Jethmal

Vs

Union of India and Another

Civil Appeal No. 2186 of 1966

(J. M. Shelat, G. K. Mitter JJ)

18.03.1970

JUDGMENT

MITTER, J. -

1. This is an appeal by certificate granted by the High Court of Punjab arising out of a petition filed in that court by the appellant for quashing the order of the Collector of Central Excise and Land Customs, Delhi, made on September 9, 1959 by a writ of certiorari or other appropriate writ.

2. The facts are as follows : On July 24, 1958, the police of Bikaner arrested one Mohammad, son of Hayat at Suresar. One Ghulam Rasool alleged to be a Pakistani national was also arrested earlier in village Randhisar. The said two persons were arrested on the allegation that they had come from Pakistan and Mohammad had brought with him smuggled gold. Another person also named Mohammad, son of Gayi, was subsequently arrested in village Suresar on the ground that smuggled gold had been recovered at the instance of Mohammad, son of Hayat from a Kund, i.e. a small water reservoir belonging to Mohammad, son of Gayi. The police claimed to have recovered 692 tolas of gold in 69 bars bearing foreign markings. A camel alleged to have been used by the two persons for their travel and transport of the gold was also taken possession of by the police. The camel and the gold were later on handed over to the customs officials of Bikaner and the same were seized under the plea that the gold in question had been imported into India illicitly. On interrogation all the three persons, namely, the two Mohammads and Ghulam Rasool admitted the offence and disclosed that the gold had been smuggled from Pakistan at the instance of the appellant, "a resident of Bikaner who had managed the whole affair." The Superintendent, Land Customs Ferozepur issued a notice to all the four persons mentioned above where it was stated in reference to the first named three persons that "the accused in their statements admitted that they had smuggled this gold from Pakistan for one Shri Jeth Mal son of Fazir Chand, resident of Bikaner." By the said notice all the four persons were intimated that the gold and camel were liable to be confiscated and the two Mohammads and Ghulam Rasool were liable to penal action under Sections 5 and 7 of the Land Customs Act, 1924, Section 167(8) of the Sea Customs Act, 1878, read with Section 19 as made applicable by Section 3(2) of the Imports and Exports Control Act, 1947 and Section 167(8) of the Customs Act, 1878, read with Section 19 of the Act as made applicable by Section 23-A of Exchange Regulation Act, 1947. All the four persons were required to show cause as to why the gold and the camel should not be confiscated and further penal action be not taken against them. They were also asked to indicate in their written explanations as to whether they wished to be heard in person or through a representative before the case was adjudicated so that a date could be fixed for the hearing of the case, if considered necessary. The appellant's name does not find a place in the concluding paragraph of this notice (although those of the other three appear there) to the effect that if no case was shown against the action proposed to be taken within ten days from the date of the

receipt of the memo or if the named persons "did not appear when the case was posted for hearing it would be decided ex parte on merits of the facts already on record." There can however be no doubt ..... and indeed there is no dispute ..... that the written notice was addressed to all the four persons whose names appeared at serial numbers 1 to 4 at the foot thereof. According to the Customs Department the receipt of the notice was acknowledged by all the said persons but no reply had been received within the stipulated time from any of them. The notice bore that date August 19, 1958. Nearly one year afterwards, i.e. on 9th August, 1959 the Collector or Central Excise passed on order in the above case on the basis of the record and the statements of the persons. According to this order the two Mohammads and Ghulam Rasool had on interrogation disclosed that the gold had been smuggled from Pakistan at the instance of the appellant who had managed the whole affair. Further "there was a regular gang of smugglers operating in Bikaner aided and abetted by the appellant." The Collector of Central Excise held that the evidence brought on record was sufficient to establish that the said gold had been imported into India through unlawful means. He therefore, ordered confiscation of the same under Section 167(8) of the Sea Customs Act, 1878, read with Section 19 thereof as made applicable by Section 23-A of the Foreign Exchange Regulation Act. He also imposed a personal penalty of Rs. 5,000/- on each of the two Mohammads and Rs. 50,000/- on the appellant.

3. On November 9, 1959, the appellant filed a writ petition challenging the order of the Collector of Central Excise on various grounds. The first ground was that the statements, if any, alleged to have been made by the two Mohammads and Ghulam Rasool were inadmissible in evidence as having been made while they were in police custody. Secondly, there was no material on record to connect him with the alleged smugglers or with the smuggled gold or with the act of smuggling and there was no basis for a reasonable belief that he was a person concerned in the importation of the gold. Yet another ground was taken that the maximum penalty which could be imposed under Section 167(8) of the Sea Customs Act was only Rs. 1,000/. The appellant also alleged that he had submitted show-cause through his counsel by a written reply, dated August 27, 1958, under a certificate of posting which had not been taken into consideration by the Collector of Central Excise. He claimed to be entitled to a reply thereto and to a personal hearing before disposal of the matter. He submitted that the order of September, 1959 was void as being contrary to the rules of natural justice.

4. The Collector of Central Excise affirmed an affidavit in opposition wherein he made a definite allegation that he had received no reply from the appellant to the show-cause memo, dated August 19, 1958. Further according to him he had while disposing of the case taken note of the statements made by the two Mohammads and Ghulam Rasool. All these statements had been made before the customs authorities. He also referred to the said statements to show that it was the appellant who had advanced a sum of Rs. 16,000/- for the smuggling of the gold.

