Indru Ramchand Bharvani and Others

Vs

Union of India and Others

Special Leave Petition (Civil) No. 7799 of 1988

(Sabyasachi Mukharji, S. Ranganathan JJ)

22.07.1988

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. This is an application under Article 136 of the Constitution for leave to appeal against the judgment and order of the Division Bench of the High Court of Delhi, dated May 16, 1988. In order to appreciate the contentions urged before us, it is imperative to state a few facts.

2. M/s Gems Impex Corpn., Bombay, petitioner 3 herein, is a firm engaged in the business of diamonds and precious stones. Ramchand Udhavdas Bharvani, petitioner 2 herein, is a partner in the said firm. Indru Ramchand Bharvani, petitioner 1 herein, is his son. It is stated that both the father and the son were managing the business of the firm. The Customs Officers received a secret information that smuggled diamonds have been kept by petitioners 1 and 2 in the said premises. After obtaining necessary search warrant the Customs Officer searched the business premises on November 16, 1979. It may be mentioned that the day was not very auspicious for the firm as well as for the people of Bombay. On that day a warning had been issued by the Weather Office, Bombay, about a possible sea storm that night. The entire activities came to a halt and the public had been advised to rush back to their houses early. On searching the premises of petitioner 3, the Customs Officers found over 2800 carats of rough diamonds and over 400 carats of cut and polished diamonds in addition to a lot of other items of precious stones, pearls, gold manufacturers etc. The books of accounts of the firm, claimed to be written up-to-date, however, showed a stock of 11.96 carats of cut and polished diamonds and the stock of rough diamonds and other articles was shown as nil. On being asked to produce evidence of legal acquisition, import and possession of diamonds, petitioners 1 and 2 showed their inability to produce any such documents. They replied that they had purchased the goods locally through brokers and had already made 50 per cent cash payment. The cash book, however, revealed no such payment nor were any purchased vouchers produced before the officers. When asked to name the brokers, petitioners 1 and 2 stated that the brokers would not come forward to confirm the deal. The Customs Officers also found various documents which had been described in the initial panchanama as "various incriminating documents". In the background of the secret information and the facts and the circumstances aforesaid, the Customs Officers formed a prima facie belief under section 110 read with section 123 of the Customs Act, 1962, (hereinafter called 'the Act'), that the unaccounted diamonds were smuggled goods. They seized various goods including cut and polished diamonds and rough diamonds in all valued at Rs. 54,42,882,02 under Section 110 of the Act on the reasonable belief that the goods had been smuggled into India. They also seized Indian currency of Rs. 1.40 lakhs and some other incriminating documents found in the premises. The only question agitated before the High Court was regarding cut and polished diamonds and rough diamonds. In view of the climatic conditions the goods and the documents

seized were put in two cartons in the presence of witnesses and the cartons were sealed with the customs' seal and also with the seal provided by petitioners 1 and 2 and the signatures were also put on the label of the cartons. A detailed itemwise inventory of the seized goods and documents was prepared in the Customs House, Bombay, latter on November 20, 21 and 22, 1979. Petitioners 1 and 2 were asked by the department to attend preparation of the detailed itemwise inventories but they did not attend, rather petitioner 1 replied that the job could be carried out even in his absence. Petitioners 1 and 2 were examined and their statements recorded under Section 108 of the Act.

3. In his statement recorded on November 29, 1979 Ramchand Udhavdas Bharvani gave names of the four dealers. The petitioners also produced certain notes issued by the said dealers showing that some quantity of diamonds had been given by the said dealers to petitioners 3 on approval basis. The approval basis was stated to be known in the business circle as 'jangad'. Some of these notes bore dates earlier than November 16, 1979 but neither these notes nor any packet of diamonds covered thereby had been found with the firm on the date of search and seizure. The dealers named by the petitioners were questioned under Section 108 of the Act to check the veracity of the notes. They stated that they had issued antedated and fake notes in order to help the petitioners. The diamonds covered by these 'jangad notes' were not found in possession of the firm on the day and these were not seized. The petitioners gave such explanation for the absence of these diamonds dealers which were not found acceptable by the department. A show-cause notice was, thereafter, issued on May 9, 1980 on various persons including the petitioners. By the show cause notice the petitioners were called upon to explain to the Collector of customs (Preventive) Bombay, as to why goods mentioned in the notice and the Indian currency of Rs. 1.40 lakhs be not confiscated and the penalty should not be imposed under Section 112 of the Act. The petitioners duly filed a reply on March 5, 1981 stating that the goods seized from their custody were lying with them on approval basis or jangad basis and belonged to various other dealers.

