

Assistant Controller of Customs for Prevention and ors. Vs. the New Central Jute Mills Co. Ltd.

Assistant Controller of Customs for Prevention and ors. Vs. the New Central Jute Mills Co. Ltd.

SooperKanoon Citation : sooperkanoon.com/853420

Court : Kolkata

Decided On : Aug-25-1972

Reported in : AIR1973Cal91,77CWN14

Judge : B.C. Mitra and ;Amiya Kumar Mookerji, JJ.

Acts : [Customs Act, 1962](#) - Section 105, 105(1) and 105(2); ;Code of Criminal Procedure (CrPC) - Section 165(1); ;[Code of Civil Procedure \(CPC\) , 1908](#) - Order 41, Rule 22

Appeal No. : A.F.O.O. No. 38 of 1970

Appellant : Assistant Controller of Customs for Prevention and ors.

Respondent : The New Central Jute Mills Co. Ltd.

Advocate for Def. : R.C. Deb and ;R.N. Bajoria, Advs.

Advocate for Pet/Ap. : G.P. Kar and ;A.K. Banerjee, Advs.

Disposition : Appeal dismissed

Judgement :

Amiya Kumar Mookerji, J.

1. This appeal is by the Assistant Collector of Customs, Preventive Officer and Union of India against the judgment of K. L. Roy, J., dated 26-11-1969, quashing an authorisation under Section 105 of the [Customs Act, 1962](#) (hereinafter referred to as 'the Act') and, all proceedings taken thereunder.

2. The respondent is an existing company under the Companies Act, 1956, and has its registered office at 11, Give Row, Calcutta. M/s. Sahu Jain Ltd., has also its registered office in the said premises. On the nth of May, 1968, the appellant No. 2 along with several persons searched the said premises in pursuance to an authorisation issued by the appellant No. 1 under Section 105 of the Act. In course of the said search, various books, papers, documents belonging to the respondent company were seized by the appellant No. 2. On 16th of May, 1968, the respondent moved this Court on an application under Article 226 of the Constitution, challenging the validity of the order of authorisation dated 11-5-1958 under which the preventive officer of the Customs department, appellant No. 2, was authorised under Section 105 of the Act to enter into the premises of the respondent to search for, seize and take possession of things, goods and the documents, having reasons to believe by the appellant No. 2 that the goods liable to confiscation under the said Act were secreted in the premises of the respondent. A Rule Nisi and an interim order of injunction restraining the appellants from examining or looking into any of the seized documents were obtained by the respondent. The said Rule was heard and made absolute by K. L. 'Roy, J. The learned Judge found that in view of the averments made in the affidavit affirmed by the appellant No. 1, that, in consequence of the information received, he had reasons to believe that certain offences under the Act and other Acts had been committed by the respondent and certain other companies of the - Sahu Jain Group, and that certain goods, documents and things relevant to proceedings for enquiry into the said offences were secreted in the said premises but the learned Judge quashed the authorisation upon the view that appellant No. 1 had not applied his mind in issuing the impugned authorisation under Section 105 of the Act as the spaces requiring the particulars of the goods, documents and things, which would be useful for and/or relevant to any proceedings contemplated under the Act were left entirely blank; no particulars of the intended proceedings were given and even the name of the respondent, which was suspected of the

alleged offence, did not appear in the authorisation form. The appellant being aggrieved against the said judgment, preferred this present appeal.

3. It is contended by Mr. Kar, learned Counsel appearing on behalf of the appellant, that the learned Judge of the Court below having found that the Assistant Collector of Customs had reasons to believe that the offence under the Customs and other Acts have been committed by the respondent and that the goods, documents and things relevant to the proceedings were secreted in the premises of the respondent, the learned Judge was wrong in coming to the conclusion that the Assistant Collector of Customs did not apply his mind in issuing the impugned authorisation under Section 105 of the Act, and quashing the same on that ground. Mr. Kar further contended that the power of search granted under Section 105 of the Act Was a power of general search. It was not possible for the officer to predict or even know in advance what documents could be found in the search and which of them would be useful or necessary for the proceedings. So, it was not possible to give specification or description of the documents in advance. It was also not necessary to give the name of the respondent in the authorisation because the search was with respect to the premises. It was not incumbent upon the customs officer to give reasons of his belief before issuing an authorisation under Section 105 of the Act. In support of his contentions Mr. Kar referred to two decisions of the Supreme Court *Durgaprasad v. H. R. Gomej*, reported in AIR 1966 SC 1209, and *Gopi Kisen Aganval v. R. N. Sen*, reported in : 1967 CriLJ1194 .

4. Mr. Deb, learned Counsel appearing on behalf of the respondent, contended that the conditions precedent to the exercise of the power by the appellant No. 1 issuing an authorisation under Section 105 of the Act did not at all exist. The reasons to believe or information of the appellant No. 1, Mr. Deb argued, were not based on any relevant fact or material in his possession. The appellant No. 1 did not apply his mind to the facts and circumstances before issuing the said authorisation. Mr. Deb pointed out that there were various blanks in the said authorisation and even the name of the respondent did not appear therein. According to Mr. Deb, the said authorisation was vague, uncertain, indefinite, incapable of being acted upon or executed and wholly illegal.

