the goods or imposing a penalty. Since Section 115(2) 'of the Act renders a conveyance or animal used as a means of transport for smuggling of goods or for the carriage of any smuggled goods liable to confiscation, the cumulative effect of. these Sections would be that a Magistrate has no jurisdiction to make orders in respect of goods seized by the Customs Officers which are liable to confiscation under the provisions of the Act.

(7) Shri Harjinder Singh, the learned counsel for the petitioner-Randhir singh,has on the other hand, canvassed quite vigorously that the customs Officers having already filed a complaint for prosecution of the persons allegedly found in possession of the smuggled goods as well as the trucks used as conveyance, it would be tantamount to giving the Magistrate concerned control over the seized, goods and as such he would have power to grant interim custody to the seized

goods in order to ensure either proper preservation and safety pending final disposal of the case either before the Customs authorities in adjudication proceedings Or before the criminal court. In the context, he has adverted to Section 4 of the.Code of Criminal Procedure hereinafter referred to as the Code'), which provides for trial of offences under the Indian Penal Code (for Short IPC) and other laws. Sub-section (1) of Section 4 deals with' offences under Indian Penal Code while Sub-section (2) thereof provides that all offences under any other law i.e. other than the offences under the Indian Penal Code shall be investigated, inquired into) 'tried and otherwise dealt with according to the same provisions viz. the provisions of the Code, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It would follow as a necessary corollary that where any, special statute prescribes offences and simultaneously specifies the manner or place of investigating, inquiring into, trying or others wise dialing with such offence, the provisions of the Code shall not. apply to that extent. So, it is to be seen if any provision to the contrary is made in the Act which may indicate that an offence under the Act is not to be investigated, inquired into, tried Or otherwise dealt with under the Code. Evidently the power of seizure of smuggled goods or any conveyance used for carriage of such goods etc. vests in a proper officer under the Act. The term 'proper officer' means in relation to any functions' to be performed under the 'Act, the officer of Customs who is assigned those functions by the Board or the Collector of Customs. thereforee, once' the goods' are properly seized, the power to retain custody of such goods and order their confiscation or release under the provisions of Section 125 of the Act would naturally vest in the ' adjudicating authorities under the 'Act, as specified in Section 122' of the Act. Hence, there can be no manner of doubt that a criminal court will exercise only such powers which do not, in any manner, impinge upon the authority of 'the Customs Officers in relation to goods seized by them. It-is, however, conceded that there is no provision in the Act for handing over the seized property to the owner pending adjudication under section 124 & 125 or pending trial of the accused in a court of law under Section 135 of the Act. Hence, reliance is placed by Shri Harjinder Smgh, the learned counsel for the petitioner-Randhir Singh, on Section 451 of the Code which empowers a criminal court to make order for custody and disposal of property pending trial. It reads as under :

'When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial..-...... Explanationn-For The purpose of this section, 'property' includes- (a) property of any kind or document which is produced before the Court or which is in its custody.' (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.'

On a plain reading of Explanationn (b) above, it is manifest that the trucks in question allegedly used for transporting the smuggled goods in a clandestine manner would fall within the ambit of 'property' as defined therein. However, the vital question which falls for consideration is whether the criminal court would have power to order its interim custody until such property is produced before it because on its own wording this Section will apply only where property is produced before a court during any inquiry or trial. In other words, the Magistrate will have no jurisdiction to dispose of the property which is never produced before him. The submission of Shri Harjinder Singh, however, is that the moment the Customs Officers instituted the complaint in respect of goods seized by them, the seized goods including the trucks in question became custodia legis. It would be all the more so when the complainant also filed Along with the complaint the Panchnama vide which the trucks in question were seized. Thus, according to him, on taking cognizance of the complaint the Magistrate would have seisin of the case and he would be deemed to be in control and custody of the case property so as to make appropriate orders regarding the interim custody of the seized goods including the trucks pending the conclusion of the inquiry/trial. However, on a consideration of the matter, I do not feel persuaded to subscribe to this view.

(8) In Remo Paul Altoe v. Union of India, : 1977 CriLJ1933 , an Assistant Collector of Customs filed a complaint in the court of the Chief Metropolitan Magistrate, Calcutta, alleging the inter alia, that the appellant had brought in the foreign currency seized from his possession in violation of Section 13(1) of the Foreign Exchange Regulation Act and was, thereforee, liable to be convicted under

Section 135 of the Customs Act. The Metropolitan Magistrate convicted the appellant under the said Section and sentenced him to pay fine. The Magistrate further ordered that 'the goods involved in this case are confiscated to the State if not already confiscated'. The order of confiscation was presumably made under Section 452(1) of the Code.

