Khadeeja Vs. District Collector

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Court : Kerala

Decided On : Feb-20-2006

Reported in : 2006(2)KLT654

Judge : K.S. Radhakrishnan and; K.T. Sankaran, JJ.

Acts : Customs Act, 1962 - Sections 2(39), 8(1), 28B, 111, 112, 142, 142(1) and 142(C); Kerala Revenue Recovery Act - Sections 32 and 69(2); Foreign Exchange Regulation Act, 1947 - Sections 23(1A); Gold (Control) Act - Sections 55 and 74; Customs (Attachment of Property of Defaulters for Recovery of Government Dues), Rules 1995 - Rule 28

Appeal No. : W.A. No. 1801 of 2005

Appellant : Khadeeja

Respondent : District Collector

Advocate for Def. : John Varghese, Assistant Solicitor General and; Lakshminarayanan, Sr. Govt. Pleader

Advocate for Pet/Ap. : T.M. Sreedharan, Adv.

Disposition : Petition dismissed

Judgement :

K.S. Radhakrishnan, J.

1. The question that is posed for consideration in these cases is whether the amount of penalty could be recovered under Section 142 (1) (c) (i) of the Customs Act read with the Kerala Revenue Recovery Act against the personal properties left behind by the defaulters for an offence of smuggling which is against the national interest?

2. Petitioners in O.P. Nos. 21354 of 1999 and 28882 of 2002 are the son and daughter of one late Kallatra Abdul Khader Haji and the petitioner in O.P.No. 20917 of 1999 is the wife of one late M.B. Moosa. The reliefs sought for in all the Original Petitions are identical. Petitioners have sought for a declaration that they are not liable to pay the penalty due from their predecessors' interest and that the movable and immovable properties are not liable to be proceeded with for the recovery of the amounts due from late Abdul Khader Haji and Moosa respectively.

3. Customs Authorities had intercepted a fishing boat on 22.3.1974 from Neeleswaram coast with 86 silver ingots said to be illegally transported from Neeleswaram to a foreign country. Enquiry conducted had revealed that husband of the petitioner in O.P.No. 20917 of 1999 by name Moosa and father of the petitioners in O.P.Nos. 21354 and 28882 of 2002 by name Kallatra Abdul Khader Haji were involved in the illegal transportation of silver ingots and were found guilty of offence under Section 111(d) of the Customs Act, 1962. Goods were confiscated and penalty of Rs. 5 lakhs was imposed on Kallatra Abdul Khader Haji and Rs. 3 lakhs on M.B. Moosa.

Appeals were filed before the Central Board of Excise and Customs against the original order C. No VIII/10/9/74 Cus. Adj. dated 18.8.1977 passed by the Collector of Customs and Central Excise and the appeals were rejected by the appellate authority. Appeals Nos. 398 to 408 preferred against the above mentioned order before the Central Board of Excise and Customs. New Delhi were also dismissed as per order dated 21.2.1980. Relevant portion of the order reads as follows:

As regards Kallatra Abdul Kader Haji, the Board observes that the plea that there has been no unauthorised export is belied by the facts relating to the seizure. The plea of duress is also not tenable. His statement together with that of others, his interception in a hotel (away from his place of residence) where he had booked under another names, the use of his boat etc. clearly go against this. Therefore, he has been correctly penalised and his appeal is rejected.

As regards the appellant Shri M.B. Moosa, the Board observes that the plea that the boat carrying the silver was proceeding towards the coast is belied by the facts relating to the seizure. It is quite clear that unauthorised export was being effected when the goods were seized. The role of the appellant in organizing the export has been clearly established and he has been correctly penalised. His appeal is accordingly rejected.

Proceedings initiated for imposing penalty have therefore become final. Customs Authorities had sent several notices to the above mentioned persons for remitting the penalty imposed on them. Penalty amounts were not paid. Later attempts were made by the Customs Authorities to initiate action under Section 142(1)C (i) of the Customs Act to recover the amounts from the properties owned by them as if it were arrears of land revenue. The Assistant Collector, Special Customs Preventive Division then issued a demand notice in Form No. 24 dated 4.7.1978 under Section 69(2) of the Revenue Recovery Act and directed the District Collector for Customs to collect the penalty as if it were arrears of public revenue due on land. Notice dated 18.8.1979 was also issued to Moosa to remit the amount of penalty failing which it was ordered that the amount would be recovered through revenue recovery under the Revenue Recovery Act. Further we also notice that the Assistant Collector, Special Customs Preventive Division, Calicut had initiated certificate action against the defaulters, vide certificate Nos.8 to 11/78, 13/78, 4/78, and 5/78. We may in this connection refer to Customs (Attachment of Property of Defaulters for Recovery of Government Dues), Rules 1995. Chapter II deals with the procedure for attachment of property. Chapter III deals with the procedure for sale of property. Rule 28 states that if any time after the certificate has been issued by the Assistant Commissioner of Customs or Deputy Commissioner of Customs, the defaulter dies the proceedings under the rules may be continued against the legal heirs of the defaulter. So far as the present case is concerned, the Department is not proceeding against the legal heirs, but against the assets of the defaulters in the hands of the legal heirs.

