**(2007) 05 DEL CK 0322**

**In the Delhi High Court**

**Case No :** Criminal Revision Petition 548 of 2003

A.K. Joshi APPELLANT

Vs

State RESPONDENT

**Date of Decision :** 28-05-2007

**Acts Referred:**
Customs Act, 1962 — Section 111, 132, 135, 135(1)
Passports Act, 1967 — Section 12, 12(1), 15, 3
Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471, 511

**Citation :** (2007) 05 DEL CK 0322

**Hon'ble Judges :** S. Ravindra Bhat, J

**Bench :** Single Bench

**Advocate :** Naveen Malhotra, in Criminal Rev. P. 548/2003 and M.P. Singh and K.K. Singh, in Criminal Rev. P. 583/200, for the Appellant; R.M. Tiwari, for the Respondent

**Final Decision :** Dismissed

## Judgement

S. Ravindra Bhat, J.—This revision challenges an order dated 15-3-2003 by which the petitioners were charged with committing offences under Sections 420 and 511 Indian Penal Code (IPC) read with Sections 468/471, read with Section 120-B and Section 12 of the Passports Act.

2. Briefly, the facts are that Section 111(d) of the Customs Act, 1962, enacts that any goods, imported, or or attempted to be imported or brought within the Indian Customs Waters, contrary to any prohibition imposed under the is liable to confiscation. It was alleged that during the relevant period import of cars without valid import license/customs clearing permit was restricted/prohibited under Clause 3(1) of Imports (Control) Order, 1955 issued under Clause 3 of Imports & Exports (Control) Act, 1947 read with Public Notices No. 21-ITC/92-97 dated 26/6/92 and Public Notice No. 197-ITC/(PN)/90-93 dated 16/8/91 issued by the Chief Controller of Imports and Exports, Central Government. These prohibitions were deemed to have been imposed u/s 111 of Customs Act, 1962. According to

 

conditions laid under Public Notice dated 16/8/91 payment for the imported car should not have been remitted from India, payment for duty of motor vehicle should be have been made in foreign exchange unless specially exempted from the public notice and the importer came back to India for permanent settlement with declaration to that effect before Customs; he should have stayed abroad at least for two years. Another condition was that import of passenger car not exceeding 1600 cc capacity could be made for a new car, otherwise a car having capacity of 1600 CC or more should have been in use of the importer for more than a year before his return to India.

3. The accused petitioners were proceeded for offences against by the CBI, which investigated into allegations of forgery, fabrication of documents and cheating, besides violation of provisions of the Passports Act, in regard to import of nine Honda cars. The CBI, after carrying out investigations, filed a charge sheet, alleging that there was sufficient materials to charge Mohd. Salim Khatri (A-1), M/s Sealand (India) (A-2) and Shri A.K. Joshi (A-3).

4. According to allegations eight bills of entry were processed by staff of the customs department. No bill of entry was filed in respect of import of car in the name of Kolavayal Gangadharan. In none of the 9 cases formal orders for out of charge of the goods were given. The bills of entry were taken over by the DRI Officers before the final assessment of the goods and scrutiny of the documents. No payment of Customs duty was also made for import of any of the cars. It was alleged that investigation with various passport offices revealed that the above passports were issued by the respective passport offices; addresses shown on them were altogether different from what were shown in the Bills of entry for import of the nine Honda Cars. The passport holders were not found at Delhi addresses shown in the bills of entry. Passport application in respect of Shri K. Gangadharan only was available and the rest had been destroyed by Passport Offices due to efflux of time.

5. The CBI alleged that photographs and signatures of Shri Paul Daniel Mohandhas, Shri K.S. Shanmugam, Shri P.H. Anthru and Shri J.M.A. Wahab on passports in their names were forged. Investigation at Banglore revealed that both Shri Mohd Ahmed and Shri K. Gangadharan are did not exist at the addresses shown in passports issued in their names. There were interpolations in the identity number, date of issue, date of expiry etc. in the passport in the name of Shri K. Gangadharan. Investigation at Hyderabad disclosed that Sheikh Hussain Saheb was not traceable at the given address in the passport. The investigations at Regional Passport Office, Mumbai, showed that it issued passport in favor of one Shri G.R. Bhumayya a resident of Jangapally PO Tottapally, Dist. Kareem Nagar, Andhra Pradesh. He had gone to Delhi and had given his passport for Rs. 5,000/- to Shri Khatri (A-1) and Joshi (A-3) for import of car in his name. Shri Khatri and Shri Joshi had obtained his signatures on various papers. Actually, he had not imported/purchased any car.

