

Naresh J. Sukhawani

Vs

Union of India

SLP (C) No. 23708 of 1995

(K. Ramaswamy, B. N. Kirpal JJ)

06.11.1995

ORDER

1. The special leave petition arises from the order dated 7-8-1995 passed by the Bombay High Court in WP No. 1334 of 1995. The Customs officials at Sahar International Airport, Bombay apprehended one Sukhawani Solanki when he was attempting to export foreign exchange out of India valuing Rs 13,27,212. Mr Solanki in his statement recorded under Section 108 of the Customs Act by the Customs official, had stated that one Mr Subhash Dudani had given him the currency to hand over to Mr Kenny at Hong Kong. The Customs officials apprehended Mr Subhash Dudani who in his statement recorded under Section 108 stated that foreign exchange given to Solanki was received from one Mr Rajesh Sukhawani. Thereafter, the Customs officials traced the petitioner and had searched his premises on 21-12-1991 in his absence, but nothing incriminating was recovered.

2. The Customs officials initiated proceedings for confiscation of foreign exchange and used the statement of Mr Dudani against the petitioner. After enquiry and giving an opportunity to the petitioner, the Additional Collector confiscated the foreign currency and imposed a penalty of Rs 1 lakh. When the petitioner challenged the confiscation in appeal, the Collector set aside the said order. On suo motu revision, the Government reversed the order the Collector and restored the order of the Additional Collector which was affirmed by the High Court by the impugned order. Thus the special leave petition.

3. The Joint Secretary to the Government, the revisional authority, has held that the evidence and the statement given by Mr Dudani incriminates the petitioner. This was established with reference to the photographs and other intrinsic material. On that basis, he concluded that Mr Dudani incriminated himself and the appellant in passing off foreign currency out of India, i.e., to Hong Kong. It was accordingly held that the contravention was established. It is contended that the statement of the co-accused could be used only to corroborated other evidence as one of the circumstances under Section 30 of the Evidence Act. But it cannot be used as substantive evidence without corroboration from other independent evidence. Except the statement of Dudani, there is no other independent evidence. Mr Dudani's evidence cannot be pressed into service to arrive at the conclusion that the petitioner is involved in the passing of foreign currency out of India.

4. It must be remembered that the statement made before the Customs officials is not a statement recorded under Section 161 of the Criminal Procedure Code, 1973. Therefore, it is a material piece of evidence collected by Customs officials under Section 108 of the Customs Act. That material incriminates the petitioner inculpating him in the contravention of the provisions of the Customs Act. The material can certainly be used to connect the petitioner in the contravention inasmuch as Mr Dudani's statement clearly inculpates not only himself but also the petitioner. It can, therefore,

be used as substantive evidence connecting the petitioner with the contravention by exporting foreign currency out of India. Therefore, we do not think that there is any illegality in the order of confiscation of foreign currency and imposition of penalty. There is no ground warranting reduction of fine.

5. The special leave petition is dismissed accordingly.