4. The Customs Authorities were not made known of the death of Moosa and Kallatra Abdul Haji. Moosa died on 5.1.1992 and Kallatra Haji died on 28.2.1993. Their properties were bequeathed to the legal heirs. Department has got definite information that the properties in Ajanoor Panchayat, Hosdurg Taluk covered in re-survey Nos. 268/1 Pt. 1.00 acre, in R.S. 265/2 Pt. 1.00 Acre, in R.S. No 261/4 0.06 Acre and in R.S. No 300/2 1.33 acres totalling to 3.39 acres belonged to Moosa, the late husband of the petitioner in O.P. No. 20917 of 1999. Customs Authorities also got information that the properties comprised in R.S.No 53/1 and R.S.No 53/2 Pt. having 0.43 acres and 0.22 acres of land respectively belonged to deceased Abdul Kader Haji.

5. Customs Authorities took steps for the recovery of the penalty amount due to the department by attachment and sale of the properties belonged to Jate Moosa and Late Abdul Khader Haji through the Tahsildar, R.R. Kasargode. Petitioners being legal representatives of Moosa as well as Abdul Khader Haji are aggrieved by the steps taken for recovery of the amount and have approached this Court with these Writ Petitions. Learned single Judge though earlier dismissed O.P. No 21354 of 1999 by judgment dated 9.1.2002 holding that if the petitioner had inherited any property from his father to the extent of the value of that property, recovery can be proceeded with. Later petitioner filed R.P.No. 830 of 2002. Learned single Judge reviewed the judgment, allowed the review petition and posted the O.P. for hearing.

6. O.P. No. 28882 of 2002 filed by the daughter of Abdul Khader Hajee came up for hearing before another learned Judge on 21.10.2002 and following the original judgment dated 9.1.2002 in O.P. No 21354 of 1999, Original Petition was dismissed. Aggrieved by the same WA No. 2840 of 2002 was filed. O.P. No 20917 of 1999 filed by the wife of late Moosa came up for consideration before the learned single Judge and the Original Petition was dismissed on 14.3.2005 against which W.A. No 1801 of 2005 was filed. Since common questions arise for

consideration in all these cases, we posted all the cases together.

7. We heard Sri T.M. Sreedharan, counsel appearing for the writ petitioners and also Sri John Varghese, Asst. Solicitor General for the Department.

8. Sri T.M. Sreedharan submitted that on the death of the offenders Department is not legally entitled to recover the amount from the legal heirs personally as well as against the properties inherited by the legal heirs.

Counsel submitted that the liability is quasi criminal liability and is the personal liability of the offender, consequently legal heirs are not liable for the personal liabilities under their personal law. Counsel made reference to the decision of the Calcutta High Court in Tarak Nath Gayen and Ors. v. Customs, Excise and Gold Control Appellate Tribunal : 1987(31)ELT631(Cal) . Counsel also submitted that proceedings initiated by the State revenue recovery authorities under the Kerala Revenue Recovery Act are not in accordance with the Customs (Attachment of Property of Defaulters for Recovery of Government Dues) Rules 1995. Counsel also raised a contention that the properties of the deceased have already been vested in the legal heirs under Shariath Law free from encumbrances. Counsel also submitted that penalty was imposed as early as in the year 1977 and no action has been taken against the defaulters or against their property for the last so many years and therefore there is no justification in initiating the proceedings against the properties left behind by the deceased defaulter.

9. Sri John Varghese, Assistant Solicitor General appearing for the department on the other hand contended that the Department had initiated proceedings against the defaulters when they were alive and since they are no more Department has got the legal right to recover the amount from their properties which have been inherited by the legal heirs. Counsel submitted that the Department has not taken any action personally against the legal heirs but only against the properties of the defaulters. Counsel submitted that the Department could invoke the provisions of Section 142(i)(C)(i) of the Customs Act to recover the amount from the properties of the defaulters as if it were arrears of land revenue.

10. The offence committed by the deceased Moosa as well as Kallatra Abdul Khader Haji was an economic offence, that is, smuggling, within the meaning of Section 2 (39) of the Customs Act. Section 111 of the Customs Act deals with confiscation of improperly imported goods etc. Section 112 of the Customs Act deals with the imposition of penalty following confiscation under Section 111 of the Act. Several steps were taken by the Department for recovery of the penalty imposed on Moosa as well as Abdul Khader Haji after finalisation of confiscation and penalty proceedings, but were of no avail. Consequently steps were taken to recover the amount invoking the provisions of Section 142 (i)(C)(1) of the Customs Act. Relevant portion of the said provision is extracted below for easy reference.