6. It was also alleged according to investigation that the passport of Shri R.P.

 

Shridharan was genuine, with his photographs and signature. He gave a signed statement before DRI that he had given his passport for Rs. 5,000/- to Shri Mohd. Salim Khatri and Shri A. K. Joshi at Delhi. He had not purchased any car; nor did he import any car. It was alleged that according to investigation each passport had Transfer of Residence (TR) entries; the Unaccompanied baggage centre of Customs at Air Cargo Complex, Sahar, disclosed that such entries in passports of Sh. Mohd. Sahib, J.M.A. Wahab, Sh. K. Shanmugam, Sh. P.H. Anthru, Sh. Mohd. Ahmed, Shri K. Gangadharan, Shri Paul Daniel Mohandas were bogus as no such clearance was given to them. Likewise, there was no emigration clearance entry in passport of Shri G.R. Bhumauyya.

7. According to CBI, none of the eight cases, at the time of assessment, the passports were checked by Customs to verify if there were any TR entries and departure and arrival entries of the passport holders. Except in case of passports of Shri R.P. Sreedharan and Shri G.R. Bhumayyha, entries of transfer of residence and emigration clearance particulars in the remaining seven passports were forged. Not only this, investigation proved that Shri Mohd. Ahmed and Shri Seikh Hussain Saheb are non existent. The photographs and signatures in the passports in the names of Shri P.H. Anthru, Shri Paul Daniel Mohandas, Shri K. Shanmugam, Shri J.M.A. Wahab were replaced. These aspects showed forgery of the passports. They were obtained in fictitious names of Shri Mohd. Ahmed and Shri Seikh Hussain Saheb from the Passport Office, Bangalore and Hyderabad, respectively. In case of passport in the names of Shri P.H. Anthru, Shri Paul Daniel Mohandas, Shri K. Shanmugam, Shri J.M.A. Wahab, forgeries were made as regards photographs and signatures by replacing them after the passports were issued by the concerned Passport Offices.

8. According to investigations of CBI, Savings Bank Accounts were opened in the names of nine passport holders with Oriental Bank of Commerce, Sarva Priya Vihar Branch, Kalu Sarai, New Delhi. The bank is located in the building owned by Khatri Brothers. The accounts are opened in the year 1992 between 31/1/92 and 7/2/92 with initial cash deposit of Rs. 500/-. One of the accounts i.e. account No. 3185 in the name of Shri Seikh Hussain Saheb was introduced by Shri Mohd. Salim Khatri. The address of Shri Seikh Hussain Saheb shown in the Account Opening Form is C/o Mr. Salim, 83/1, Adhichini, New Delhi. Shri Mohd. Salim Khatri has a workshop in the name of M/s Technic Automobiles Pvt. Ltd. at 83/1, Adhichini, New Delhi.

9. In the case of the other 8 accounts, addresses shown in ledger sheets is 83/1, Adhichini, New Delhi. First pay in slips by which the accounts were opened with initial deposit of Rs. 500/- showed the address either as C/o Mr. Salim or as c/o Salim, 83/, Adhichini, New Delhi. Usually there were two transactions - first deposit of Rs. 500/- for opening of the account and second for withdrawal of Rs. 600/- leaving very meagre balance in the accounts in the name of Shri R.P. Sreedharan, Shri Mohd. Ahmed, Shri K. Gangadharan, Shri K., Shanmugam, Shri P.D. Mohandas and Shri P.H. Anthru. Patterns of withdrawal and use of accounts

 

in in all the cases were similar. The last withdrawal of Rs. 450/- from the account of Shri Seikh Hussain Saheb and Rs. 3300/- from the account of Shri G.R. Bhumayya was made by Shri Surinder Saini. Investigation revealed that Shri Surinder Saini had withdrawn the amount from these accounts on the instance of Shri Mohd. Salim Khatri and had given the withdrawn amount to him.

