

Hazara Singh

Vs

Union of India and Others

Civil Appeal No. 1884 of 1967

(P. Jagmohan Reddy, H. R. Khanna JJ)

12.09.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. This appeal is by certificate against the dismissal in limine of the writ petition filed by the appellant in the High Court of Punjab and Haryana. The appellant was convicted under Section 8(2) read with Sections 23-A and 23-B of the Foreign Exchange Regulation Act, 1947 (hereinafter called the 'Act') on the allegation that the appellant and one Gopal Dass of Delhi were attempting to smuggle Rs. 1,40,000 in currency notes in Rs. 100 denominations across the border. The appellant who is the owner of immovable and movable properties of substantial value was seen along with one Gopal Dass carrying a tin box and approaching a customs-cum-police raiding party also termed as nakabandi party near the borders of Pakistan, a little distance away from the village Valtoha on the night of September 25, 1961 at about 9 p.m. When they reached the nakabandi point probably noticing the party in hiding they turned back and started running towards the house of the appellant and were chased by the nakabandi party. The appellant entered his house followed by the nakabandi party and was caught while in the act of concealing the tin box on in a heap of wheat in the room where it was stored. In the tin box was found a package tied with a piece of twine in which 14 bundles of currency notes of Rs. 100 denomination were found. The persons comprised in the raiding party disclosed their identity, a seizure memo was drawn up. The witnesses of the seizure memo were Surat Singh, Milkha Singh, Hazara Singh and Natha Singh. Gopal Dass disclosed his identity as a resident of Mohalla Nawabgunj, Pul Bangish, Delhi. He was also searched and a diary containing the addresses of different persons in India and Pakistan was recovered along with Rs. 127 in currency notes. A statement was given by the appellant to the Customs Officer in the presence of Hazara Singh, Surat Singh, Natha Singh and Milkha Singh that he along with Tara Singh and Gopal Dass were indulging in smuggling, that he and Gopal Dass prepared 14 bundles of Indian currency and placed them in a tin box and that they were to cross the border and hand over the currency notes to Mohd. Hussain of Kasur and Mohd. Tahir of Karachi. The appellant further stated that at 9 a.m. they started towards the border along with the tin box which he carried and Gopal Dass was to cross the border near Wan P.A.P. post with the currency, that when they reached about 50 yards from the house they noticed whispering coming from in front of them and since they did not know that there was a naka they immediately turned to the house and while concealing the said small box in the heap of wheat, the police chased them and caught and took possession of Rs. 1,40,000/-. This statement was recorded by U. S. Viridi, Inspector preventive. It was signed by the appellant and admitted by him as correct. The statement bore the thumb-impression of Natha Singh, Surat Singh and Harnam, Singh and was attested by police officer Khemkaran.

2. Notice to show-cause was issued to both the appellant and Gopal Dass to explain within ten days

from the dated of their receipt of the memo as to why the currency notes and the box which was used as a container should not be confiscated and why further penal section should not be taken under the aforesaid provision of law. As this notice could not be served on the appellant, subsequently a copy was given to the appellant through his advocate on March 31, 1962.

3. The appellant in answer to the show-cause notice denied that a nakabandi about 100 yards from Jhugian Gurdial Singh was conducted by the police in collaboration with the customs along with three named persons on September 25, 1961 and he generally denied all the allegations contained in the said notice. He also denied that he made any confessional statement that the currency notes were being taken to Pakistan through unprescribed route near Wan P.A.P. or that he was chased and apprehended by the nakabandi party. According to him, the police party raided his house and recovered Rs. 1,40,000/- without a search warrant in spite of his protests about the high-handedness of the police who in order to save themselves cooked up the story and also arrested him of a cognizable offence under Section 411/414, I.P.C.