142. Recovery of sums due to government.--

(1) Where any sum payable any person under this Act including the amount required to be paid to the credit of the Central Government under Section 28B is not paid,-

(a) xxx xxx xxx

(b) xxx xxx xxx

(c) if the amount cannot be recovered from such person in the manner provided in Clause (a) or Clause (b)-

(i) the Assistant Commissioner of Customs or Deputy Commissioner of Customs may prepare a certificate signed by him specifying the amount due from such person and send it to the Commissioner of the District in which such person owns any property or resides or carries on his business and the said Commissioner on receipt of such certificate shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue; or' Assistant Collector, Special Customs Preventive Division had made requisition to the District Collector, Calicut vide C.No VIII/10/63/74 dated 4.7.1978 wherein it was specifically stated that the proceedings are initiated against the properties of Kallatra Abdul Khader Haji under the Kerala Revenue Recovery Act as if it were arrears of public revenue. Customs Authorities have also invoked Section 142 (i)(C)(1) of the Act for recovery of the amount from the properties owned by the defaulter as if it were arrear of land revenue. Invoking the power under Section 32 of the Kerala Revenue Recovery Act the Tahsildar (R.R.), Kasargode had attached the properties belonging to late Kallatra Abdul Khader Haji. Customs Authorities are taking steps for recovery of the penalty amount not from the legal heirs but from the properties left behind by the defaulters. Contention was raised by the legal heirs stating that the authorities cannot proceed against the properties inherited by them from the defaulters and no recovery proceedings can be initiated under Section 142 of the Customs Act or under the provisions of the Kerala Revenue Recovery Act. In our view, the above contention cannot be sustained in view of the Bench decision of this Court in Devi and Ors. v. State of Kerala 1977 KLT 781. Question arose in that case was whether coercive proceedings for recovery of the amount can have operation against the legal representatives of the deceased person for default occasioned by the deceased. The Bench followed the decision in Janaki v. State of Kerala 1976 KLT 182 wherein the learned Judge held as follows:

In law, a legal representative is not a different person from the deceased, but only continues the persona of deceased. In this case the arrears due from the deceased are sought to be recovered from his legal representative who continues the persona of the deceased. There is no flaw or infirmity in the proceedings thus started.

We are therefore of the view, when the sum is payable by any person and the same is sought to be recovered from his property as if it were land revenue, the mere fact that defaulter is no more, the proceedings will not abate and the properties inherited by the legal heirs could be proceeded with since recovery proceedings are not directed against the legal heirs but against the properties left behind by the defaulter.

11. Provision regarding confiscation of goods under the Customs Act is a penalty in rent enforceable against the goods while the personal penalties under Section 112 and other provisions of the Act are penalties in personam enforceable against the person concerned. This legal provision is well settled by the decision of the

Apex Court in Union of India v. Mustafa & Najibai Trading Company : 1998(101)ELT529(SC) . Goods which are the subject matter of the illegal transportation were already seized under Section 111(d) of the Customs Act and were confiscated. Penalty proceedings were later initiated against the offenders under Section 112 of the Act which are in the nature of penalty in persona and can be enforced against the person concerned. Principle of mens rea has no application to economic offences. Apex Court in State of Maharashtra v. Mayer Hans George : [1965]1SCR123 dealt with the case of prosecution under Section 23 (1 A) of Foreign Exchange Regulation Act, 1947 after having noticed that gold brought to India in contravention of Section 8 (1) of the Act was confiscated by the Customs Authorities. Penalty imposed by the authority in respect of an offence under Section 111 of the Customs Act falls within the realm of civil obligation in the sense even if the offender is no more it can be recovered from his properties since it is an economic offence. Being an economic offence against national interest, we are not prepared to accept the contention that the penalty imposed on a person for such an offence dies with that person. True it cannot be enforced against his legal heirs personally but liable to be recovered from the defaulter's properties inherited by the legal heirs.

12. Counsel appearing for the petitioners brought to our knowledge judgment of the Calcutta High Court in Tarakh Nath Gayem's case, supra : 1987(31)ELT631(Cal) . Learned Judge of the Calcutta High Court took the view that the intention of imposing penalty under Sections 55 and 74 of the Gold (Control) Act is intended to penalise the accused and therefore recovery of the amount would amount to punishing the legal heirs. Learned Judge held that since the defaulters are already dead there cannot be any question of realisation of the amount of penalty from the legal representatives. Learned Judge however took the view that amount could not be realised even from the assets left behind by the deceased a principle we find it difficult to accept especially when the offence committed was against national interest and recovery proceedings were initiated when the defaulters were alive.

13. We are therefore inclined to accept the view of the Division Bench of this Court in Devi's case, supra 1977 KLT 781) than the decision of the Calcutta High Court

in Tarak Nath Gayen's case, supra : 1987(31)ELT631(Cal) . Penalty was due when the defaulters were alive. Proceedings were initiated against them when they were alive but they did not pay. Penalty demanded is in connection with an offence which is against national interest and hence even if the defaulters are dead the proceedings can be continued against the personal assets in the hands of the legal heirs. Proceedings initiated against the assets of the defaulters are therefore valid.

14. We therefore find no infirmity in the proceedings initiated by the respondents for recovery of the amount by attachment and sale of the properties left behind by the defaulters. Appeals and the Writ Petition would stand dismissed.