5. Mr. Deb further contended that the averments made in the affidavit of the appellant No. 1 did not disclose any material upon which reasonable beliefs could be based. The said affidavit suffered the same infirmities as that of the authorisation itself. It was incumbent upon the Assistant Collector of Customs to disclose the materials before the Court, upon which he based his belief, if it was challenged. In support of his contentions Mr. Deb referred to a decision of the Supreme Court, *Sheo Nath Singh v. Appellate Asst. Commr. of Income-tax*, reported in : [1971]82ITR147(SC) .

6. In the letter of authorisation the name of the respondent was not given but there is nothing in Section 105(1) of the Act which requires the Customs Authority to specify the name of the individual whose premises are to be searched. The power is given under Section 105 of the Act to search the premises and if the particulars of the premises are given in the authorisation, in our view, in such case, the requirements of the section are fulfilled. The same view was taken by this Court in *Anshuman Lath v. Deputy Supdt. of Central Excise, Calcutta*, reported in (1967) 71 Cal WN 814, and we respectfully agree with that view.

7. Mr. Kar raised an objection that Without filing a cross-objection the respondent could not urge the point that the Assistant Collector of Customs had no reasons to believe which was decided in favour of the appellant by the learned Judge of the Court below.

8. We do not see any substance in this objection. Under Order 41, Rule 22, Civil Procedure Code, the respondent is entitled to canvass the correctness of the findings against it in order to support the judgment that has been passed against the appellant.

9. Mr. Deb lastly contended that the provisions of Section 105(2) of the Act had not been observed as no report required by Section 165(1) of the Criminal Procedure Code was made in this case.

10. This point has been decided by the Supreme Court in *Gopikisen's case*, : 1967 CriLJ1194 , where it has been held that the procedure prescribed under Section 165(1) of the Criminal Procedure Code for search is not applicable in Section

105(2) of the Customs Act inasmuch as the two sections are intended to meet totally different situations, recording of reasons in writing by the Assistant Collector is not necessary. So, in -view of the above decision of the Supreme Court, this point fails.

11. In Durga Prasad's case, AIR 1966 SC 1209 it has been held by the Supreme Court that power of search granted under Section 105 of the Act is a power of general search but it is essential that before this power is exercised, the preliminary conditions required by the section must be strictly satisfied, that is, the officer concerned must have reasons to believe that the documents and things which in his opinion are relevant for any proceedings under the Act, are secreted in their place. In Gopikisen's case AIR 1965 SC 1298 the Supreme Court held that Section 105 of the Act did neither compel the officer to give reasons nor the particulars of the goods and of the documents were to be given in the authorisation.

12. In both Durga Prasad's (AIR 1966 SC 1209) and Gopikisen's case, : 1967 CriLJ1194 , in the authorisation suspected commission of offence under Section 11 read with Section 111 of the Act were mentioned. In the instant case, the nature of the suspected offence under the Act has not been mentioned. In paragraph 6 (d) of the affidavit in opposition commission of offences under the . Customs Act and other acts have been mentioned, but no particulars or nature of the suspected offence are given. The affidavit also does not disclose any material or circumstances upon which the Assistant Collector of Customs has founded his belief.

13. The statutory requirement of reasonable belief, rooted in the information in possession of Custom's Officer, is to safeguard the citizen from vexatious proceedings. 'Belief is a mental operation of accepting a fact as true, so, without any fact, no belief can be formed. It is true that it is not necessary for the Assistant Collector of Customs to state reasons for his belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which his belief was formed, as it has been held by the Supreme Court in Shconath Singh's case which was referred to by Mr. Deb : [1971]82ITR147(SC) , that the

Court can examine the materials to find out whether an honest and reasonable person can form his reasonable belief upon such materials although the sufficiency of the reasons for the belief cannot be investigated by the Court.

14. Mr. Kar remarked that in Shonath's case, : [1971]82ITR147(SC) , the Supreme Court made the above observations in a case under Section 34(1-A) of the Income Tax Act, so that decision could not be relied upon in the present case under the Customs Act.

15. We are unable to accept the contention of Mr. Kar. There is no difference in our view, of the principle as laid down by the Supreme Court as the words 'reasons to believe' occur both in Section 34(1-A) of the Income Tax Act as well as in Section 105 of the Customs Act.

16. The words 'when the proper officer has reasons to believe' in Section 105 of the Act, suggest that the belief must be that of an honest and reasonable person based upon relevant materials and circumstances. In Pukhraj v. D. R. Kohli, reported in : 1983(13)ELT1360(SC) , the Supreme Court observed as follows:

'After all, when we are dealing with a question as to whether the belief in the mind of the officer who effected the seizure was reasonable or not, we are not sitting in appeal over the decision of the said officer. All that we can consider is, whether there is ground which prima facie justifies the said reasonable belief.'

17. If the information is such as leads the Customs Officer to believe that articles of search are secreted in a place, he may thereby have 'reasons to believe' as contemplated under Section 105 of the Act and issue a warrant even if he does not know the name of the person who is in possession of the articles of search. All that the court can consider is, whether there is ground which prima facie justifies the reasonable belief. Considering the averments in the affidavit affirmed by the appellant No. 1 and the statements in the authorisation, we are satisfied that the preliminary conditions required by Section 105 of the Act have not been fulfilled in the instant case and as such the impugned authorisation issued by the appellant No. 1 and proceedings taken thereunder could not be sustained.

18. In the result this appeal fails and It is dismissed but there will be no order for costs.

B.C. Mitra, J.

19. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com