(9) The aforesaid order of confiscation was challenged by the appellant on the ground that the criminal court had no jurisdiction to pass an order of confiscation under Section 452(1) of the Code which was inapplicable to such goods in view of the provisions of the Act which provide that the contraband goods shall be liable to confiscation and also lays down a detailed procedure for the confiscation of such goods. The Supreme Court observed that it Was not necessary to go into the question as to whether the Customs authorities and the criminal court had concurrent jurisdiction in the matter as their Lordships thought that the appeal should succeed On a short point. Their Lordships then proceeded to say :

'An order for the disposal of any property Under Section 452(1) of the Criminal Procedure Code is necessary 'where the property remains to be disposed of by the Court after the inquiry or trial is Over. In the present case it appears that the foreign currency Seized from the appellant was not produced before the Magistrate and was not in the custody or control of the court when the order of confiscation was made. There was thus no necessity or occasion for the court to make an order for disposal of any property ; the order of the Magistrate that the goods involved in the case are confiscated 'if not already confiscated' clearly shows that he was not aware what had happened to the goods which Were in the control of the Customs authorities It is true that the foreign currency seized from the appellant's possession Was property in respect of which an offence was committed, but this fact alone did not call for an order under Section 452(1) in the circumstances of the case, and the order passed, besides being unwarranted, is likely to create complications if in respect of the foreign currency a proceeding under the Customs Act is pending or the Customs authorities have made any order with which the Magistrate's order is inconsistent.'

It is thus crystal clear that the Supreme Court did not consider the mere fact of the foreign currency seized by the concerned authorities under the foreign Exchange Regulation Act being case property in respect of which the alleged offence was committed to be enough to empower a criminal court to pass on order regarding its disposal under Section 452(1) of the Code. The Said case stood On a much better footing than the one in hand, in that the criminal court therein had not only taken seisin of the case but had also decided it finally. Even then the mere factum of the seized goods being the case property regarding which offence had been committed was not considered as tantamount to production of the goods before the Magistrate. It may be noticed here that whereas Section 451 deals with Only property which is produced before any criminal court during any inquiry or trial, Section 452 covers any property or documents produced before the court or in the custody of the court or regarding which any offence appears to have been committed. Thus, despite the wider amplitude of Section 452 the Supreme Court expressed the view that production of such property in court is a must before the court is vested with the necessary power to pass an order under Section 452(l) of the Code. It is thus manifest that the power of a criminal court to make orders as to the temporary custody or production of property is limited by the language of the Section to property which is produced before it. The mere fact that the court is seized of the case after having taken cognizance of the complaint would not per se amount to production of the seized goods/property before the court. In , other words, the Magistrate will have no jurisdiction to make an order regarding, interim custody of the property which is never produced before .him nor the Magistrate will have jurisdiction to direct disposal of the property in the absence of due production of the subject matter of criminal case in his court. It may be that. in some cases such property may not be capable of physical production and only symbolical production may be enough to confer the necessary jurisdiction on the criminal court but that is not so in the instant case. The fact remains that. the trucks in question were seized by the Customs authorities in exercise of the statutory powers conferred on them by the Act and as such mere filing of the complaint in court would not divest them of the custody and , Control of the same so as to vest the same in the criminal court within the meaning of Section 451 of the Code which will have no application unless the property is produced before the court during the inquiry or trial.

(10) In this view of the matter, thereforee, the argument of Shri Harjinder Singh that the trucks in question may become a mere junk and total loss in case they are permitted to remain the control and custody of the Customs authorities for lack of proper up-keep and care dwindles to insignificance. Obviously the intention of the legislature is that the Customs authorities must bestow proper case and attention to the goods like the present seized by them so long as they remain in their custody and control. It may be, however, made clear that it shall be open to the persons having any right and interest in the trucks in question as registered owners thereof or otherwise to apply afresh for interim custody, if and when these trucks are produced in the course of inquiry or trial.

(11) The upshot of the whole discussion, thereforee, is that the impugned order dated 18th July 1985 of the learned Additional Chief Metropolitan Magistrate directing that interim custody of the truck bearing No. HRN-2341 be delivered to Mal Singh-respondent in Criminal Revision No. 131/85 is hereby quashed whereas the other petition (Cr. M (M) 496/85) filed by Randhir Singh is dismissed.