

Gurwant Singh Vs. Assistant Commissioner (Anti Smuggling)

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Court : Punjab and Haryana

Decided On : Jan-31-2012

Judge : Mehinder Singh Sullar

Appeal No. : Criminal Misc. No. M-13992 of 2008

Appellant : Gurwant Singh

Respondent : Assistant Commissioner (Anti Smuggling)

Judgement :

Mehinder Singh Sullar, J.-

The crux of the facts, culminating in the commencement, relevant for the limited purpose of deciding the core controversy, involved in the instant petition and emanating from the record, is that, on receipt of secret information, petitioner Gurwant Singh son of Ajit Singh was apprehended by the custom staff and police on 14.6.1994 at Sherpur Chowk, Ludhiana. After completion of the formalities and in pursuance of search, 79 gold biscuits, with foreign markings and Indian currency of Rs. 1,53,000/-, were recovered from his possession in the presence of independent witnesses. The smuggled gold biscuits were seized and taken into possession by the custom staff, by virtue of search memo under sections 110 and 111 of the Customs Act, 1962 and the rules framed thereunder (hereinafter to be referred as "the Act and relevant Rules"). The petitioner made voluntary statement before the custom officers, admitting the recovery of the gold biscuits and

confessed that he had been working in Abu Dhabi for the last 3-4 years. He brought the said biscuits to Ludhiana and for this job, he was to get commission of Rs. 4000/-. Consequently, the petitioner was arrested by the custom officers after following the due procedure under Section 104 of the Act.

2. Levelling a variety of allegations and narrating the sequence of events, in all, according to complainant-respondent Assistant Collector, Customs (for brevity "the complainant") that since the unaccounted smuggled 79 gold biscuits with foreign markings were recovered, so, the petitioner is liable to be prosecuted. After obtaining the requisite sanction and in the background of these allegations, the complainant filed the complaint (Annexure P2) against the petitioner for the commission of offence punishable under section 135 of the Act in the manner indicated hereinabove.

3. The petitioner-accused did not feel satisfied and preferred the present petition for quashing the impugned complaint (Annexure P2) and all other subsequent proceedings arising therefrom, invoking the provisions of Section 482 Cr.PC.

4. The case set up by the petitioner, in brief in so far as relevant, was that on 27.5.1994, he, Resham Lal and Hanif came from Dubai in flight No. EK-702 and landed at International Airport, Delhi. Resham Lal and Hanif had brought the indicated gold biscuits with them. They accompanied him (petitioner) in the vehicle brought by his brother. As soon as, they reached near the red light, Najafgarh, in the meantime, the petitioner offered them a cup of tea. When both Resham Lal and Hanif alighted from the vehicle, then, the petitioner and his brother fled away in the van alongwith their (Resham Lal and Hanif) luggage, whereas he was arrested on 14.6.1994 at Ludhiana by the custom officers alongwith the gold biscuits.

5. The case of the petitioner further proceeds that on 5.7.1994, Resham Lal filed a complaint at Police Station Tilak Nagar, Delhi against him and his other co-accused. He was produced by way of production warrant before the Metropolitan Magistrate, wherein he moved an application to confess his guilt and his statement was recorded on 9.9.1994. Consequently, he was convicted and sentenced to undergo R.I. for five months and nine days (already undergone) and to pay the

penalty of Rs. 5000/- for the commission of offence punishable under sections 379/34 IPC by the Metropolitan Magistrate, Delhi, through the medium of judgment of conviction dated 26.7.2000 and order of sentence dated 27.7.2000 (Annexure P1). On the strength of aforesaid averments, the petitioner has sought to quash the complaint (Annexure P2) on the following grounds :-

i) That the petitioner has stolen the property i.e. gold biscuits of Resham Lal which were not smuggled one but were cleared by the Custom Authorities at the Delhi Air Port after getting requisite duty from Resham Lal and looking into the relevant papers.

ii) That the petitioner has been tried by the Metropolitan Magistrate, Delhi and was convicted for the offence under Sections 379/34 IPC and he undergone the sentence awarded by the competent court.

iii) That the complaint filed by the Custom Authorities before the learned CJM, Ludhiana (Annexure P2) is against the principles of double jeopardy under Article 20(2) of the Constitution of India and under Section 300 of Cr.P.C.

iv) That when gold biscuits do not belong to the petitioner, he cannot be charged under Section 135 of the Customs Act and the very allegation leveled against him in the complaint is an abuse of the process of law.