4. The Collector of Customs, Amritsar after he supplied the relevant documents to the advocate of the appellant recorded the evidence of Natha Singh and Harnam Singh who were both cross-examined by the advocate of the appellant. The case was adjourned to give an opportunity to the appellant for his defence. On June 26, 1963 the Collector Customs, New Delhi ordered that the offending currency notes be confiscated absolutely under Clause 6 of Section 167 of the Sea Customs Act, 1878 and he also imposed a penalty of Rs. 5,000/- on the appellant and Rs. 500/- on Shri Gopal Dass to be paid within one month from the date of the order. The Collector found that on a careful consideration of the evidence on record it was established beyond doubt that the currency amounting to Rs. 1,40,127 was clearly attempted to be exported illicitly out of India and the attempt to take out was completed when the nakabandi party intercepted the appellant while making an attempt to smuggle it out, when they chased him to his residence and that at the appellant's residence the currency notes were recovered. Against this order of the Collector an appeal was filed to the Central Board of Excise and Customs, New Delhi. That appeal was rejected after giving the appellant a personal hearing. A revisions application was filed before the Central Government on March 2, 1965 which was also rejected on August 9, 1965. After waiting for nearly two years the appellant filed a writ petition under Article 226 in the High Court of Punjab and Haryana on May 23, 1967 which as we said earlier was dismissed in limine.

5. Before us the learned advocate for the appellant submits that there was absolutely no admissible evidence to convict the appellant of the offences with which he was charged or to confiscate the currency notes because the statement alleged to have been made by him to the Customs Officer in fact was to the police officer or if it is held to be made to the Customs Officer it was made in the presence of the police, as such was inadmissible in evidence; that the appellant was a rich farmer and was in possession of a large sum of money which was recovered from his house; that the incident took place at 9 p.m. and away from a place which is about 10 miles from the Pakistan border, which does not raise an inference that an attempt could have been made to smuggle the currency notes across the border; and that the attesting witnesses were all in the nakabandi and were therefore police witnesses.

6. Apart from the inordinate delay in filing the writ petition, it is admitted that the accused was arrested on September 28, while the first confessional statement was taken down on September 25, 1961 so that the question of inadmissibility prima facie does not arise. Even otherwise, there is nothing to show nor was it urged before the Customs authorities or in the writ petition that the statement was given to the Customs Officer in the presence of police. Even so on September 28, just

before his arrest the appellant gave another statement this time to the Customs Officer B. M. Ray, Inspector Preventive, Headquarters (P and I), Amritsar and attested by M. R. Sachdev, Superintendent Technical, Customs, Amritsar. The statement was read over to the appellant and admitted by him to be correct. In that statement after setting out his family history and the nature of his business he admitted that the amount which was recovered from him by the police, etc., was of currency notes of Rs. 100/- each amounting to Rs. 1,40,000/- in Indian currency notes, that these currency notes along with a small box made of tin were recovered in the presence of witnesses from Wheat's room taken into custody by police etc., under recovery memo, and that the amount of Rs. 1,40,000/- belonged to him; that Gopal Dass had no share in it; that he had given a statement to the Inspector of Customs in connection with the recovery of an amount of Rs. 1,40,000/- in the presence of witnesses and has nothing further to say and that that statement may be treated as correct. This later statement is clearly admissible in evidence because it was made to a Customs Officer and it is not alleged that the police were present at that time. Confessional statements made to the Customs Officer have been held by this court not to come within the inhibition of Sections 24 and 25 of the Indian Evidence Act because customs officers are not police officers within the meaning of those provisions, vide Assistant Collector of Customs v. Vallabhadas ([1965] 3 SCR 854 : AIR 1965 SC 481 : (1965) 1 SCJ 208) and R. C. Mehta v. State of West Bengal. ([1969] 2 SCR 461 : AIR 1970 SC 940 : (1971) 2 SCJ 123).

7. The learned advocate, however, submits that the statement of September 28, 1961, is not a confessional statement, firstly, because it refers to an earlier inadmissible confessional statement, and secondly, the appellant asserts that the Rs. 1,40,000/- currency notes are his. It may be that Rs. 1,40,000/- currency notes belong to the appellant but that is not a relevant circumstance when it is alleged that he attempted to smuggle the said currency notes across the border to Pakistan. It may also be noticed that in the second statement the appellant admits that he had made the first statement to the Customs Officer. There is no suggestion throughout that statement that the confession made on September 25, 1961, was made to a police officer or in the presence of any police officers.

