(1998) 03 AHC CK 0048

In the Allahabad High Court

Case No : C.M.W.P. No. 3600 of 1980

Arya Abhushan Bhandar and another — APPELLANT

Vs

Union of India and others — RESPONDENT

Date of Decision : 23-03-1998

Acts Referred:

Constitution of India, 1950 — Article 20(3)
Criminal Procedure Code, 1973 (CrPC) — Section 102, 103
Customs Act, 1962 — Section 108
Evidence Act, 1872 — Section 24, 25, 26
Gold (Control) Act, 1968 — Section 16, 2, 69, 71

Citation : (1998) 3 AWC 1651

Hon'ble Judges : O.P. Jain, J

Bench : Single Bench

Advocate : Keshari Nath Tripathi, for the Appellant; V.K. Barman and S.C., for the Respondent

Judgement

O.P. Jain, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioners with a prayer that the orders passed by respondent Nos. 1, 2 and 3 on 14th December, 1973, 19th November, 1977 and 25th January, 1980 which are Annexure-8, Annexure-9 and Annexure-10 respectively may be quashed and the respondents may be commanded to return the seized and confiscated items of gold.

2. The brief facts leading to the petition are that on 14th March. 1973, Custom Inspector, Mau, Sri Kamta Prasad accompanied by two other Custom Inspectors, namely, Sri K. P. Jaiswal and Sri V. K. Srivastava searched the business premises of M/s. Arya Abhushan Bhandar, Mau. The search party consisted of, besides the Officers named above, Sri Jamuna Prasad Mishra and Sri Ram Dhyan Singh constables of the Customs Departments and two police constables. As a result of the search, the following gold articles were recovered :

"1. 270 pieces of gold ornaments weighing 1418-400 grams worth Rs. 21,187.00 only manufactured by M/s. Arya Abhushan Bhandar, Mau for sale.

2. 12 pieces of foreign gold primary gold weighing 166.00 grams worth Rs. 3,825.00 paise only recovered from the business premises of the abovementioned firm.

3. 22 pieces of gold ornaments weighing 216.700 grams worth Rs. 3,415.00 paise only said to be received by the firm from customers for repair and hypothecation.

4. 53 pieces of gold ornaments weighing 303.900 worth Rs. 5,394.00 paise only said to be personal property of the party.

Total 345 pieces weighing 1,939.00 grams worth Rs. 29,996 ornaments.

3. The Department served a notice Annexure-3 dated 16th April, 1973 which was replied by the petitioners vide Annexure-4- It was followed by another reply sent through an Advocate'' which is Annexure-5. It appears that there was some technical flaw in the first notice and, therefore, it was cancelled and second notice Annexure-6 was issued. The petitioners filed reply Annexure-7 in which they reiterated contents of their earlier reply Annexure-4 and Annexure-5. After considering the reply given by the petitioners, the Collector of Customs passed order Annexure-8 dated 14th December, 1973 by which the seized articles were confiscated and some penalty was also imposed'' on Sri Dharam Dutt Arya. Being aggrieved against the order of Collector of Customs, the petitioners filed an appeal which was decided on 19th November. 1977 by the Gold Control Administrator and the appeal was dismissed. The petitioners filed a revision which was disposed of by Special Secretary to the Government of India who did not find any reason to interfere and the revision was rejected on 25th January, 1980 by order Annexure-10.

4. Under these circumstances, the present writ petition has been filed for quashing Annexure-8, Annexure-9 and Annexure-10. It may be mentioned that originally the petition was filed by M/s. Arya Abhushan Bhandar and Sri Dharam Dutt Arya. The second petitioner died during the pendency of the petition and on the application of his son and legal representative Mahesh Chandra the latter was impleaded as the legal representative of the former.

5. We have heard Sri K. M. Dayal, learned Senior Advocate appearing on behalf of the petitioners and Sri S. P. Malviya, learned Standing Counsel appearing for Union of India and have gone through the record.

6. It is argued by the learned counsel for the petitioners that the orders passed by the Collector of Customs and the Appellate, and the Revlsional Authorities are based on the statement said to have been given by Sri Dharam Dutt Arya on 14th March. 1973, a copy of which is Annexure-1 to the petition. It is contended that the said statement was made under duress and coercion. Moreover it was made in the presence of policemen and, therefore, the statement is not admissible in evidence under the provisions of Sections 24 and 25 of the Indian Evidence Act. It is further argued that the list of articles seized from the

premises of Sri Dharam Dutt Arya was not prepared on the spot but it was actually prepared at P.W.D. Dak Bungalow and in this way, the provisions of Sections 102 and 103 of the Code of Criminal Procedure have been violated. It has also been argued that there were no independent witnesses associated with the search and that Sri Chandrama Prasad and Sri Kanti Lal Patel who were associated as Motblr witnesses were actually under the influences of Custom Authorities. It was also contended that the search warrant was for the shop only but actually the search of the residential portion was also taken and the ornaments found in the residential portion of the house were seized. A grievance has been made that the witnesses were not produced for cross-examination, copies of statements were not supplied to the petitioners and no personal hearing was given to the petitioners.

