Sumeet Arora Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Mar-31-2008

Reported in : 2008(2)JKJ453

Judge : J.P. Singh, J.

Appellant : Sumeet Arora

Respondent : State and ors.

Judgement :

J.P. Singh, J.

1. Invoking this Court's jurisdiction under Section 561-A of the Code of Criminal Procedure, Samvat, 1989, petitioner has filed this petition, seeking quashing of F.I.R No. 128/05, registered at Police Station, Kothi Bagh, Srinagar, under Sections 379/380/120-B RPC, and 8/25 Antiquities and Art Treasures Act, 1972.

2. According to the petition, the petitioner possesses a Master Degree in Business Administration from Business School of Punjab University, Chandigarh and collecting of Coins is his hobby since childhood. He had served at various managerial positions with different organizations and had come to be posted as Assistant Manager, Customer Care, Bharati Tele-Ventures Limited (AIRTEL) Srinagar in 2005 when he was arrested by the Police and the Coins collected by him as his hobby were seized despite his apprising the police that collection of

coins and possession thereof was not an offence under the laws in force in the State.

3. His counsel Mr. Shakeel Ahmed submits that registration of F.I.R by Police Station, Kothi Bagh against the petitioner for finding him in possession of Coins, was an abuse of the process of law because Notification No. G. S. R. 28C (E) of 15th April, 1976 which had notified Coins as registerable antiquity stood since withdrawn with the issuance of S.O.448(E) of 2nd July, 1976.

4. Mr. B.S. Salathia, learned Additional Advocate General, when asked to comment as to whether or not possession of Coins was punishable under the provisions of the Antiquities and Art Treasures Act, 1972 or under any other law for the time being in force, submitted that possession of Coins may not amount to commission of any offence.

5. I have gone through the Antiquities and Art Treasures Act, 1972 and its provisions contained in Sections 3,5,12,13,14,17 and 25 thereof. These Sections, for facility of reference, are reproduced hereunder:

3. Regulation of export trade in antiquities and art treasures. - (1) on and from the commencement of this Act, it shall not be lawful for any person, other than the Central Government or any authority or agency authorized by the Central Government in this behalf, to export any antiquity or art treasure.

(2) Whenever the Central Government or any authority or agency referred to in Sub-section (1) intends to export any antiquity or art treasure such export shall be made only under and in accordance with the terms and conditions of a permit issued for the purpose by such authority as may be prescribed.'

'5. Antiquities to be sold only under a licence. - [As from the date of expiry of a period of six months from the commencement of this Act] no person shall, himself or by any other person on his behalf, carry on the business of selling or offering to sell any antiquity except under and in accordance With the terms and conditions of a licence granted under Sec 8.

Explanation. - In this Section and in Section 7,8,12,13,14,17 and 18 'antiquity' does not include ancient and historical records other than those declared by or under law made by Parliament to be of national importance.'

'12. Persons whose licenses have been revoked may sell antiquities to other licensees. - Notwithstanding anything contained in Section 5, any person whose licence has been revoked under Section 11 may, after making a declaration before the licensing officer, within such period, in such form and in such manner, as may be prescribed, of all the antiquities in his ownership, control or possession immediately before such revocation, sell such antiquities to any other person holding a valid licence under this Act:

Provided that no such antiquity shall be sold after the expiry of a period of six months from the date of revocation of the licence.

13. Power of Central Government to carry on the business of selling antiquities to the exclusion of others. - (1) If the Central Government is of opinion that with a view to conserving antiquities or in the public interest it is necessary or expedient so to do, it may, by notification in the Official Gazette, declare that the with effect on and from such date as may be specified in the notification, the Central Government or any authority or agency authorized by the Central Government in this behalf shall alone be entitled to carry on the business of selling or offering for sale of antiquities.

(2) On the issue of a notification under Sub-section (1).:

(a) it shall not be lawful for any person, authority or agency, other than the Central Government or any authority or agency authorized by the Central Government, to carry on the business of selling or offering for sale any antiquity on and from the date specified therein;

(b) the provisions of this Act, In so far as they relate to the licensing of persons carrying on the business of selling or offering for sale of antiquities shall cease to have effect except as respects things done or omitted to be done before such cesser of operation and Section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply upon such cesser of operation as if those provisions had been repealed by a Central Act:

Provided that every licence granted under Section 8 and in force on the date aforesaid shall, notwithstanding that the period specified therein has not expired, cease to be in force.

(3) Every person whose licence has ceased to be in force under the proviso to Clause (b) of Sub-section (2) shall, within such period, in such form and in such manner as may be prescribed, make a declaration before the licensing officer of all the antiquities in his ownership, control or possession immediately before the date specified in the notification issued under Sub-section (1).

'14. Registration of antiquities. - (1) The Central Government may, from time to time, by notification in the Official Gazette, specify those antiquities which shall be registered under this Act.

(2) In specifying the antiquities under Sub-section (1), the Central Government shall have regard to the following factors, namely:

(i) the necessity for conserving the objects of art;

(ii) the need to preserve such objects within India for the better appreciation of the cultural heritage of India;

(iii) such other factors as will, or are likely to, contribute to the safeguarding of the cultural heritage of India.

