

(1994) 04 PAT CK 0045
In the Patna High Court
Case No : Cr. W.J.C. Nos. 419 and 474/1993

Angou Golmei

APPELLANT

Vs

Vizovolie Chakha Sang

RESPONDENT

Date of Decision : 22-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0045

Final Decision : Dismissed

Judgement

S.N. Jha, J.—The petitioner have challenged the validity of seizure of the goods, namely, cloves and javitri. They also seek direction to the respondents to permit them to carry on trade and business in cloves, javitri and other items. The controversy in the two writ petitions being identical, they have been heard together and are disposed of by this common judgment.

2. Shorn of details, the petitioner in Cri. W.J.C. No. 419 of 1993 claims to be holder of monopoly rights for working of cloves in the State of Manipur for the period of two years effective from 23rd October, 1992. The petitioners in Cr. W.J.C. No. 474 of 1993 claim to be settles of the cloves and the Javitri Mahals in the State of Nagaland for the period of one year ending on 9th September 1992. On the basis of the settlement aforesaid, according to them, they collect articles and despatch them to different places by air or mail on payment of royalty to the respective Government, namely, Government of Manipur and Nagaland. As Manipur is not connected to other places of the country by air or rail, the goods are brought to Dimapur and then transported out. The movement of goods within and outside the State is on the basis of Transit passes granted by the officers of the Forest Department. On account of absence of direct air or rail link as aforesaid, it is said, the Manipur Government has entered into an understanding with the Nagaland Government for issue of Transit passes to cover the onward journey of the goods from Dimapur. In other words, whenever the goods are to be taken out of the State of Manipur, a Transit pass is first issued by a competent authority of Manipur State and when the goods reach the State of Nagaland, the

authorities of that State in lieu of the Transit passes issued by the Manipur administration issue separate Transit passes of the State of Nagaland and the goods are booked for onward journey by air or rail or by road on the basis of the Transit passes so issued by the authorities of the Nagaland Government.

3. The petitioners have given details of Transit passes and bookings etc. relating to the impugned consignments of goods, which are not necessary to be stated for the purpose of this case. It may only be stated that the goods were detained and later seized by the Customs authorities, at Barauni Railway Station. The details of their detention and seizure will be mentioned later at the appropriate place in this judgment. The petitioners made representation. Their claim was supported by the Government of Manipur and Nagaland and but the goods were not released and, in the circumstances, the writ petitions were filed on 6th July, 1994 and 26th July, 1993.

4. In these writ petitions the petitioners have only challenged the seizure and not the confiscation proceedings. However, since a valid seizure is a sine qua non of the confiscation proceeding this court directed that the final order in the confiscation proceedings will not be passed but the pendency of the writ petitions will not be a ground for the petitioners to abstain from the confiscation proceedings.

5. Power of seizure of goods is contained in Section 110 of the Customs Act, 1962, the relevant part of which reads 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."

The principal point for consideration is whether there was reasonable belief on the part of the seizing officer that the goods in question were liable to confiscation under the said Act.

6. A question arose during course of hearing as to whether consequent upon repeal of the Import and Export (Control) Act, 1947 by the Foreign Trade (Development and Regulations) Act, 1992 (Act 22 of 1992) there is any restriction on the import of cloves. However, in view of the provisions of Section 3(3) and Section 4 of the 1992 Act read with the relevant entry, namely, item 8 of Part II of Schedule II of the Schedule, the Import and Export Policy having statutory force u/s 3(2) of that Act, there cannot be any doubt that the clove will be deemed to be a prohibited item within the meaning of Section 11 of the Customs Act. The cloves are, thus, undoubtedly liable to confiscation u/s 111 of the Customs Act unless, of course, they are found to be indigenous.

