(1988) 04 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 741 of 1981

Amrut Rayoo Anvekar — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 04-04-1988

Acts Referred:
Gold (Control) Act, 1968 — Section 50

Citation : (1988) 17 ECR 257 : (1988) 36 ELT 87

Hon'ble Judges : R.A. Jahagirdar, J

Bench : Single Bench

Judgement

1. This is a petition under Article 226 of the Constitution of India challenging certain orders which have been passed against the petitioner by the appropriate authorities under the Gold (Control) Act as well as under the Customs Act. The facts leading to proceedings which resulted in a penal action being taken against the petitioner must be stated in order to understand what I would regard as the untenable nature of the orders passed against the petitioner.

2. The petitioner is carrying on the business of a goldsmith under the name and style of M/s. Anvekar Brothers at a place in Bombay. On receiving information that his mother is sick he proceeded to his native place in the then Union Territory of Goa on or about 6th November, 1973. He had a brother by name Gurudas who was left behind to look after the shop. On 12th of November 1973 the petitioner returned to Bombay, his mother having recovered sufficiently enabling him to do so. On return the petitioner found that on 8th of November 1973 a search had been carried out in the premises of the shop and 49 gold bars with foreign marking had been recovered in that raid. Gurudas, the brother of the petitioner who had been left in charge of the shop, made a statement in which he claimed to be the owner of the shop. Another person called Subhash Mayekar, who was present in the shop at the time of the raid, mentioned in his statement that he was present in the shop accidentally and he had nothing to do either with the shop or with the contraband gold found at the time of the raid.

3. Show cause notices were issued to Gurudas, the brother of the petitioner, and the said Subhash Mayekar on 26th of April 1974. These notices required them to show cause why penalty should not be imposed upon them under the Gold (Control) Act as well as under the Customs Act and also as to why the gold seized should not be confiscated. Subsequently, the petitioner also was required to give a statement, which he did, and in that statement he had mentioned that he was away in Goa on 6th November, 1973 and he returned to Bombay on 12th November, 1974. The year 1974 was obviously a mistake because the statement itself is prior to 12th of November, 1974. Obviously he meant that he returned to Bombay on 12th of November, 1973. This ought to be emphasised because the Government of India, the revisional authority under the Gold (Control) Act, has taken this fact into consideration as a crucial fact for holding that the petitioner had left the shop in possession of his brother for such a long time which facilitated the Commission of the offence in question by his brother Gurudas.

4. The petitioner also received two notices, one under the Gold (Control) Act and the other under the Customs Act, both dated 11th November, 1975. The petitioner gave his explanation, which was more or less on the lines on which he had given his statement earlier, namely that on being summoned on account of his mother''s sickness he proceeded to his native place in Goa and had returned to Bombay on 12th November, 1973. In his absence the raid had taken place and without his knowledge let alone with his connivance, somebody might have secreted the gold bars in his shop.

5. This explanation was rejected by the Additional Collector of Customs, who is also the concurrent authority under the Gold (Control) Act, and he by his order dated 25th of June 1976 held the petitioner guilty. He imposed a fine of Rs. 10,000 on him u/s 74 of the Gold (Control) Act.

6. Two appeals were naturally preferred by the petitioner one to the Gold Control Administrator, who is the appellate authority under the Gold (Control) Act. The Gold Control Administrator by his order dated 21st November, 1977 dismissed the appeal by holding that the petitioner acted in such a manner that facilitated the concealing of the contraband gold by his brother Gurudas. Against this order the petitioner preferred a revision application to the Central Government.

7. In the meantime, the petitioner was prosecuted under the Customs Act and the learned Metropolitan Magistrate at Bombay gave an honourable acquitted to the petitioner. The appeal which the petitioner had preferred under the Customs Act against the order of imposing a fine of a Rs. 10,000 on him was also allowed by the Central Board of Excise and Customs by its judgment and order dated 6th of March 1980. From what has been stated so far by me it is clear that the facts were common to the proceedings under both the Acts. The petitioner has been held to be not guilty not only in the criminal proceedings under the Customs Act but also in adjudication proceedings under the said Act. However, as already mentioned above, the appellate authority under the Gold (Control) Act took a different view and dismissed the appeal preferred by the petitioner. The Central

Government refused to interfere with the orders of the two authorities below and by its order dated 30th of March 1981 the Central Government dismissed the revision preferred by the petitioner. A consequence of this final order passed under the Gold (Control) Act was the cancellation of the Gold Dealer''s Licence of the petitioner, which was brought about by an order passed on 21st of May 1981 by the Collector of Customs (Preventive), Bombay, who has concurrent jurisdiction under the Gold (Control) Act also. The petitioner has now approached this Court under Article 226 of the Constitution challenging the view taken by the authorities under the Gold (Control) Act holding the petitioner guilty of abetting the illegal activities of his brother Gurudas who had been left temporarily in charge of the shop during the petitioner''s absence at his native place.

8. Mr. Taleyarkhan, the learned Advocate appearing in support of the petition, has pointed out that one consideration which has weighed with all the authorities under the Gold Control Act was the fact that the petitioner had left the shop in charge of his brother and this act facilitated the Commission of the offence by his brother. The authorities below have taken this view on the palpably wrong reading of the statement of the petitioner wherein it was mentioned that the petitioner had left Bombay on 6th of November 1973 and that he returned to Bombay on 12th November, 1974. This fact is patently wrong because the statement of the petitioner was recorded on 21st of September 1974. This statement could not have, naturally, mentioned that the petitioner returned to Bombay on or about 12th of November 1974. The authorities below are exercising powers under an Act which would visit the persons proceeded against with penal consequences. Naturally, concepts such as benefit of doubt and burden of proof on the prosecution are relevant in these proceedings because they are in the nature of criminal proceedings though they themselves are not criminal proceedings. If this fact had coloured the views taken by the authorities under the Gold (Control) Act, then the orders based upon such views are liable to be set aside and ought to be set aside.

9. Mr. Rege, the learned Advocate appearing for the respondents, has tried to support the impugned order on the basis of the reasons given therein. The affidavit in reply to this petition also is to the same effect. It is not necessary for me to deal with them because I am of the opinion that the entire approach of the authorities below is vitiated by irrelevant considerations or at least by considerations which are totally divorced from the facts.

10. In the result, the petition must succeed. Rule is made absolute in terms of prayer clause (a). The order dated 21st May, 1981 passed by the Collector of Customs (Preventive), Bombay cancelling the gold dealer''s licence of the petitioner is set aside.

11. These will be no order as to costs in this petition.