7. In support of the above contentions, the learned counsel for the petitioners has cited a large number of decisions. Balwinder Singh Vs. State of Punjab, ; The State of Punjab Vs. Bhajan Singh and Others, ; Jagta v. State of Haryana. AIR 1974 SC 1545, have been cited in support of the contention that Annexure-1 statement of Dharam Dult Arya dated 14th March, 1973 is not admissible in evidence under Sections 25 and 26 of the Kanan and Others Vs. State of Kerala, (Para 2) ; State of Maharashtra Vs. Kondiba Tukaram Shirke, (Para 15) ; Ratan Gond Vs. The State of Bihar, (Paras 8 and 12), have been cited in support of the contention that extra-Judicial confession is evidence of a weak type. It is pointed out that the alleged confession dated 14th March, 1973 which is Annexure-1 was retracted at the earliest possible opportunity, i.e., on 18th March. 1973 when the petitioners filed affidavit Annexure-2 in which the circumstances under which the earlier statement was recorded, were mentioned. The learned counsel has cited Shankaria Vs. State of Rajasthan, , for the proposition that a retracted confession has very little evidentiary value. Another case which has been cited by the learned counsel is B. Singh v. State of Punjab. 1963 ALJ 776 (Paras 5, 13, 14 and 15). In which it has been held that after arrest and before recording the confession, at least 24 hours time should be given to the accused. It is argued that in the instant case, Dharam Dutt Arya was not given any time and his statement was recorded immediately after his arrest. Sarwan Singh Vs. The State of Punjab, (Paras 10 and 11) ; Romesh Chandra Mehta Vs. State of West Bengal, ; Zwinglee Ariel Vs. State of Madhya Pradesh, (Para 13), have been cited in support of the contention that the statement made in the presence of a Police Officer is Inadmissible in evidence. The learned counsel has also cited Tribhuvandas Bhimji Zaveri and Another Vs. Collector of Central Excise, , in support of the contention that where independent witnesses were available and yet they were not examined, no reliance can be placed on the uncorroborated testimony of the D.V. Shanmugham and another Vs. State of Andhra Pradesh, , has been cited in support of the contention that non-supply of copy of the list of articles seized and the copies of the statements of witnesses vitiates the trial due to violation of principles of natural Justice.

8. We have given careful consideration to the arguments advanced on" behalf of

the petitioners but we are afraid that the above contentions have no force and the rulings relied upon by the learned counsel have no bearing on the case. All the rulings which have been referred to above relate to criminal prosecution whereas we are dealing with an order of confiscation of gold. Under the Gold (Control) Act, 1968 (hereinafter called the Act), the confiscation and penalties have been dealt with under Chapter XIII. Adjudication and appeals have been dealt in Chapter XIV. It is Chapter XV which deals with offences and their trial. We are not hearing an appeal against conviction for an offence under the Act. Even in the context of a criminal case, it has been held by the Apex Court in Harbansingh Sardar Lenasingh and Another Vs. The State of Maharashtra and Others, , that the confessional statements recorded by an officer of Customs under the Customs Act are admissible in evidence and are not hit by Section 25 of the Evidence Act or Article 20(3) of the Constitution. The same view has been taken in Percy Rustomji Basta Vs. State of Maharashtra, , and it has been held that Section 24 of Evidence Act is not a bar to the admissibility in evidence of statement made by a person to a Customs Officer on summons issued u/s 108 of Customs Act.

9. It was argued by the learned counsel that Section 69 of the Act provides that the provisions of Sections 102 and 103 of the Code of Criminal Procedure relating to search and seizure shall, so far as they are applicable, apply in relation to every search made under this Act and to every seizure made in the course of such search. On this basis. It is argued that the omission to associate Motbirs of the locality during the search and the omission to prepare a list of articles in the shop itself has vitiated the search and recovery. We are unable to find any force in this contention because it has been held in State of Maharashtra Vs. Natwarlal Damodardas Soni, , that irregularity or illegality in the search does not affect the recovery, not disputed.

10. The next contention on behalf of the petitioners is that under the provisions of Section 16, sub-clause (5) of the Act, a family need not file a declaration under sub-clause (1) or sub-clause (3) of Section 16 if the weight of the articles and ornaments possessed by the family does not exceed 4,000 grams. It is contended that none of the items seized from the possession of the petitioners are "primary gold" within the meaning of Section 2(r) of the Act and, therefore, the articles and ornaments were not liable to be confiscated u/s 71 of the Act. According to the petitioners, most of the items were ornaments belonging to the ladles of the family and the total weight being 1,939 grams, the confiscation is bad in law.