7. Although in the show cause notice and the ground of seizure the authorities had referred to the trade opinions of certain local traders to the effect that the cloves in question are of Janjibar origin, during course of hearing, the trade opinions were given up as a basis of the belief regarding the contraband nature of the goods. According to the department, seizure rests on a general belief that

cloves are not grown in Manipur or Nagaland or other North-Eastern States and, therefore, coming as they do from Dimapur they must have been smuggled from outside i.e. across the Indo-Burman border. This case, in that sense, is different from the usual run-of-the mill cases where the dispute centres round the "Identity" of the goods.

8. This takes us to the question whether the materials brought on record are relevant and sufficient to sustain the aforesaid belief on the part of the seizing officer on the date of seizure. Before entering upon adjudication of that question it is necessary to sort out the dispute regarding the date of seizure itself. According to the petitioners, the seizure was effected on 30th March, 1993. While according to the department, on that date the goods were merely detained and the actual seizure was made on 3rd and 16th April, 1993.

9. Proviso to Sub-section (1) of Section 110 of the Customs Act reads as follows :-

"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 permission of such officer."

Learned counsel for the petitioners in support of the contention placed reliance on Collector of Customs and Central Excise, West Bengal v. Hindustan Motors Limited (AIR 1975 Calcutta 368) where on construction of the order made u/s 110 it was held that the overt act of scaling the packed drums amounted to exercise of dominion over the goods constituting seizure within the meaning of Section 110(1) of the Act. No other case on the point was brought to our notice by either side. The actual order of 30th March, 1993 which could show as to whether it conforms to the requirements and conditions laid down in the proviso is not on the record. This aspect of the matter, no doubt, is significant for the purpose of return of the seized goods to the person from whose possession they were seized if no notice in respect thereof is given under clause (a) of Section 124 within six months of the seizure. However, for the purpose of these cases, which relate to the validity of the seizure alone and not the confiscation proceeding, it is not necessary to collaterally decide the question regarding date of seizure. Admittedly, show cause notice u/s 124 have been issued on 29th September, 1993 (said to be despatched on 30th September, by the petitioners). Seizure memo having been prepared on 3rd and 16th April, 1993, Annexure-23(3) in Cr. W.J.C. 419 of 1993, I proceed to examine the question of existence of reasonable belief on the assumption that the seizure was effected on those dates, i.e. on 3rd and 16th April, 1993.

10. Brief facts of the case dated 25th April, 1993 prepared by Sri. K.R.C. Pillai, who effected the seizure, Annexure-24, shows (a) on 30th March, 1993 information was received from Assistant Security Commissioner, R.P.F Barauni, regarding illicit movement of cloves and Javitri through railway wagons placed at

Garhara transshipment yard, (b) the information was processed and worked out by the Superintendent of Customs, Barauni, on 30th March, 1993. Under reasonable belief and on close examination of the railway wagons, wagons bearing No. ER BCX 40121 and WR BCX 77009 were detained on 30th March, 1993 by the Superintendent of Customs and sealed, and (c) the said railway wagons were opened in the presence of R.P.F. staff and independent witnesses. The goods, namely, cloves and Javiri were found to be of foreign origin on the basis of the trade opinion of the "noted dealers of the State". "After taking all the facts into consideration and careful studies the goods i.e. cloves and Javitri were found to be of foreign origin, hence was seized u/s 110 of the Customs Act, 1962".

11. Counsel for the petitioners was at pains to point out that as on 16th April, 1993 the seizing officer had only two materials with him (a) information received from Assistant Security Commissioner, R.P.F. Barauni, leading to scaling of the goods, and (b) trade opinions as contained in Annexures 23,23(1) and 23(2). As indicated above, during course of hearing, the aforesaid trade opinions were not pressed and, in fact, given up as ground of belief and the seizure.

