Tukaram G. Gaokar

Vs

R. N. Shukla & Others

Civil Appeal No. 1597 of 1967

(CJI M. Hidayatullah, R. S. Bachawat, C. A. Vaidialingam, K. S. Hegde, A. N. Grover JJ)

08.03.1968

JUDGMENT

BACHAWAT, J-.

This is an appeal by certificate against an order of the Bombay High Court on Letters Patent appeal confirming an order of dismissal of a writ petition by which the appellant Tukaram G. Gaokar asked for a writ of prohibition restraining proceedings for imposition of a penalty on him for alleged complicity in the smuggling of gold in pursuance of a notice dated November 16, 1966 issued under s. 112 of the Sea Customs Act, 1962. The appellant's contention is that the threatened proceedings amount to contempt of the magistrate before whom his trial for offences in connection with the smuggling of gold is imminent are and in violation of the constitutional protection of Art. 20(3) of the Constitution. The High Court rejected these contentions.

The main facts may be stated briefly. On September 14 and 17, 1966, the customs officers raided a number of premises in the city of Bombay and seized 65,860 tolas of foreign gold and some gold bangles worth about Rs. 1,14,20,270. On September 14, 1966, the appellant was arrested on charges of complicity in the smuggling of gold and other articles. After several remands, he was released on bail. On October 6, 1966, the customs officers lodged a first information report charging the appellant, one John D'Sa and other persons with offences in connection with the smuggling of gold under s. 120B of the Indian Penal Code read with s. 135 of the Sea Customs Act, R. 131-B of the Defence of India Rules and s. 8 of the Foreign Exchange Regulation Act. The trial of the appellant on these charges before a magistrate is imminent. On November 16, 1966, the Assistant Collector of Customs, Preventive Department, Bombay issued a notice to the appellant to show cause why the gold should not be confiscated under s. 111 of the Sea Customs Act and why a penalty should not be imposed on him under s. 112 of the same Act. The notice alleged that he acquired possession of and was concerned in carrying, removing, depositing, harbouring, keeping, concealing and dealing with gold which he knew or had reason to believe was liable to confiscation under s. 111 and that in relation to such gold he was knowingly concerned in fraudulent evasion of customs duties and of the prohibitions imposed under the laws in force. The notice relied on several documents and the statement of John D'Sa. The appellant disclaims any interest in the gold seized by the customs officers. He resists the imposition of penalty on him for alleged complicity in the smuggling.

It is quite clear that identical issues arise in proceedings for imposition of penalty under s. 112(b) of the Sea Customs Act 1962 and in a trial for an offence punishable under s. 135(b) of the same Act. If any person 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 s. 111, he may be

proceeded against under s. 112(b) and also under s. 135(b). On the same set of facts, a penalty may be imposed on the offender under s. 112(b) and he may be punished with imprisonment and fine under s. 135(b). Similar issues arise in the trial of offences for contravention of R. 131-B of the Defence of India Rules and s. 8 of the Foreign Exchange Regulation Act. The customs officers will have to enquire into these issues, though the same issues will later be tried by the criminal court. The Sea Customs Act contemplates parallel proceedings of this kind. Section 127 expressly provides that the award of a penalty under s. 112 is not a bar to the infliction of punishment under s. 135. The offender may be punished under s. 135 without prejudice to any other action that may be taken under the Act. The customs officers are empowered to confiscate smuggled goods and to levy penalties on persons concerned with the smuggling. They may initiate proceedings for confiscation of the goods and for imposition of the penalty though the trial of those persons in a criminal court for connected offences is imminent. The initiation and continuance of those proceedings in good faith cannot amount to contempt of the criminal court. To constitute of court, there must be involved some "act done or writing published calculated to bring a court or a judge of the court into contempt or to lower his authority" or something "calculated to obstruct or interfere with the due course of justice or the lawful process of the courts", see Reg v. Gray [[1900] 2 Q.B. 36.], Arthur Reginald Perera v. The King [[1951] A.C. 482, 488.]. The customs officers did nothing of this kind. They are acting bona fide and discharging their statutory duties under Ss. 111 and 112. The power of adjudicating penalty and confiscation under those sections is vested in them alone. The criminal court cannot make this adjudication. The issue of the show-cause notice and proceedings thereunder are authorised by the Act and are not calculated to obstruct the course of justice in any court. We see no justification for holding that the proceedings amount to contempt of court.