4. The petitioners sought reliance upon affidavits of seven other diamond merchants, jewellers, customers etc. which they filed for the first time along with their reply to show cause notice after about 15 months of the seizure. The affidavits, however, covered the entire quantity of the goods seized. So far as the diamonds are concerned, the affidavits of there other persons were filed. It was correctly mentioned by the High Court, if we may say so, that the diamonds were not entered in the books of accounts of the dealers who filed the affidavits, when and from whom these were acquired, and whether any jangad notes were issued and if so, why, these were not mentioned in their affidavits. The High Court has characterised these affidavits in the judgment as a bald statement about the ownership of diamonds. The High Court was right.

5. The Collector of Customs by his order dated April 17, 1982, directed release of jewellery but ordered absolute confiscation of various other goods including the diamonds in question and also imposed a penalty of Rs. 5 lakhs on the petitioner under Section 112 of the Act. A penalty of Rs. 25 lakhs each was imposed on the firm and petitioner 1 and a penalty of Rs. 15 lakhs was imposed on petitioner 2. Aggrieved thereby, the parties appealed to the Collector of Customs under Section 128 of the Act but the same was dismissed. The Custom and Excise and Gold (Control) Appellate Tribunal by its order dated January 17, 1984 confirmed the order of confiscation in respect of both the diamonds. The Tribunal held that seizure of diamonds was in the reasonable belief that these were smuggled goods and consequently the onus of proof, according to Section 123 of the Act, was on the petitioners and they had failed to discharge it in respect of the seized diamonds. The Tribunal, however, ordered the release of Indian currency of Rs. 1.40 lakhs and of all the confiscated goods except the diamonds. The penalty on petitioner 1 was reduced to Rs. 10 lakhs and on the petitioner 2 and the firm, it was reduced to Rs. 5 lakhs each. The result was that the penalty

imposed on the petitioners under Section 112 of the Act was reduced from Rs. 65 lakhs to Rs. 20 lakhs.

6. The petitioners challenged the correctness and legality of the Tribunal's order dated January 17, 1986, before the High Court of Delhi under Article 226 of the Constitution. Moreover, on an application filed by the petitioners under Section 130 of the Act, the Tribunal by its order dated January 8, 1985 referred to Bombay High Court the following two questions :

> (1) Whether, in the facts and circumstances of the case the Tribunal was justified in holding that the seizing Customs Officer had adequate material to form the reasonable belief as contemplated in Section 110 read with Section 123 of the Act, that the diamonds found in the business premises of M/s Gems Impex Corporation were smuggled goods?
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> (2) Assuming that Section 123 applied and burden of proof was on the appellants, whether the Tribunal should have held that the appellants had discharged this burden by tendering affidavits of persons claiming ownership of the seized diamonds?

7. By this Court's order dated July 15, 1987, it was directed that the reference application pending in the Bombay High Court should stand transferred to the Delhi High Court and be heard along with the writ petition.

8. The High Court by the impugned judgment dated May 16, 1988, from which the appeal was sought to this Court, disposed of the writ petition as well as answered the question.

9. Two contentions were raised before the High Court, namely, (1) there was no material before the Customs Officer to form the reasonable belief that seized goods were smuggled goods and, hence, the seizure itself was bad in law and, therefore, the provisions of Section 123 of the Act could not be applied and it was for the customs department to prove that the diamonds in question were smuggled. The customs department having failed to prove that the seized diamonds were smuggled the impugned order cannot be sustained. It was secondly argued that by assuming that the onus was upon the petitioners to prove that the seized diamonds were not smuggled, they had amply discharged the said burden by tendering affidavits.

