
(1973) 02 MAD CK 0020

In the Madras High Court

Case No : Writ Appeal No"s. 336 to 338 of 1967

Chimanlal B. Mehta

APPELLANT

Vs

The Collector of Central Excise, Madras and Others

RESPONDENT

Date of Decision : 02-02-1973

Acts Referred:

Imports and Exports (Control) Act, 1947 — Section 3(2), 3(3)
Sea Customs Act, 1878 — Section 167(3), 167(8), 172, 181, 19

Citation : AIR 1974 Mad 216

Hon'ble Judges : K. Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Judgement

Raghavan, J.—These three writ Appeals arise out of three connected writ petitions Nos. 2193 of 1967, 2194 of 1967 and 2195 of 1967.

W. P. 2193 of 1967 is to quash the adjudication order of the Collector of Central Excise, Madras, dated 2-9-1964 confirmed by the appellate

order of the Central Board of Excise and Customs, New Delhi, dated 18-8-1966, and further confirmed in the Revision Petition by the Union of

India, by its order dated 10-3-1967, confiscating 2657 diamond pieces weighing 228.51 carats seized from the appellant's premises on 23-8-

1961, on the ground of illegal importation in contravention of Section 19 of the Sea Customs Act, 1878 read with Section 3(2) of the Import and

Export (Control) Act 1947. W. P. 2194 of 1967 is filed to quash the search warrant issued by the Chief Presidency Magistrate in his D. Dis

5870/71 dated 23-8-1961 u/s 96 of the Criminal Procedure Code, authorising the search of the appellant's premises No.99/102 N. S. C. Bose

Road, Madras-1, by the Officers of the Collectorate of Central Excise and W. P. 2195 of 1967 is for the issue of writ of mandamus to direct

return of the said 2657 diamond pieces seized from the appellant's premises forthwith to the petitioner.

2. The appellant is a native of Pallampur in Gujarat State settled down at Madras and carrying on business as a dealer in diamonds and other

precious stones for the last 38 years. On 23-8-1961, an Officer of the Customs (Preventive Section) of the Collector of Central Excise along with

certain other members of his staff went to the premises of the petitioner with a search warrant from the Chief Presidency Magistrate, Madras,

Presumably issued on application filed on behalf of the Customs Collector, stating that he believed that contraband watches were secreted in the

petitioner's premises, u/s 172 of the Sea Customs Act, 1878. The search was commenced at 4 p.m. on 28-8-1961, and in spite of a complete

search carried out by the authorities they were not able to secure any watches, for which they had obtained a search warrant. In the course of the

search, the officers opened the iron safe and the steel almirah wherein certain leather pouches containing 30 paper packets containing in all 2657

diamond pieces cut and polished weighing 228 carats and 51 cents were found.

3. The authorities having found no contraband watches in the premises started interrogating the petitioner regarding the same as also the sources

from which such large quantity of diamonds were secreted in the premises.

4. The petitioner's case is that he was harassed till late in the night by interrogations and threats and further made the petitioner sign a statement

prepared by them stating that the petitioner did not have accounts showing the sources from which the diamond pieces were purchased, that the

Superintendent of Central Excise, who recorded the statement, required the inclusion in the statement, that it was made voluntarily and that the

Officers treated the petitioner courteously, that the signature of the petitioner in the statement was witnessed by (1) Mahendra M. Shah and (2)

Babulal L. Mehta, but that the signatures of Sri K. S. Iyer would appear to have been taken later. The petitioner's further case is that after

obtaining the said statement they called upon petitioner to sign a mahazar which the Deputy Superintendent of Customs Preventive (T. S.

Jayaraman) prepared and obtained the signatures of three witnesses, viz, (1) Mahendra M. Shah (2) Babulal L. Mehta and (3) Girish Kumar C.