12. In this connection it would be useful to refer to the affidavit sworn by Sri Kamakhya Prasad Sinha, Superintendent of Customs, Barauni, filed during course of hearing on 7th December, 1993, the relevent of which, dealing with the seizure made on 3rd April, 1993, reads as follows :-

"On opening of bags some cloves was taken out and visually inspected. On visual inspection and smelling Sri K.R.C. Pillai he re-affirmed that the clove was of foreign origin. Opinion of traders dealing in spices was also sought for the purpose of investigation. Sri Jakulal and Vinod Kumar who had been called for the purpose of obtaining trade opinions also confirmed in writing that the cloves was different from indigenous clove. Sri Pillai being a part of customs preventive formation Barauni was already aware of the intelligence communicated to him by the Superintendent and having firm reasons to believe that the consignment in question was of foreign origin, effected seizure under the provisions of Customs Act, 1962, under the supervision of the deponent."

The seizure effected on 16th April, 1993 has been described in paragraph 13 of the aforesaid affidavit in identical manner. It would, thus, appear from the perusal of the "Facts of the Case" (Annexure-14) and the affidavit stating facts about the seizure that the seizure was made on the basis of the information received from the Assistant Security Commissioner, R.P.F. Barauni and the "visual inspection and smelling" by Sri K.R.C. Pillai (not so stated in "Brief Facts", Annexure-24), supported by the opinions of the traders. It may be stated again even at the cost of repetition that the aforesaid trade opinions were not relied upon by the Department during the course of hearing.

13. But this is not all. The bone of belief which led to the impugned seizures is succinctly stated by Sri Kamakhya Prasad Sinha in his aforesaid affidavit in these

words :-

"Having already known that no spices are growing in North-East States and no cloves and Javitri are growing there at least of commercial scale, the deponent immediately came to the conclusion that this must be cloves and Javitri from Burma".

The same thing has been stated, though in different words, by Sri Manoj Krishna, Assistant Collector (Prev.) Muzaffarpur, and Sri Jai Prakash, Assistant Collector (Prev.) Headquarters, Patna. Says Sri Manoj Krishna :-

"Any consignment of clove moving under the authority of the Forest Department of Manipur becomes suspicious."

And this constitutes the core of controversy, Counsel for the parties made detailed arguments with reference to letters and correspondences, reports and news item as well as horticultural literature to substantiate the rival contention that the cloves and other spices of commercial importance are grown, or not grown, in Manipur, Nagaland and other North-Eastern States. I must make it clear that it is neither necessary nor possible to hold enquiry and come to any conclusion on the aforesaid controversy in the instant proceeding. However, since the belief leading to impugned seizure is said to rest on a general belief that spices are not grown in Manipur or Nagaland it is necessary to refer to the aforesaid documents to find out the existence of the reasons for the belief.

14. The Department has placed heavy reliance on Annexure-C /1 which is letter of the Spices Board dated 22nd April, 1993 to the Superintendant (Prev.) Customs and Central Excise, Guwahati stating :-

"There is no reports/data about cloves production in North-Eastern States (Assam, Arunachal Pradesh, Meghalaya, Manipur, Nagaland, Mizoram and Tripura).

A Task Force constituted by Government of India (sometime in 1985-86) had testified that the spices like cloves, Nutmeg, sinnamon, can be grown in North-Eastern States but there is no report of anybody growing clove trees for commercial purposes." .

Then there are correspondences between Collector of Customs (Prev.) Patna, Collector of Customs (Prev.) Central Board of Excise and Customs, New Delhi and Principal Chief Conservator of Forests, Imphal, Chronologically, they are (i) letter dated 21st May, 1993 from Collector of Customs (Prev.) Patna, to Principal Chief Conservator of Forests, Imphal, (ii) letter dated 28th May, 1993 from Member, Central Board of Excise & Customs to Collector of Customs (Prev.) Patna, (iii) letter dated 8th June, 1993 from Collector of Customs (Prev.) Patna, to Director General, Revenue Intelligence, New Delhi, (iv) letter dated 25/26th August, 1993 from the Collector of Customs (Prev.) Patna to Collector of Customs (Prev.) Shillong and (v) letter dated 9th September, 1993 from Collector of Customs (Prev.) Shillong to Collector of Customs, Patna, along with two enclosures being

letter dated 14th July, 1992 and 11th June, 1993, from Collector of Customs, Shillong to Additional Director General, Revenue Intelligence, New Delhi, and Member, Central Board of Excise and Customs, New Delhi, respectively. Then there is a report of Sri Jai Prakash dated 21st March, 1993. Some literature on the horticultural aspects of cloves and other spices were also referred to.

