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Paramjit Singh Vs. Commissioner of Customs and ors.

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Court : Delhi

Decided On : Apr-16-2002

Reported in : 2002VIIIAD(Delhi)104; 98(2002)DLT116; 2002(64)DRJ200; 2002(82)ECC547; 2002(143)ELT485(Del)

Judge : S.K. Agarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397 and 401; [Customs Act, 1962](#) - Sections 108, 110 and 135(1); Gold (Control) Act, 1968 - Sections 66 and 85; [Constitution of India](#) - Article 20(3); Evidence Act - Sections 30

Appeal No. : Crl. R. No. 181/2002

Appellant : Paramjit Singh

Respondent : Commissioner of Customs and ors.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : P.L. Dhir, Adv

Disposition : Petition dismissed

Judgement :

S.K. Agarwal, J.

1. This revision petition under Sections 401/397 of the Code of Criminal Procedure, 1973 is directed against the Order dated 21st February, 2002 framing charge against the petitioner under Section 135(1)(b) of the Customs Act.

2. I have heard learned counsel for the petitioner and have been taken through the record.

3. Facts in brief are that on 30th August, 1986 officers of the Customs Preventive Branch, Customs Collectorate, New Delhi intercepted one truck No. DEL-1885 near Punjab & Sind Bank at Roshanara Road, Delhi; Harjeet Singh was the Driver and Nishan Singh was the cleaner in the said truck; as a result of search, the Customs Officers detected one cavity made of wood in the hollow of the right hand side of rear seat behind the driver's seat of the cabin; the search of the said cavity resulted in recovery of 124 pieces of foreign marked gold biscuits, six slabs of gold and ten bars (rods) of gold; and they were seized under Section 110 of the [Customs Act, 1962](#) and Section 66 of the Gold (Control) Act, 1968. The recovered gold collectively weighed 27.17 kgs. Valued at Rs.57,05,815/-; the driver and the cleaner admitted the recovery and seizure of the gold; Nishan, cleaner, in his statement stated that he did not know anything; only Pappu (accused No.2-driver) of Paramjit Singh-petitioner could tell about the details of the seized articles; and that he did not know to whom the gold was to be delivered in Delhi. The driver and the cleaner were held guilty by judgment and order dated 31st October, 1987 under Section 135(1)(b) of Customs Act and were sentenced to undergo RI for one year and three months and to pay a fine of rupees ten thousand each; under Section 85 of the Gold (Control) Act and were sentenced to undergo RI for two months and to pay a fine of rupees five thousand. A separate complaint was filed against the petitioner. At the pre-charge stage, the prosecution examined four witnesses. Learned trial court vide impugned judgment and order dated 21st February, 2002, on the basis of material on record, held that a prima facie case under Section 135(1) of Customs Act against the petitioner is also made out on the ground that the petitioner was concerned in carrying, keeping, dealing with or knew or had reasons to believe the recovery and seizure of 27.17 of gold from a secret cavity from the truck No. DEL 1885. This order is under challenge.

4. Learned counsel for the petitioner vehemently argued that the impugned order framing the charge is illegal and improper and the same has resulted in miscarriage of justice; there is no iota of evidence against the petitioner; trial court did not apply its mind; statement of Nishan Singh, Surender Nath and Trilok Singh made before the customs authorities could not be acted upon as they were not admissible in evidence, therefore, the order of framing of charge should be quashed. In support of his submissions, learned counsel placed reliance on the observations made in Vipin Kumar v. Department of Customs, 1988 DLT 541. I am unable to agree.

5. As per settled law, statement of any person called for enquiries during investigation by the authorities under the Customs Act, can be recorded by the customs officer. Such statement is admissible in evidence. Protection under Article 20(3) of the [Constitution of India](#) is not available at that stage (see Poolpandi et.etc. v. Superintendent, Central Excise and others etc.etc., : 1992 CriLJ2761). The confession of the co-accused in the case would also be admissible by virtue of Section 30 of the Evidence Act. As per statement of witnesses, the petitioner absconded after the seizure. His conduct would be relevant.

6. As per the allegations the petitioner was the owner of truck No. DEL 1885; from a secret cavity in this truck 27.17 kgs. of gold worth more than Rs.57.0 lacs was recovered; the driver and the cleaner in their statement recorded under Section 108 of Customs Act named the petitioner; and after the seizure petitioner absconded. All these circumstances show, prima facie, case for framing of the charge. At the stage of framing of charge, evidence is not required to be appreciated, even grave suspicion is enough. Reference in this regard can be made to Supreme Court decisions in (i) Munna Devi vs. State of Rajasthan and Anr. 2001 (8) SC 172, (ii) State of M.P. v. S.B. Johari & Ors., 2000 (1) Crimes 165 (SC), (iii) Ram kumar Laharia v. State of Madhya Pradesh and Anr., 2001 1 AD S.C. 54, (iv) Om Wati v. State 2001 SCC 685.

7. For the foregoing reasons, I find no merit in the petition. The same is dismissed. Any observation made herein shall not affect merit of the case during trial.