The decided cases do not support the appellant's contention. In Saibal Kumar Gupta v. B. K. Sen [[1961] 3 S.C.R. 460.], it was held that an enquiry by a special committee appointed by the Corporation of Calcutta to enquire into the conduct of the Commissioner in the matter of appointment of municipal officers pending criminal proceedings against him in respect of certain offences did not amount to contempt of court. The special committee could not be said to hold a parallel enquiry on matters pending before the court, though the enquiry might extend to those matters incidentally. It may be noted that there was no express provision in the Calcutta Municipal Act authorising a special committee to hold an enquiry into any matter in issue before a Court. In S. S. Roy v. State of Orissa [A.I.R. 1960 S.C. 190.], a magistrate issued an order restraining the execution of a warrant of arrest issued by a civil court. The order was in excess of his jurisdiction and was not warranted by s. 144 of the Code of Criminal Procedure. The court held that he could not be punished for contempt of court in the absence of wilful error proceeding from improper or corrupt motives. In the present case also, the customs officers are not actuated by any oblique motive. Moreover, their action is authorised by Ss. 111 and 112 and is not in excess of their jurisdiction.

The customs officers have a discretion to stay the proceedings under Ss. 111 and 112 during the pendency of the trial in the criminal court. In the exercise of their discretion they have refused to stay the proceedings. It is not shown that their action is mala fide or arbitrary. The court will not issue a mandamus to control this exercise of their discretion.

The appellant then claims that the proceedings under Ss. 111 and 112 are in violation of Art. 20(3) of the Constitution. He says that unless the proceedings are stayed he will be compelled to enter the witness-box to rebut the evidence of John D'Sa and will be forced in cross-examination to give answers incriminating himself. Article 20(3) affirms that "no person accused of any offence shall be compelled to be a witness against himself." The first information report has been lodged and formal

accusation has been made in it against the appellant charging him with offences in connection with the smuggling of gold. The appellant is, therefore a person accused of an offence. But it is not possible at this stage to say that he is compelled to be a witness against himself. There is no compulsion on him to enter the witness-box. He may, if he chooses, not appear as a witness in the proceedings under Ss. 111 and 112. The necessity to enter the witness-box for substantiating his defence is not such a compulsion as would attract the protection of Art. 20(3). Even in a criminal trial, any person accused of an offence is a competent witness for the defence under s. 342-A of the Criminal Procedure Code and may give evidence on oath in disproof of the charges made against him. It may be very necessary for the accused person to enter the witness-box for substantiating his defence. But this is no reason for saying that the criminal trial compels him to be a witness against himself and is in violation of Art. 20(3). Compulsion in the context of Art. 20(3) must proceed from another person or authority. The appellant is not compelled to be a witness if he voluntarily gives evidence in his defence. Different considerations may arise if he is summoned by the customs authorities under s. 108 to give evidence in the proceedings under Ss. 111 and 112. But he has not yet been summoned to give evidence in those proceedings. We express no opinion on the question whether in the event of his being summoned he can claim the protection under Art. 20(3) and whether in the event of his being then compelled to give incriminating answers he can invoke the protection of the proviso to s. 132 of the Indian Evidence Act against the use of those answers in the criminal proceedings. It may be noted that counsel for the customs authorities gave an undertaking in the High Court that they would not use in any criminal proceedings the statement, if any, that might be made by the appellant during the course of the adjudication proceedings.

Before the High Court, the appellant took the further point that the proceedings under Ss. 111 and 112 were in violation of Art. 14 of the Constitution. The High Court repelled this contention. That point has now been abandoned by the appellant and does not survive.

In the result, the appeal is dismissed. There will be no order as to costs.

Appeal dismissed.##

</html