15. I have carefully gone through the aforesaid documents. The documents, no doubt, create a suspicion, if I say so, a strong suspicion, as to whether the cloves and spices are grown on commercial scale in the region in question. However, at the same time, they do not rule out the possibility of either wild growth of the plants and the trees or possibility of systematic organised plantation. Even the Task Forces of the Government of India had reported eight years ago, vide Annexure-C/1, that these spices can be grown in the North-Eastern States. In fact, as would appear Annexure-F which is letter from Collector of Customs (Prev.) Patna, dated 25/26th August, 1993 (supra), at least till date, doubt was being expressed and the Customs Collectorate at Patna was not very sure as to whether spices are grown or not. The said letter, inter alia, states :-

"In so far as consignments originating from the States of Mizoram and Nagaland are concerned, we are unable to confirm whether spices like cloves, cardamom of commerce, Javitri and Jaiphal grow there. In view of our expert (illegible) issued by local State Forest Department may not be very reliable. I, therefore, request you to depute some reliable officers to personally verify whether these spices grow in the State of Manipur and Nagaland."

Counsel for the Department submitted that the doubt expressed in the aforesaid letter relates to the State of Nagaland and Mizoram alone and not Manipur. However, at least so far as Cr. W.J.C. 474 of 1993 is concerned, the goods are said to be the forest produce of the State of Nagaland and originated from there. Besides, all the impugned consignments including those coming from Manipur were admittedly booked from Dimapur.

16. The State of Manipur and Nagaland have filed affidavits enclosing documents in support of the claim of the petitioners. So far as State of Manipur is concerned the affidavit states that out of 8 districts comprising the State, five are hill districts inhabited by tribals, who earn their livelihood from out of the forest produce. It is said that the hilly area comprises of thick jungles in which various forest produce including timbers and spices, such as cloves, cardamom, Javitri, Dalchini, betel nut etc. are grown in abundance, it is suggested that the tribals earlier did not know the value and importance of the spices but having known the same now they collect and sell the same to traders. More or less similar plea has been taken on behalf of the State of Nagaland in its affidavit filed in Cr. W.J.C. 474 of 1993.

17. The Customs Department has pooh-poohed the claim of the Governments of Manipur and Nagaland making direct allegation of collusion with "smugglers" against them. Says Shri Manoj Kumar in his affidavit:

"It is confirmed that these trade and transactions are being conducted in collusion with the Forest Department who are looking their own State revenue, legalise the illegal import, supported by the documents".

Mr. Ram Balak Mahto for the Government of Manipur and Mr. B.C. Ghose for the officers of Forest Department of Nagaland were very critical, and in my view justifiably so, of the stand of the Customs Department which, according to them, amounts to uncalled for, baseless, scurrilous attack on constitutionally formed Governments standing at par with the Union in their sphere. I find force in the submission of the learned counsel. As particular officer may be in collusion but it is too much to say that the whole Government is acting in collusion with smugglers and, thus, acting against national interest.

18. The documents enclosed with the affidavit of the Government of Manipur show that firms have been registered by the Spices Board with authority to do business as exporters of spices. It may be stated here that the Spices Board is statutory body, created under the Spices Board Act, 1986. From the notifications dated 3rd January, 1986 and 17th September, 1991 brought on record by the Department itself as enclosures to the report of Sri Jai Prakash dated 21st March, 1993, Annexure-B (supra), it appears that while cloves and other spices were not specified as commodities for the purpose of levy of royalty by the Forest Department in the 1986 notification, they have been included in the Schedule in the 1991 notification, effective from 30th July, 1991. It, thus, appears, prima facie, that prior to 1991 the spices were not known source of revenue by way of royalty to the Forest Department. In course of time, they came to be identical as potential source of revenue and, accordingly, included in the 1991 notification. One can take notice of the fact that agricultural and horticultural items which were not produced earlier in particular area are now being grown or produced on account of awareness or advancement.