8. It is further submitted that the village of the appellant is 10 miles away from the border and that the nakabandi was only 100 yards away from the village towards the border and when the appellant is said to have been chased just before reaching the nakabandi, it cannot be said that he was attempting to cross the border. While no doubt the contention of the appellant was that his village was 10 miles away from the border the Collector noted that according to the report it was very much less but in any case that fact was immaterial as long as other circumstances prove that an attempt had been made to smuggle out the currency. In support of the contention on behalf of the appellant that no attempt was made we were referred to a decision of this Court in Malkiat Singh and Another v. State of Punjab ([1969] 2 SCR 663 : (1969) 1 SCC 157) where Ramaswami, J., observed that the test for determining whether the overt acts already done are such that if the offender changes his mind and does not proceed further, the acts already done would be completely harmless. This does not in any way assist the appellant because there is ample independent evidence in this case that the appellant, and Gopal Dass were seen together going towards the border with a tin case in their hands and when they saw the nakabandi they immediately turned round and ran away : they were chased into the house of the appellant where they found the appellant secreting the tin box in the heap of wheat in his house. These facts are sufficient to constitute an attempt by the appellant and Gopal Dass to smuggle the currency notes. Harnam Singh in his statement of September 28, 1961 recorded by the Inspector of Customs at the village Dabipura in the presence of the Superintendent of Customs admitted that he joined the nakabandi party on September 25, 1961 as a witness. He further stated that nakabandi party on September 25, 1961 as a witness. He further stated that nakabandi was conducted at 8 p.m. about 100 yards from Jhugian Gurdial Singh which is near the

Indo-Pakistan border; that after about an hour, two persons were seen coming from Gurdial Singh and going towards the Pakistan border; one of the persons was a Sikh and was carrying a box; that when they reached near the nakabandi point they suddenly turned back and started running; that they were chased by the nakabandi party into the house of the appellant; that one of these two persons was the appellant, the owner of the house who was caught while concealing the box that he was carrying in the heap of wheat and that on an examination of the box Indian currency notes amounting to Rs. 1,40,000/- were recovered. He also states that the other person disclosed his name as Gopal Dass from whom Rs. 127/- and some addresses were recovered. He admitted that the statements of both the offenders were recorded in which they admitted that they were smuggling the Indian currency to Pakistan. The statement of Natha Singh was also recorded by the Customs Officer and he corroborates the statement given by Harnam Singh. The order of the Collector shows that both he and Harnam Singh were examined and cross-examined. The Collector considered that evidence and the contentions urged on behalf of the appellant and held that the charge against the appellant and Gopal Dass was established. It may be stated that under Section 8(2) of the Act as amended, no foreign exchange can be taken outside India or across the border without the permission of the Reserve Bank of India. Under Section 23-A the restrictions imposed under subsection (2) of Section 8 are deemed to have been imposed under Section 5 of the Land Customs Act, 1924 as then in force and all the provisions of that Act shall have effect accordingly. Under Section 5 of the Land Customs Act every person desiring to pass any goods, whether dutiable or not, by land, out of or into any foreign territory shall apply in writing for and obtain a permit from the Customs authorities and produce that permit to Customs Officer if he requires such production. Section 23-B of the Act says that whoever attempts to contravene any of the provisions or of any rule, direction or order made there-under shall be deemed to have contravened that provision, rule, direction or order as the case may be. It may be mentioned that though the Land Customs Act does not specify that goods include "Indian currency", Section 8(2) of the Act by virtue of Section 5 of Act 39 of 1957 specifically includes "jewellery or precious stones or bank notes or coins".

9. In our view the order of the collector confiscating the currency notes and awarding the punishment does not suffer from any infirmity and the appeal is accordingly dismissed with costs.

</html