5. The learned single Judge of the High Court turned down the contention that the order of the Collector had been passed without affording the appellant an opportunity of being heard. He was inclined to agree with the submission made on behalf of the Union of India that the omission of the appellant's name in the last paragraph of the show-cause notice was merely accidental and that it did not in any way prejudice him. He held that the appellant had been given an opportunity of showing cause against the action proposed and had not availed himself of the same. He was also the view that the document styled a reply to the show-cause notice was a fabrication and an after-thought. He further observed that as the appellant to whom the notice had been issued did not respond thereto the Collector was left to consider such material as was available before him to reach his conclusion. According to the learned Judge the Collector was not governed directly by the rules of evidence and

in the circumstances of the case no exception could be taken to his having proceeded on the basis of the statements recorded. The learned Judges also felt himself unable to exercise any discretion in favour of the appellant for invoking the extraordinary jurisdiction of the court in certiorari proceedings, particularly as the appellant had sought to support his case by a spurious document. He however relied on a judgment of a Division Bench of that court to hold that the personal penalty imposed could not exceed Rs. 1,000/-.

6. Writ petitions had also been filed by Mohammad, son of Gayi and Mohammad, son of Hayat, challenging the order of the Collector and appeals were filed by Mohammad, son of Hayat and the appellant under Clause 10 of the Letters Patent of the High Court. The Union of India also filed an appeal against the reduction of the personal penalty. The Appellate Bench accepted the facts alleged in the affidavit of the Collector as correct and concluded that neither Mohammad, son of Hayat nor the appellant had put in any kind of reply to the show-cause notice and that Mohammad, son of Gayi, had sent in a reply after the period mentioned in the notice. According to the Division Bench there was no violation of any principle of natural justice because of the failure to mention the appellant's name in the concluding paragraph of the show-cause notice. Again it was not for the High Court in an application for the issue of a writ of certiorari to decide whether the evidence before the Collector was sufficient for him to come to the conclusion arrived at. Finally the Bench relied on a decision of this Court in Radha Kishan Bhatia v. Union of India and others (1965 (2) SCR 212 (unreported at the time the judgment of the High Court was delivered)) to hold that the expression "concerned in any such offence" in the penalty part of Section 167(8) may include a person 'interested' or 'involved' or 'engaged' or 'mixed up' in the commission of the offence referred to in the first column of the said provision of law. The said decision was also relied on for taking the view that the power of impose a fine under Section 167(8) was not limited to the sum of Rs. 1,000/-. In the result the Division Bench accepted the appeal of the Union of India and restored the penalty imposed by the Collector.

7. Our attention was also drawn to a recent decision of this Court in A. K. Kripak v. Union of India (1969(2) SCC 340) where some of the rules of natural justice were formulated in Paragraph 20 of the judgment. One of these is the well known principle of audi alteram partem and it was argued that an ex parte hearing without notice violated this rule. In our opinion this rule can have no application to the facts of this case where the appellant was asked not only to send a written reply but to inform the Collector whether he wished to be heard in person or through a representative. If no reply was given or no intimation was sent to the Collector that a personal hearing was desired, the Collector would be justified in thinking that the persons notified did not desire to appear before him when the case was to be considered and could not be blamed if he were to proceed on the material before him on the basis of the allegations in the show-cause notice. Clearly he could not compel appearance before him and giving a further notice in a case like this that the matter would be dealt with on a certain day would be an idle formality.

8. Before us a faint argument was made that the statements of the two Mohammads or Ghulam Rasool were inadmissible in evidence as having been made before a police officer. In our view there is no substance in this point because the statements were recorded by a Customs Officer duly investigating into a case where allegations were made about the smuggling of gold. At that stage no criminal case had been started against them in respect of such smuggling and it is difficult to see how such statements can be said to be inadmissible in evidence. The question as to admissibility of the statements made to Customs Officers is now settled by decisions of this court, e.g. Ramesh Chandra Mehta v. State of West Bengal (Cr. A. No. 27 of 1967, decided on 18-10-1968) and Hira H. Advani, etc. v. State of Maharashtra (1969(2) SCC 662).

9. It was next argued that a personal penalty of Rs. 50,000/- could not be imposed under the provisions of Section 5, read with Section 7 of the Land Customs Act. In our view this is a matter of no moment as the order of the Collector passed on 9th August, 1959, clearly showed that the confiscation had been ordered under Section 167(8) of the Sea Customs Act, read with Section 19 of the Act as made applicable by Section 23-A of the Foreign Exchange Regulation Act and the personal penalty was imposed under these provisions of law.

10. Lastly it was urged that the levy of personal to the extent of Rs. 50,000/- on the facts of this case was a perverse order. It is difficult to appreciate the argument. If the gold smuggled weighed 692 tolas of which the value would not be less than rupees one lakh a penalty of Rs. 50,000/- was certainly not out of proportion to the gravity of the offence. Further, there is no substance in the argument that the appellant could not be said to be a person concerned in the smuggling of gold even if it were to be held that he had paid Rs. 16,000/- to the other three persons for bringing the gold into India. If the Collector was free to proceed on the basis of the statements recorded which went to show that gold of the value of rupees one lakh was smuggled into India at the instance of and for the benefit of the appellant who had paid out a large sum of money for the purpose, it is difficult to see how he could be said to be a person not interested or concerned in the act of smuggling. All the points urged therefore fail and the appeal is dismissed with costs.

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