The Government Expert on Questioned Documents (GEQD) opined that signatures were of Surinder Saini on the back of the cheques. GEQD has also identified signatures of Shri A.K. Joshi on the Bills of Entries and of Shri Mohd. Salim Khatri on account opening form of Shri Shaikh Hussain Saheb.

10. It was alleged that for violations of Customs Act, the Department of Revenue Investigation, filed complaint before ACMM, Patiala House Court after obtaining sanction of Collector of Customs, Delhi under Sections 132 and 135(1)(a) of Customs Act, 1962 against Shri Mohd. Salim Khatri and Shri A.K. Joshi. The investigation by CBI revealed commission of offences u/s 120-B, IPC r/w 420/511, 468 and 471 IPC and Section 12(1)(b) and (d) of the Passport Act, 1967 by Shri Mohd. Salim Khatri, M/s Sealand (India) and Shri A.K. Joshi. Sanction order for prosecution of Shri Mohd. Salim Khatri, M/s Sealand (India) and Shri A.K. Joshi, was issued by the competent authority Lt. Governor of NCT of Delhi u/s 15 of Passports Act, 1967 is enclosed in original.

11. Learned Counsel contended that there was no evidence to show that the petitioners ever induced anyone to part with property, dishonestly, or that they had forged or fabricated the materials. No loss was established; the cars imported by the nine persons were entered in Bills of Entry, according to instructions given by them. The petitioner A-3 was a customs agent, who merely acted on the representation of the importers. It could not be said that the entry of the cars were based on a fraudulent intention to cheat anyone; if there was any revenue loss, that issue had been gone into by the Customs, Excise and Service Tax Appellate Tribunal, which completely exonerated both the accused of the charges of evasion of duty. The revenue angle having been cleared, the petitioners could not be accused of any other offence.

12. It was submitted that the alleged forgery or duplication of passports, could not be fastened upon the petitioners, who had no role in that regard; in any event, the prosecution had no evidence to connect them with such incident. In these circumstances, the offences u/s 468/471 were unsustainable. Similarly, the allegation of cheating were not only far fetched, but baseless. As regards the charge of contravention of Section 12 of the Passports Act, it was contended that the petitioners could never be arrayed for it, since they had not used or allowed to the passports, to be used.

13. The impugned order was defended by learned Counsel for CBI, who submitted that apart from the revenue angle, i.e loss to the customs department, the modus operendi adopted by the petitioners, was ingenious; they sought to circumvent import restrictions, by devising methods for importing the

 

Honda cars, without paying duty. These included using genuine passports, for illegal purposes; manipulating entries in travel and passport documents, using tampered passports, and in some cases dubious documents, because the passports were not found in any of the addresses mentioned. At least two of the alleged importers had in their statements, recorded, categorically stated that their passports were used by the accused, for import of cars, upon payment of money by them.

14. Learned Counsel submitted that the pattern of acts committed by the accused petitioners revealed a deep rooted conspiracy; in all the cases, the so called importers were said to have opened bank accounts, with identical amounts; they were identified by the first accused, and the third accused facilitated the entire process, his involvement was clearly found in the issuance of the Bills of Entry. It was alleged that the exoneration of the petitioners, in the departmental, or adjudication proceedings, did not imply that they could not be charged with offences under the Indian Penal Code, if the evidence collected, indicated their complicity.

15. The findings of CESAT, which were relied upon, may be extracted below:

Upon examination of the evidence on record and the submissions of both the sides, we are of the opinion that the charges made against the present appellants are not well supported by evidence. Even if the passport used were false in the sense that Indian Nationals had travelled abroad to work under false/ assumed identities, as the present appellants were not involved with the preparation of such false documents (passport) for such travels, they would not be guilty in regard to the present imports. Prima facie, even the preparation of these false documents could not have been with the intention to avail of the import benefits, inasmuch as the persons had gone out of India well before the issue of the circular in question. May be, for various reasons they chose to travel abroad under false documents. But that does not support the present findings against the appellants as they had not arranged the false documents so as to benefit from the imports. The involvement of Shri Salim Khatri could be only to facilitate the sale of cares after imports and to derive some financial advantage from it. Such a brokerage activity is not illegal under the Customs Act or any other law. The clearing agent also would appear to have been only filling papers in the normal course of his business for clearing imported goods. Their statements are of not much relevance in the face of the evidence on record. Therefore, penalties could not be imposed based on those statements.