Mehta and that the officers left the premises at about 1 a.m. on 24-8-1961,

seizing the diamonds from the business premises, which is part of his residence, that the petitioner contacted next morning his advocate, Mr. Ratan of M/s. Jacob and Ratan who was present on the previous evening for sometimes and acquainted him with what all happened in the previous night, that his advocate obtained statements from the petitioner and the witnesses to the mahazar as to what all happened in the previous night and that his counsel addressed a letter to the Collector stating the circumstances under which the petitioner's statement was extracted on the previous night and further calling upon him to furnish the grounds of seizure in accordance with Section 181 of the Sea Customs Act. The petitioner also addressed a similar letter to the Collector of Customs repudiating the correctness of the statements recorded on the night of 23-8-1961 offering to produce the accounts, receipts etc., and explain the possession of the diamond pieces seized if so required by the Collector and that there was no response either to the advocate's letter or to the petitioner's letter. On 18-9-1961 however, the petitioner received a show cause notice stating that the search was conducted on 23-8-1961, on suspicion that illicitly imported foreign goods were kept in the premises, that the importation contravened the provisions of the Sea Customs Act and the Import Export (Control) Act 1947, and that the search was conducted on the basis of the warrant issued by the Chief Presidency Magistrate, Madras and that the goods seized were liable for confiscation. A copy of the warrant issued by the Chief Presidency Magistrate, Madras and that the goods seized were liable for confiscation. A copy of the statement of the petitioner dated 23-8-1961, and that of the witnesses was also furnished. In the advocate's letter dated 30-9-1961, the first respondent replied that the warrant was shown to the petitioner and that a copy of the same could be obtained from the Chief Presidency Magistrate, Madras, that the search was not for watches alone, that the reasons for the seizure were already stated in the mahazar and the show cause notice and that there is no need to furnish the grounds again. The petitioner's advocate immediately wrote back stating that the warrant was not shown to the petitioner and prayed for the reasons for the seizure u/s 181 of the Act. After prolonged correspondence a copy of the statement dated 23-8-1961 was furnished to the petitioner. The petitioner sent

a reply to the show cause notice stating that his statement dated 23-8-1961, which was extracted from him under compulsion could not be acted

upon and he further added an explanatory note as to the persons from whom he acquired the said diamonds and that he would produce all the

persons mentioned in the statement for examination. Meanwhile, the Collector of Central Excise would appear to have obtained sworn statements

from other various persons from whom he obtained the diamonds and also a sworn statement from one K. S. Iyer, a witness to the statement

dated 23-8-1961. On 14-3-1963, the petitioner was given a personal hearing by the first respondent. In response to the directions of the first

respondent, the petitioner produced his accounts on 10-5-1963. The first respondent passed an order dated 2-9-1964, holding that the diamonds

were seized in the reasonable belief that they were smuggled, that the burden of proof shifted to the petitioner from whose premises the goods

were seized, that the officer seizing the goods validly obtained the warrant as he had reasonable belief that smuggled goods had been secreted in

the premises in question and that the goods were illegally imported into India without an Import Trade Control Licence in contravention of Section

19 of the Sea Customs Act read with Section 3(2) of the Import and Export Control Act 1947 and that they are liable to be confiscated u/s

167(8) of the Sea Customs Act read with Section 3(3) of the Import and Export (Control) Act 1947. The Collector, however, held that he did not

impose any penalty on the petitioner with reference to Section 167(3) and Sec. 167(8) of the Act, as there is no conclusive evidence, that the

petitioner was the person concerned in the offence.

5. The petitioner filed an appeal against the order of the first respondent to the Central Board of Excise and Customs, pointing out the several

irregularities in the order. The second respondent gave a hearing to the petitioner but the appeal was dismissed.

6. The petitioner filed a revision petition to the Ministry of Finance, Government of India, New Delhi, on 19-12-1966 and requested for a personal

hearing and the Government refused to give a personal hearing by its order dated 10-5-1967 and dismissed the Revision Petition summarily. The

petitioner has filed the above writ petitions on the following main grounds--

(1) The entire proceeding of the first respondent from the stage of obtaining the

warrant from the Magistrate, the conduct of the search and the seizure of the diamonds are illegal and that there was lack of good faith on the part of the officers concerned and that the proceedings violated the principles of natural justice.

(2) The warrant of the Chief Presidency Magistrate merely mentioned that the authorities had suspicion that the petitioner had secreted contraband watches in his premises and the search was grounded only on suspicion.

(3) The warrant obtained from the Chief Presidency Magistrate is not in accordance with Section 172 of the Sea Customs Act, as it was applied for by the first respondent merely on suspicion that the petitioner had secreted in his premises illicit goods of foreign origin and that there was no belief in the mind of the applicant for the issue of a warrant that dutiable or prohibited goods were secreted by the petitioner in the premises and that the search warrant was obtained not on any reasonable or bonafide belief but on mere suspicion.

(4) The officers cannot seize first and then assert that they believed that the goods are smuggled goods and the seizure of the diamonds being illegal and without jurisdiction, the burden of proof provided u/s 178-A is not attracted.

7. In the counter affidavit filed on behalf of the respondents, the contentions that the entire proceedings from the stage of obtaining a warrant from

the Magistrate till the passing of the final order of confiscation are illegal and violative of the principles of natural justice and not done in good faith

were denied. The further contentions that the warrant of the Chief Presidency Magistrate was not made available for inspection or that the

authorities harassed the petitioner taking undue advantage of the mental condition of the petitioner and his wife when the search was conducted,

were also denied. It was pointed out in the counter affidavit that the writ petitioner took merely 76 days to file a list of persons from whom

diamonds seized were alleged to have been purchased by him seeking to wriggle out of the situation. The respondents pointed out that the

impugned orders were validly passed and no rules of natural justice were violated.