(3) Every person who owns, controls or is in possession of any antiquity-specified in the notification issued under Sub-section (1) shall register such antiquity before the registering officer:

(a) in the case of a person who owns, controls or possesses such antiquity on the date of issue of such notification, within three moths of such date; and

(b) in the case of any other person, within fifteen days of the date on which he comes into ownership, control or possession of such antiquity and obtain a certificate in token of such registration.

17. Transfer of ownership, etc. of antiquities to be intimated to the registering officer.:

Whenever any person transfers the ownership, control or possession of any antiquity specified in any notification issued under Sub-section (1) of Section 14 such person shall intimate, within such period and in such form as may be prescribed, the fact of such transfer to the registering officer.

25. Penalty. - (1) If any person, himself or by any other person on his behalf, exports or attempts to export an antiquity or art treasure in contravention of Section 3, he shall, without prejudice to any confiscation of penalty to which he may be liable under the provisions of the Customs Act, 1962 (52 of 1962), as applied by Section 4, be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine.

(2) If any person contravenes the provisions of Section 5 or Section 12 or Sub-section (2) or Sub-section (3) of Section 13 or Section 14 or Section 17, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both and the antiquity in respect of which the offence has been committed shall be liable to confiscation.

(3) If any person prevents any licensing officer from inspecting any record, photograph or register maintain under Section 10 or prevents any officer authorized by the Central Government under Sub-section (1) of Section 23 from entering into or searching any place under that sub-section, he shall be punishable with may extend to six months, or with imprisonment for a term which fine, or with both.

6. Perusal of the aforementioned provisions of the Antiquities and Art Treasures Act, 1972 reveals that possession of any antiquity, as such may not be punishable under; the Act. It is the unauthorized export of an Antiquity or Art Treasure which has been made punishable under Section 25 of the Act with imprisonment for a term which shall not be less than six months, but may extend to three years or with

fine. Section 5 of the Act too makes a person who himself or by any other person on his behalf carries on the business of selling or offering to sell any antiquity except under and in accordance with the terms and conditions of the licence granted under Section 8 of the Act, liable to punishment which in terms of Section 25 of the Act may extend to six months or with fine or with both.

7. Although 'Coins' fall within the definition of antiquity yet in view of issuance of S.O. 448(E) dated 2nd July, 1976 Coins have been taken out of the purview of Section 14 of the Antiquity and Art Treasure Act and registration of Coins may not thus be necessary under Section 14 of the Act.

8. In view of the provisions of the Act, the petitioner cannot thus be said to have committed any offence punishable under the Antiquities or Art Treasures Act, 1972, for neither had he been found indulging in export of any antiquities, or art treasures nor had he been accused of selling antiquity or art treasure in violation of the provisions of the Act.

9. The police had registered F.I.R No. 180/2005 on the basis of a source information in terms whereof an Inter-State group including its kingpin, namely Sumit Arora, i.e. the petitioner who had been staying at Hotel Shahanshah Palace Bouleward had in an organized manner hatched criminal conspiracy to steel monuments of Archeological importance from different places and sell these to the tourists and others.

10. Pursuant to the registration of F.I.R, the police had recovered at the instance of the petitioner 19 antique silver coins of Rs. 1 denomination of British period, 12 silver coins of 1 /2 denomination, 2 silver coins of denomination with person inscriptions, 40 copper coins with sculptures and works of various languages, 2 silver or copper rings with Lord Buddha sculptures, one silver ring with Alla-ho-Akbar and Mohammad Sullah ho-Allahiwasalam words, one copper seal bearing mark on it, one medal having on one side Ashoka and on another side independent Anniversary Medal on it, a big coin having on one side Victoria Regina and on the other side India, two coins having 2 Anna Coins having mark at Maskat Aman 1315 written on it, 3 one Anna denomination coins having Gorge V King written on it, three 2 Anna Coins haying George V King written on it, three =

Anna Coins George V King Emperor, Copper toke having jet tone Telephone written on it, one Copper coin having on it Ten Frances on it, one Copper coin having 02 pense on one side and on the other side Elizabeth II written on it, Copper coin having sculpture of Queen Elizabeth.

11. Registration of case by the police under Sections 379, 380 & 120-B RPC, in view of the source information, and the above mentioned recoveries cannot thus be faulted for the information does disclose commission of offences under Sections 379,380 & 120-B RPC.

12. For all what has been said above, although possession of Coins by the petitioner may not amount to commission of any offence under the Antiquities and Art Treasures Act, 1972, yet power of the police to investigate other allegations on the basis of source information that an inter-state group was involved in hatching a criminal conspiracy to steal monuments of archaeological importance from different places and sell these to tourist and others, cannot be said to be an abuse of the process of law.

13. I, therefore, do not find any ground to quash the F.I.R as a whole and suffice it would be to say that F.I.R registered against the petitioner for offences punishable under Section 25/8 of the Antiquities and Art Treasures Act, 1972 was uncalled for because Section 8 prescribes for grant of licence only and does not make violation of any of its provision punishable under the Antiquities and Art Treasure Act, 1972.

14. This petition is, accordingly, disposed of with above observations.

Respondents to act accordingly.