6. The complainant refuted the prayer of the petitioner and filed the reply, *inter-alia* taking certain preliminary objections of, maintainability of the petition, cause of action and *locus standi* of the petitioner. According to the complainant, that the trial Magistrate, after hearing lengthy arguments and having repelled the similar contentions, has charge sheeted the petitioner for the commission of offence punishable under Section 135 of the Act, by means of orders (Annexures P3 and P4) and this petition is not maintainable. It was alleged that there are specific allegations in the complaint (Annexure P2) that the gold biscuits of foreign markings were recovered from the possession of the petitioner, which were seized and taken into possession, vide recovery memo under sections 110 and 111 after completion of all the formalities. The petitioner-accused voluntarily admitted and made his statement under section 108 of the Act, wherein he did not disclose that

he had stolen the gold biscuits, which he is now alleging after thought. The complainant pleaded that if the petitioner has confessed his guilt and was convicted and sentenced under sections 379/34 IPC by the Metropolitan Magistrate, even then, the complaint under section 135 of the Act is independently and legally maintainable against him. Instead of reproducing the entire contents of the reply and in order to avoid the repetition of facts, suffice it to say that the complainant- respondent has reiterated the allegations contained in the complaint (Annexure P2). However, it will not be out of place to mention here that he has stoutly denied all other allegations contained in the main petition and prayed for its dismissal.

7. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after bestowal of thoughts over the entire matter, to my mind, there is no merit in the present petition.

8. *Ex facie* the argument of learned counsel that since the petitioner-accused has already been convicted and sentenced on the basis of his confession for the commission of offences punishable under sections 379/34 IPC), so, the complaint (Annexure P2) under section 135 of the Act will amount to double jeopardy and is not maintainable, is not only devoid of merit but misplaced as well.

9. As is evident from the record, that on 27.5.1994, the petitioner, Resham Lal and Hanif came from Dubai in flight No. EK-702 and landed at International Airport, Delhi. In the wake of secret information, the petitioner was apprehended by the custom staff and police on 14.6.1994 at Sherpur Chowk, Ludhiana. Having completed all the codal formalities and taken requisite sanction, the complainant filed the complaint (Annexure P2) under section 135 of the Act. Thereafter, Resham Lal filed a complaint against the petitioner and his other co-accused on 5.7.1994 (after 20 days of the recovery of gold biscuits from the petitioner) in Police Station Tilak Nagar, Delhi, in regard to the occurrence/theft of 27.5.1994 and a criminal case under sections 379/34 IPC was registered against them.

10. It is not a matter of dispute that the petitioner was produced before the Delhi Court through production warrant, whereas the remaining accused were declared proclaimed offenders. Thereafter, he (petitioner) moved an application, made his

statement and confessed his guilt of theft of gold biscuits. On the basis of his confession, he was convicted and sentenced by the Metropolitan Magistrate, vide judgment of conviction and order of sentence (Annexure P1). If the epitome of the facts mentioned hereinabove, is put together, then, the conclusion is irresistible that the petitioner, with the connivance of other persons, enacted and managed to stage the indicated drama, perhaps in order to create a false defence to wriggle out from the rigors of complaint (Annexure P2).

11. Sequel to, to me, the judgment (Annexure P1) based on the confessional statement of the petitioner, would not, in any manner, debar the complainant to prosecute him in a separate complaint under Section 135 of the Act. Therefore, the question of double jeopardy did not arise at all in this respect, as contrary urged on his behalf.

12. There is another aspect of the matter, which can be viewed from a different angle. As indicated earlier, the complaint (Annexure P2) has been filed against the petitioner for the commission of offence under section 135 of the Act, which postulates as under :-

"135. **Evasion of duty or prohibitions** - (1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in mis-declaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or

(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or

(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods, he shall be punishable."

13. A conjoint and meaningful reading of these provisions would reveal that even mere acquisition of possession of or in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or otherwise dealing with any goods etc. constitute an offence punishable under section 135 of the Act.

14. The next celebrated contention of learned counsel that all the essential ingredients of the offence are not complete, again lacks merit. Admittedly, 79 gold biscuits of foreign markings were recovered from the possession of the petitioner and mere possession or dealing with such gold, in any manner, is an offence punishable under the Act. Whether the gold biscuits were brought to India in a lawful manner or otherwise or what is the effect of judgment of conviction (Annexure P1) etc., would be the moot points to be decided during the course of trial by the trial Court. If such points, which require the determination by the trial Court, are decided by this Court in the garb of petition under Section 482 Cr.PC, then, the sanctity of the trial, would pale into insignificance and amount to nullify the statutory provisions of trial, as contemplated under the Cr.PC, which is not legally permissible. In this manner, to my mind, the judgment (Annexure P1) based on the confession of the petitioner, has got nothing to do with the controversy involved in the complaint (Annexure P2) in this relevant connection.