10. The first question that has to be considered was whether there was material for forming an opinion as to reasonable belief under Section 110 read with Section 123 of the Act. Section 110 (1) of the Act which deals with seizure of goods, documents and things, provides as follows :

> (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods :
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> Provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permissions of such officer.

11. Section 123 which deals with onus of proof provides as follows :

> (1) Whether any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, diamonds, manufactures of gold or diamonds, watches and any other class of goods which the Central Government may by notification in the official gazette specify.

12. Hence, the gist of these two sections is that there must be materials to form a reasonable belief that the goods in question are smuggled. Section 111 deals with confiscation of property. The High Court, in our opinion, rightly found that there was evidence to presume that the goods in question were smuggled. A large quantity of diamonds was found in the possession of the petitioners. No trustworthy evidence, documentary or oral, was produced in favour of the petitioners as to its legal acquisition/importation or possession.

13. The learned Acting Chief Justice, Chadha, J. and Sabharwal J., who disposed of the matter by the judgment under appeal, found that even a cursory look at the documents was adequate to show that the transactions were of sale and purchase of diamonds in foreign currencies. While the stock in the books showed a balance of 11.96 carats of cut and polished diamonds and nil stock of rough diamonds, the stock found in their possession was much more. In those circumstances the High Court came to a conclusion that there was reasonable belief that the diamonds were smuggled and we cannot say that such conclusion was unwarranted.

14. It was contended before the High Court and repeated before us in support of the petitioners that there was no profit element in smuggling the diamonds and, hence, no presumption should be inferred against the petitioners. These was nothing on record to show that profit element was lacking. Section 123 of the Act itself recognises that diamonds have great potential for smuggling into India and that is why it is mentioned in sub-section (2) of Section 123 of the Act. The onus has been placed on the person from whose possession such articles are acquired.

15. In that view of the matter the High Court rightly drew the presumption against the petitioners. However, it was contended on their behalf that reasonable belief could not be based on presumptions. Reliance was placed on a Bench decision of the High Court of Delhi in the case of Shanti Lal Mehta v. Union of India. There it was asserted that the goods in question belonged to Queen Mother of Nepal and that they were duly entered in the account books but the accountant had gone to the income tax department. The Customs Officer did not wait for the accountant to arrive to explain the entries in the books of account to him and seized the goods which in the search list were described as 'appearing to be diamonds'. Due to these facts the learned Single Judge held that it was not a case of reasonable belief but only a case of suspicion. In the instant case, as per the High Court's order, the customs department had definite secret information. Despite petitioners' assertion that the books of accounts were written up-to-date it showed a stock of only 11.96 carats of cut and polished diamonds and that of rough diamonds and other articles as nil, the diamonds actually found on search were over 2800 carats of rough diamonds and over 400 carats of cut and polished

diamonds apart from various other precious stones etc. On being asked to produce evidence of legal acquisition, the petitioners expressed their inability. There was good ground accompanied by rational nexus leading to formation of the belief that the goods were smuggled. Furthermore, the petitioners stated that they had purchased the goods locally through the brokers and had already made 50 per cent cash payment but the cash book showed no such payment. They also come forward to confirm the deal. Besides, various incriminating documents were also found. The existence of the material is justiciable but not the sufficiency of the material. In this case there is ample material, their existence cannot be disputed. There is certainly a nexus between these materials and the formation of the belief that the goods are liable to confiscation. In the light of the above Section 110 read with Section 123 has been fully complied with.