19. None of the documents rules out the possibility of cloves and other spices being found in the hilly areas of the two States. There may not be systematic plantation on commercial scale. But simply because there is no systematic plantation or data available it would not be reasonable to conclude that any spice coming from Manipur and Nagaland must necessarily be of foreign origin, Sri Jai Prakash, who had been deputed to make field investigation could visit only few places of Manipur and not the rest or any part of Nagaland on an account of sudden insurgency and law and order problems. Correspondences are going on and facts are being ascertained. Thus, as I said earlier, it is still a matter of doubt and, as is well known, doubt cannot take the place of belief.

20. The documents which have been relied upon in support of the so called general belief of the department that spices are not grown in the region are subsequent to the seizure. It is doubtful whether Sri Pillai also shared the said belief. At least in Annexure-24, the "Brief Facts of the Case", he has [nor] said so. He has not filed any affidavit of his own. It needs hardly be emphasised that condition for valid seizure is the belief of the persons who makes the seizure and

not of any other person. No doubt, in one of the affidavits filed towards the close of the hearing of the case it has been stated that the local officers posted at Barauni were given necessary briefing in the conference held at Muzaffarpur during the period in question. In fairness to the petitioners it must be mentioned that the said affidavit was filed in the light of oral observations made during course of hearing and learned counsel for the petitioners, in that view, had taken a strong exception to the same being taken into consideration. In the above background, the question is whether the officer had reason to believe that the goods in question were liable to confiscation and, therefore, seizure.

21. The expression "reasonable belief or "reason to believe", occurs in several statutes. Reference may be made to Section 147(a) of the Income Tax Act, 1961; Section 178A of the Sea Customs Act, 1978; Section 66 of Gold (Control) Act, 1968 and so on. In Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, , a case u/s 34 of the Income Tax Act, 1922 corresponding to Section 147(a) of the Income Tax Act, 1961, the Apex Court held :

"The expression "reason to believe" postulates belief and the existence of reason for that belief. The belief must be held in good faith, it cannot be merely a pretence. The expression does not (sic) purely subjective satisfaction of the Income Tax Officer."

In Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, it was held that the words "reason to believe" suggest that the belief must be of an honest and reasonable person based upon reasonable grounds and the officer may act on direct or circumstantial evidence but not on mere suspicion, gossip, or rumour. It was further held that if the officer concerned acts on material which is irrelevant then he acts without jurisdiction.

22. Counsel for the Department referred to Pukhraj Vs. D.R. Kohli, and State of Gujarat Vs. Mohanlal Jitamalji Porwal and Another, and submitted where the articles are seized in the reasonable belief that the goods were smuggled the court should not sit in appeal over the belief of the officer. In the said two cases the facts were entirely different. In the former, five pieces of gold bullion weighing 290-6 totals were seized from a passenger travelling without ticket in a passenger train. In the latter case the article seized was a Waist-chain (Kandora) weighing 820 grammes made of pure 24 carat gold coated with mercury so as to give an impression that it was made of silver. On these facts, it was held that the Court should not substitute its own belief in plea of the belief of the Customs official based on his experience and expertise. It was said, "Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope with an over indulgent eye which sees no evil anywhere within the range of its eye sight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to entertain the suspicious circumstances and to form a reasonable belief in the light of the said circumstances."