16. A reading of the order of the Tribunal would show that it rested its findings on the basis of certain assumptions, i.e that the involvement of the petitioners could not be said to be illegal, as they sought to facilitate the sale of the cars. However, the order does not show deeper analysis of certain salient details, such as commonality of pattern of opening of bank accounts; the use of passports by the first accused; the witnesses deposed that he gave Rs. 5000/- to them to use the passport, for importing the cars. As regards the third petitioner, his use of

 

those passports, without the performance of journey by the so-called importers, and issuance of the Bill of Entry, shows his knowledge, of the fraudulent nature of the transactions. In some judgments of the Supreme Court, reported as P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, ; Commissioner of Income Tax. Mumbai v. Bhupen Champaklal Dalai and Anr. (2001) 3 SCC 469 and Surkhi Lal v. Union of India 2005 (3) JCC 1788 it was held that the exoneration of someone, in departmental or adjudication proceedings did not mean that he could not be prosecuted for offences on the same facts. This Court analyzed all the relevant decisions, in Sunil Gulati v. R.K. Vohra 2007 (1) SCC 207 and held that findings in departmental or adjudication proceedings would not amount to resjudicata and initiation of criminal proceedings in these circumstances cannot be treated as double jeopardy as they are not in the nature of "prosecution".

17. The above facts would show that nine Honda cars were sought to be imported without paying import duty. The first accused runs an auto workshop, and also deals in cars. The evidence disclosed in the charge sheet shows that he facilitated opening of accounts; some ostensible account holders, who never actually imported the car, deposed that their passports were given to the first and third accused, they also received Rs. 5000/- for giving the passports. Two passport holders were not traceable; the address furnished in the savings bank, (the branch being in the same premises as the first accused''s) were that of the first accused. He introduced the account holders. Some of the passports were tampered; all of them had fake TR entries. The Bill of Entries were issued at the behest of the third accused. In these circumstances, the impugned order on charge cannot be said to have been made without application of mind was untenable. The materials do disclose prima facie, grave suspicion about involvement of the accused petitioners, in respect of the acts complained.

18. Section 12 of the Passports Act reads as follows:

12. Offences and Penalties:

(1) Whoever -

(a) contravenes the provisions of Section 3; or

(b) knowingly furnishes any false information or suppresses any material information with a view to obtaining a passport or travel document under this Act or without lawful authority alters or attempts to alter or causes to alter the entries made in a passport or travel document; or

(c) fails to produce for inspection his passport or travel document (whether issued under this Act or not) when called upon to do so by the prescribed authority; or

(d) knowingly uses a passport or travel document issued to another person; or

(e) knowingly allows another person to use a passport or travel document issued to him, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees or with both.

(2)... (3) Whoever contravenes any conditions of a passport or travel document or any provisions of this Act or any rule made there under for which no punishment is provided elsewhere in this Act shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) ...

19. One of the conditions for attracting the offence u/s 12, is a person knowingly using the passport or travel document of another person (Section 12(d)). The facts of this case show, prima facie, that passports issued to some of the ostensible importers, were used to bring in the cars, when they never intended to do so; they were given money for that purpose. They had not imported the cars. Therefore, I see nothing wrong in the framing of this charge.

20. As regards the direct involvement of the third accused, it has been established that he made the Bill of Entry in all the cases. They contained particulars of fictitious and suspect transactions, besides false details of false and fabricated passports. Two witnesses stated that they handed over passports to A-1 and A-3, in exchange for money. His role at this stage indicates a grave, prima facie suspicion of having participated in the commission of the offence, as well as the conspiracy.

21. In view of the above findings, there is no infirmity with the order on charge. It is made clear that the observations in this order were made for the purpose of considering the correctness of the charges framed, and were not a reflection of the merits of the matter, or the defense of the petitioner accused. The petition fails, and is dismissed.

 