16. The reasonable belief a to smuggled goods, as enjoined in the Act, had been explained by this Court in State of Gujarat v. Mohanlal Jitamalji Porwal. There this Court observed whether or not the officer concerned had seized the article under the "reasonable belief" that the goods were smuggled goods, is not a question on which the court can sit on appeal. The circumstances under which the officer concerned entertains reasonable belief, have to be judged from his experienced eye who is well equipped to interpret the suspicious circumstances and to form a reasonable belief. See also M. A. Rasheed v. State of Kerala and Barium Chemicals Ltd. v. Company Law Board. It must be reiterated that the conclusions arrived at by the fact-finding bodies, the Tribunal or the statutory authorities, on the facts, found that cumulative effect or preponderance of evidence cannot be interfered with where the fact-finding body or authority has acted reasonably upon the view which can be taken by any reasonable man, courts will be reluctant to interfere in such a situation. Where, however, the conclusions of the fact-finding authority are based on no evidence then the question of law arises and that may be looked into by the courts but in the instant case the facts are entirely different. See the principles enunciated by this Court in M/s Mehta Parikh & Co. v. CIT. The same view was expressed by this Court in Pukhraj v. D. R. Kohli where while dealing with the provisions of the Sea Customs Act, 1878, this Court held that Section 178 of the said Act imposed the onus of proof that the gold was not smuggled, on the party if it was seized under the Act. The question whether it was under the reasonable belief or not, was a justiciable one. The facts of this case certainly warrant the formation of belief. In any case, once it is held that there was material relevant and germane, the sufficiency of the material is not open to judicial review.

17. The other contention urged on behalf of the petitioners was that the burden that lay upon the petitioners had been fully discharged to show that the goods were not smuggled. The High Court on an analysis of the facts found that the onus was not duly discharged and held that though the burden on the petitioners was not as high a on the prosecution but there must be preponderance of probabilities. The High Court found that by filing the affidavits in this case, the burden had not been discharged. We are in agreement with the High Court. The facts that the affidavits had been filed long afterwards and the names of the parties were not disclosed at the time of search, warrant rejection of the affidavits. These were filed after a gap of 15 months and the same were examined minutely. The facts and figures given were checked up and the credibility of the deponents as well as the credence of their version examined. Furthermore, the affidavits must be looked at in the background that those persons who claim that they had given these diamonds on approval basis, made no claim for all these diamonds.

18. Reliance was placed on a decision in the case of Rabindra Kumar Dey v. State of Orissa. This Court while considering this case under the Prevention of Corruption Act and the nature and standard of proof required of the accused under Section 105 of the Evidence Act held that the Evidence Act does not contemplated that the accused should prove the case with strictness and rigor.

But in this case the nature of the evidence on which the reliance could not be placed was rightly rejected by the customs and the High Court held it properly that the petitioners had not discharged the onus to prove that the goods were not smuggled.

19. In this case there was no denial of opportunity, the proceedings followed excluded the possibility of denial of opportunity. The proceedings taken were in order and in consonance with natural justice. The High Court was right in answering the first question by saying that the Tribunal was justified in holding that the seizing Customs Officer had adequate material to form a reasonable belief as contemplated under Section 110 read with Section 123 of the Act and it rightly held that the appellants had failed to discharge the onus. The High Court answered the second question in the negative. In our opinion, the High Court was right.

20. There is, however, one aspect of the matter which was emphasised before us, i. e. that the conclusions of the fact-finding body or statutory authority must be arrived at after giving a fair opportunity to the party to be affected by the order to be passed. As has been reiterated by a Bench decision of the Calcutta High Court in Bal Kissen Kejriwal v. Collector of Customs, a fair hearing has two justiciable elements. The first is that an opportunity must be given and the second is that the opportunity must be reasonable. Whether a person has a fair hearing, can be gone into by the court and the court's conscience must be satisfied that an Administrative Tribunal charged with the duty of deciding a dispute has conformed to the principles of natural justice. In that decision the Calcutta High Court was dealing in respect of a proceeding under the Sea Customs Act, 1878. Counsel for the appellant sought to urge before us that a fair hearing had not been given. We have set out the facts hereinbefore. The High Court had also examined this aspect and rejected this challenge. In our opinion, the High Court was right. In our opinion, judged by the aforesaid two aspects a reasonable and fair hearing was afforded to the petitioners. Hence, it cannot be accepted that there was legitimate cause of grievance.

21. The High Court was right in disposing of the matter in the manner it did. This application, therefore, fails and is rejected.

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