23. There can be no doubt that while considering the question as to whether the officer had reason to believe that the goods are contraband and liable to confiscation and seizure the Court cannot sit as an appellate authority nor can it go into the sufficiency of reasons for holding the belief. In the instant case, trade opinions of the local traders having been abandoned, the visual inspection and smell by Sri K.R.C. Pillai remain as the basis of seizure besides the information received from the Assistant Security Commissioner, R.P.F. It may be stated that although in the grounds of seizure, commercial in the counter affidavit, certain cuttings in paper etc. are also mentioned, they were not referred to during the course of hearing. The Collector of Customs (Prev.) Patna, in his letter dated 8th June, 1993 (supra) has said "the basic problem is that once a particular spice is successfully smuggled and introduced in the local market its identification as a foreign product becomes difficult." It is, therefore, doubtful that the seized goods could be identified as of foreign origin on the basis of visual inspection and smell. The Assistant Commissioner, R.P.F. had merely informed about movement of articles. The seizure thus really rests not on the basis of identification of the goods as being of foreign origin but on the basis of a general belief that the spices are not grown in the North-Eastern States, and, therefore, any spice coming from that region must be said to be smuggled. Thus, it is not a case where the court should go by the experience and expertise of the Customs officials. The reason for formation of the belief having been spelt out it is open to the court to consider whether the reasons exist or not. And the test would be whether a reasonable, prudent person on the basis of materials relied upon would hold the same belief. Sufficiency of reasons or grounds is not justifiable by the existence of the reasons and the grounds certainly is.

24. The constrictive import of the expression "suspicion", "belief" and "reasonable belief" has been succinctly, if I may say so with great respect to the learned Judge, pointed out by J.C. Shah, J. in the case of *M.G. Abrol and Another Vs. Amichand Vallamji and Others*, in these words :-

"The Customs Officers should seize the goods covered by Section 178A in a reasonable belief that they are smuggled goods before the burden of proving that they are not smuggled goods could be on the person from whose possession such goods were seized. This position would be very much clear if it can be contrasted with a case where Customs Officer seizes any of such goods merely on suspicion that they are smuggled. A suspicion can arise from peculiar kind of movement on the part of the person who is supposed to be in possession of some smuggled goods. It may arise from the kind of dealing that the person might be having in regard to certain goods, which the Customs Officer might thereupon subject to be smuggled. One may conceive of a number of other ways in which a suspicion may arise in the mind of the Customs Officer that any particular person is possessed of smuggled goods. A belief, on the other hand, cannot arise merely in the circumstances in which a suspicion can arise. A belief in the existence of a thing requires a more solid foundation than in the case of a mere suspicion. It may be based upon some definite information acquired from a

reliable source that a certain person is in possession of smuggled goods. The belief again, as required by Section 178A of the Sea Customs Act, must be a reasonable one, not a belief of a man who just catches at some slight circumstance which only creates a sort of guess or speculation in his mind that something might exist or might not exist. The belief must be such as any other reasonable man in the circumstances of the case would entertain about the existence or non-existence of a thing."

In the same case his Lordship further stated that so far as the point of time at which the reasonable belief should exist is concerned, whenever the goods are seized, the officer seizing the goods must at the time of seizure have a reasonable belief that the goods he was seizing were smuggled goods. Any subsequent acquisition of knowledge of such belief would be of no avail.

25. In *M.G. Abrol Vs. Shantilal Chhotalal and Co.*, 900 tons of steel skull was sought to be exported on the basis of licence granted by the Iron and Steel Controller. The Customs authorities took the view that 320 tons goods was not steel skull and the goods were directed to be seized. The goods were ultimately exported after imposing fine and personal penalty in lieu of confiscation. The Supreme Court held that as the goods were covered by the licence granted by a statutory authority, the Customs Collector had no jurisdiction to order their confiscation or impose the penalty.

26. In *Baba Gopal Das Bedi v. Union of India* (AIR 1982 Pat 52), this Court observed that seizure besides being an inroad on fundamental right of a citizen also adversely affects the reputation of the person and should not be casually made.

27. Having, thus, given my anxious consideration to the contentions made, on the materials brought on record, I am constrained to hold that so called belief of the officials was at the most mere suspicion, far away from belief which could be said to be reasonable. The condition precedent for the exercise of power u/s 110 of the Customs Act being absent, the impugned seizure cannot be said to be in accordance with law.

28. In the result, these applications are allowed. The seizure of the goods, namely, cloves and Javitri is quashed. The parties shall, however, bear the costs themselves.