15. Likewise, the questions, scope and jurisdiction of this Court for quashing a complaint at the initial stage of the trial under section 482 Cr.PC are not res integra. It is well settled proposition of law that in case, on the bare reading, the offences are made therefrom, no order can be made for quashment of criminal prosecution. Such criminal prosecution at the initial stage can be quashed in the rarest of the rare cases, only if it is proved that the same was lodged maliciously or vexatiously in order to wreak vengeance and not otherwise, in view of the law laid down by the Hon'ble Apex Court in a celebrated judgment in case ***State of Haryana and others v. Ch. Bhajan Lal and others, AIR 1992 Supreme Court***

604, which was again reiterated in case **Som Mittal v. Government of Karnataka 2008(2) R.C.R. (Criminal) 92 : 2008(2) Recent Apex Judgment (R.A.J.) 121.**

16. An identical question came to be decided by the Hon'ble Supreme Court in a recent judgment in case **Jeffery J. Diermeier and Anr. v. State of West Bengal and Anr. 2010(3) R.C.R.(Criminal) 183 : 2010(3) Recent Apex Judgments (R.A.J.) 437.** Having interpreted the scope of section 482 Cr.PC, it was ruled (para 16) as under :-

"16. Before addressing the contentions advanced on behalf of the parties, it will be useful to notice the scope and ambit of inherent powers of the High Court under Section 482 of the Code. The Section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of Court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

The indicated Bench mark and requisite ingredients for quashing the criminal prosecution emerging out from the aforesaid judgments are totally lacking in the instant case.

17. Not only that, the same very contentions raised on behalf of petitioner were rightly negated by the CJM, Ludhiana, while framing the charge against him under section 135 of the Act, vide order dated 26.4.2008 (Annexure P3) and charge sheet of even date (Annexure P4), which, in substance, is (para 3 of Annexure P3) as under:-

"3. After giving my thoughtful consideration to the rival contentions and going through the record of the case, I am of the view that it is a fit case for framing the charge under Section 135 of the Customs act against the accused. The accused was found in unauthorized possession of 79 gold biscuits of foreign origin. There is nothing to show that the said biscuits had been imported into India in a lawful manner. Once the accused was found in possession of gold biscuits of foreign origin and he has not been able to prove that the same had been imported lawfully into India, he is liable to be charged under Section 135 of the Customs Act. No doubt, in the judgment delivered by the learned Metropolitan Magistrate, Delhi, there is a mention that the biscuits had been imported into India by Resham Lal and Hanif and they had paid the custom duty at the Airport, but there is no evidence to substantiate the said recitals. In the matter before the learned Metropolitan Magistrate, the question as to if the said biscuits had been imported legally into India or the same had been imported in an lawful manner was not involved. Moreover, the possibility of the said case having been got registered by the accused against himself in connivance of the complainant etc. cannot be ruled out. The alleged theft of gold biscuits was committed by the accused on 27.5.1994. However, it is strange that Resham Lal and Hanif, who were claiming that they had imported the gold biscuits into India in a lawful manner, did not report the matter to the police upto 5.7.1994. When they were having knowledge about the identity of the accused, there is no reason as to why they did not lodge any report with the police upto 5.7.1994. They had got registered a case under Section 379 IPC against the accused at P.S. Tilak Nagar after the gold had already been seized by the Custom Officers and when the accused was in custody under Section 135 of the Customs Act. The said judgment shows that the accused did not contest the said case. Though the accused did not confess his guilt in the said case, but the (Sic. offence is) made out against the accused. Let, the accused be charged accordingly."

18. Meaning thereby, the trial Court has analyzed the material in the right perspective, correctly negate his plea, charge-sheeted the petitioner-accused for the commission of indicated offence and recorded the cogent grounds in this respect. Such impugned orders, containing valid reasons, cannot possibly be interfered with, by this Court, while exercising the limited powers conferred under

section 482 Cr.PC, unless and until, the same are illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner- accused, so, the impugned orders deserve to be maintained in the obtaining circumstances of the case.

19. No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

20. In the light of aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of trial of the complaint case, as there is no merit, therefore, the instant petition is hereby dismissed as such.

21. Needless to mention that nothing observed, here-in-above, would reflect, in any manner, on merits during the trial of the complaint case, as the same has been so recorded for a limited purpose of deciding the present petition in this relevant direction.

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