11. An examination of the record shows that the stand taken by the petitioners from time to time has been different. In Annexure-I, their statement dated 14th March, 1973, they have claimed 53 items weighing 303 grams 800 milligrams as their personal ornaments. In the affidavit given by them on 18th March, 1973 which is Annexure-2 to the petition, they have claimed 123 items as belonging to their family members and they have further stated that these family ornaments

were kept in the shop for the reasons of safety. The petitioners have filed a supplementary affidavit on 30th August, 1980 and along with it S.A. 2 has been filed which is a copy of the written submissions at the time of hearing before the Gold Control Administrator. In paragraph 1 (i) of S.A. 2, it has been claimed that 270 pieces of old and used gold ornaments weighing 1418.400 grams of the purity of 12 carats, 14 carats, 16 carats, 18 carats and 20 carats were family ornaments and were recovered in a leather suitcase on the second floor of the residential premises.

12. In this way, it is found that the petitioners have mentioned different number of gold ornaments which they claimed to be personal ornaments of the family at different times. It also appears that the stand taken by the petitioners is inconsistent inasmuch as at one place they have said that the ornaments were found in a leather suitcase on the second floor of the residential premises but in their affidavit dated 18th March, 1973 Annexure-2, they have stated that the family ornaments were kept in the shop for safety reasons.

13. The petitioners have further developed their case and have alleged that "even the ornaments worn by the ladles were taken from them and seized". This averment has been made in paragraph 12 of S.A. 3 which has been filed with the supplementary affidavit of Mahesh Chandra sworn on 30.8.1980. Therefore, it is not surprising that the Collector of Customs or the Appellate Authority or the Revisional Authority were not inclined to accept the version given by the petitioners. In the order of adjudication Annexure-8, the version given by the petitioners was rejected in the background that before coming into force of the Act, the petitioners were carrying on gold business. In appellate order Annexure-9, it is mentioned that the lot of 270 pieces of new ornaments weighing 1418.400 grams include numbers of items in trade quantities. In the revisional order Annexure-9, It is mentioned in paragraph 5 that the seized ornaments are in multiple number like Ball 56 pieces, Rings 61 pieces and Karn Phool 47 pieces. From this, the Revisional Authority drew the inference that ornaments in such multiple numbers cannot be for family use but are really stock-in-trade. In this way, we find that the adjudication authority and the Revisional Authority have given consideration to the contentions raised before them and have given good reasons for coining to the conclusion that the ornaments recovered from the petitioners were not family ornaments.

14. The learned counsel for the petitioners has also argued that some of the items recovered from the petitioners have been treated as primary gold within the meaning of Section 2(r) of the Act whereas they should have been treated as -articles" as defined by Section 2(b) of the Act. It is pointed out that there were eleven gold items out of which there was inscription of Durgaji on seven items and they were kept at the shop for the purpose of "Pooja" and should not have been treated as primary gold. According to learned counsel, these pieces of gold should have been treated as ''articles''. We are unable to agree with this argument. If something is engraved on a piece of gold, its nature is not changed

from primary gold to article. Moreover, such a contention I''ts beyond the scope of a writ petition. It has been held by the High Court of M. P. in Ramrattan Hemraj Mantri v. Union of India and others. 1983 ELT 705 (M.P.), (paragraph &) that the power and Jurisdiction to decide whether the seized article is primary gold or not vests in the adjudicating authority and it is not open to this Court in a petition under Article 226 of the Constitution to decide the question whether the seized article is primary gold or ornaments.

15. The learned counsel for the petitioners has placed reliance on an order Annexure-12 passed by Appellate Assistant Commissioner of Income Tax on 11.1.1983 by which it has been held that the seizure of ornaments does not prove concealment of income on the part of the petitioners. Annexure-14 is an order passed by Sales Tax Authorities on 21.6.1977 in which the petitioners books of account have been found reliable. In our opinion, these papers are irrelevant for the purposes of this writ petition. The order passed by Assistant Commissioner Income Tax is dated 11.1.1983, i.e., much later than the decision of the Gold Control authorities. Whether the Income Tax or the Sales Tax authorities found the explanation given by the petitioners as correct or not is not binding on officers authorised under the Gold Control Act. The relevant considerations under the Sales Tax Act, Income Tax Act and under the Gold Control Act are different.

16. After careful consideration of the material on record and the submissions of the learned counsel for the petitioners, this Court does not find any reason to interfere with the order of confiscation passed by the Collector of Customs and upheld by the Appellate and Revisional authorities.

17. The writ petition, is therefore, dismissed. Parties will bear their own costs.