

(1996) 07 CAL CK 0035
In the Calcutta High Court
Case No : Matter No. 3697 of 1992

Bombay Art Jewellers

APPELLANT

Vs

Collector of Cus. (Preventive)

RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Citation : (1998) 98 ELT 61

Hon'ble Judges : Umesh Chandra Banerjee, J;Ronojit Kumar Mitra, J

Bench : Division Bench

Advocate : Mullick, for the Appellant;

Final Decision : Dismissed

Judgement

Umesh Chandra Banerjee, J.—There will be an order in terms of prayer (a) of the petition.

2. Normally the Appellant Court ought not to interfere with the user of discretion of the learned Trial Judge unless the same can be termed to be otherwise perverse or not in accordance with the known principles of law. In order to assess the situation, however, it is a duty incumbent on the Appellate Court to apprise itself on the factual context and see for itself whether in fact such an exercise of discretion can be termed to be in accordance with law. At this juncture, however, advertng to the contextual facts, it appears that 50 Kgs. of gold was imported by MMTC and subsequently was made over to the appellant-petitioner herein. Obviously MMTC was otherwise satisfied as to the credibility of the appellant as otherwise MMTC, a Government organisation being an authority within the meaning of Article 12 would not have asked for a bank guarantee covering the value of 30 Kgs. of gold only and for the balance 20 Kgs. of gold no security of any nature was asked for and 20 Kgs. of gold was made over to the Appellant.

3. Let us now however once again deal with the factual aspect as regards the satisfaction of MMTC in so far as the credibility of the Appellants herein. The facts

depict that the appellant has been receiving benefit of MMTC's gold for a period of about six months having the last consignment for 50 Kgs. Being the subject matter of the instant matter, Be it noted that the appellant herein at an earlier point of time was apprehended at Bombay by reason of exportation of brassware as against silverwares and it is on this background MMTC, a Government organisation, found it fit to put certain confidence on the appellant to allow for 20 Kgs. of gold without any security whatsoever. While it is true that it is for the MMTC to decide as to who should be trusted or not and formulate its policy and it is for the Law Court to dictate its requirement, but in the contextual facts, the Court cannot help but to record its surprise and wonder in regard to the Governmental action.

4. Be that as it may and without dilating much on this score the factual context depicts that there was search and seizure at the premises in question by the Calcutta Customs and the matter came before the Court though after a lapse considerable period. The show cause notice was issued but by reason of the pendency of the proceedings before the Court, no reply was given to the show cause notice. The learned Trial Judge while dealing with the matter, however, was pleased to direct the appellant herein to send a reply to the show cause notice within eight weeks from the date of the order and thereafter the departmental proceedings were directed to be continued in accordance with law and with such expedition as the circumstance will permit.

5. It is this order, which is under challenge before this Court contending however that the order is unjustified and harsh since the petitioner in terms of the order of the Court manufactured the jewellerys as are required to be manufactured for its export commitment. Mr. Mallick appearing in support of the appeal and the stay application contended that since the jewellerys stand manufactured in terms of the order of the Appellate Court and since a substantial amount of foreign exchange would otherwise be lost to the country, the learned Trial Judge ought to have granted permission and/or sanction to export the same in order to meet its export commitment which would enable the petitioner to pay off its dues both to MMTC and the bank and nobody could have any grievance in regard thereto. Mr. Mallick submitted that this exportation ought to take place through the Special Officer appointed by the Court. Be it recorded that the learned Trial Judge, however, discharged the Special Officer without any further duty or obligation. Another significant fact ought also to be noted at this juncture, namely, the suspension of the export licence the petitioner's licence stood suspended as has been admitted by Mr. Mallick and the learned Trial Judge recorded the finding of cancellation of such a licence. Be that as it may, admittedly the petitioner as of date is not entitled to effect any exportation of any jewellery in accordance with law. The learned Trial Judge also in dealing with the matter observed, however, that it is no part of the Court's duty to effect any export of jewellery in terms of the export commitment of the petitioner. The learned Trial Judge also went on to record his reasonings in regard to other aspect of the matter, namely, the reason to believe. It is on this count also Mr.

Mallick submitted that the learned Trial Judge has given wrong reasonings. In the contextual facts however, we cannot lend our concurrence with the submissions of Mr. Mallick. The matter has been extensively dealt with by the learned Trial Judge and the reasonings given in the order does not warrant intervention of the Appellate Court and we record our concurrence with the observation of the learned Trial Judge that the Courts ought not to transpose itself to the position of an exporter or export jewellery for and on behalf of the parties.

6. In that view of the matter we do not find any reason to interfere with the order of the learned Trial Judge. The application, therefore, fails and the same is dismissed. No order as to costs.

7. Since by reason of the order as above no useful purpose would be subserved in keeping the appeal pending, the appeal also stands dismissed upon treating the same as on the day's list.

8. It is recorded that the respondents have not used any affidavit but they do not admit the allegations in the petition.

9. Undertakings in terms of prayer (a) of the petition however stand discharged.

10. Xerox certified copy of this order be made available to the parties with utmost expedite.