8. Before Kailasam J. two contentions were put forward viz, (1) the warrant issued by the Chief Presidency Magistrate u/s 172 of the Sea

Customs Act 1878, is not in accordance with law and that the seizure of the

goods was without a reasonable belief and consequently the burden of proving that the goods were not smuggled goods had not shifted to the petitioner and (2) The diamonds seized belonged to the petitioner and that

they were purchased by him in the open market and that this plea of the petitioner vouched by accounts and receipts should have been accepted.

9. The learned Judge rejected the plea of the petitioner that the diamonds seized were purchased by him from private parties, that the said

purchases were not supported by account books, vouchers, receipts etc., and that they were smuggled ones on the admission contained in the petitioner's voluntary statement.

10. The learned Judge further found that the Magistrate in issuing the warrant was satisfied on the basis of information that dutiable goods were

secreted in the premises of the petitioner and that the burden shifted onto the petitioner, to establish that the goods seized were not smuggled

diamonds and that the petitioner failed to discharge the burden. In the result, the learned Judge dismissed the writ petition. The petitioner has filed

the above writ appeals to this court.

11. Sri V. K. Thiruvengkatachari the learned Counsel for the appellant, contends (1) that the warrant issued by the Chief Presidency Magistrate,

Madras was based on suspicion that illicitly imported foreign goods have been secreted in the petitioner's premises and that the warrant did not

disclose that it was issued on information furnished by the Officer who had reasonable belief that they are smuggled goods and that the petitioner

was not informed on what information the warrant was obtained and consequently the burden of proof u/s 178-A of the Act was wrongly thrown

on the petitioner and (2) the statement dated 23-8-1961 deposed by the petitioner before the Deputy Superintendent of Central Excise, Customs

Preventive, Madras, and the mahazar prepared on the same night cannot be relied upon as they were prepared by the Deputy Superintendent of

Central Excise, Customs Preventive (Sri T. S. Jayaraman), though signed by the petitioner and that in the circumstances it could not have been the

statement of the petitioner.

12. In dealing with the first contention, we may refer to the judgement of the Supreme Court in The Collector of Customs, Madras Vs. Nathella

Sampathu Chetty and Another, where Rajagopala Aiyangar, J., in reversing the

judgement of this court reported in Nathella Sampathu Chetty and Another Vs. Collector of Customs, Madras, observed at pages 336 and 337 as follows:--

The other ground upon which the learned Judges upheld the respondent's contention that the rule as to the burden of proof enunciated in Section 178-A was not attracted to the present case was based on the finding that the Customs officer who effected the seizure did not, at the moment of the seizure, entertain a reasonable belief that the goods seized were smuggled. The learned Solicitor General who contested the correctness of this finding did not urge that the words in Section 178-A "in the reasonable belief that they are smuggled goods" did not prescribe a condition precedent to the applicability of that provision which had to be satisfied before the provision could be invoked against the affected party. As we have already pointed out, his further submission was that such a reasonable belief must not only be entertained by the seizing officer and besides that the question whether the officer had done so or not, was a matter which could objectively be determined by the adjudicating authority acting u/s 182. And these submissions he made as aids to his main contention that the burden of proof imposed was reasonable. We are pointing this out because before the learned Judges of the High Court the argument apparently advanced was that the test was the subjective belief of the seizing officer which could only be disproved by the establishment of circumstances in which no such belief could ever honestly or reasonably be entertained based on the reference to "the subjectivity of the officer" in the judgment of this court in Babulal Amthalal Mehta Vs. The Collector of Customs, Calcutta, . It was by approaching the problem even from this very narrow standpoint that the learned Judges reached a conclusion on this part of the case favourable to the respondent,..... Even taking the record of the detention in the mahazar prepared at the Central Station as "the seizure" we do not agree with the learned Judges of the High Court that the seizing officer could not entertain a reasonable belief that the gold seized was smuggled. The reasonableness of the belief has to be judged by all the circumstances appearing at that moment. In the present case, the quantity of gold in the possession of Nandagopal of the value of over one lakh of rupees was certainly a very relevant factor to be taken

into account and which could be considered in judging the matter. No doubt, such a quantity could be the subject of bona fide purchase in the course of normal trade, particularly when the person in possession was the representative of a well-known firm of bullion dealers. But one would also normally expect that the representative would have secured a bill or voucher to evidence the purchase. In other words (1) it was not a case of a few trinkets of gold or small quantity purchased for domestic or personal use but a considerable amount for purposes of business (2) the undelivered letter addressed to Messrs. Mathurdas Gopalakrishnayya and Co., which admittedly had a bearing upon the purchase of gold in the possession of Nandagopal necessarily drew an amount of suspicion on the theory of a bona fide purchase. These circumstances, in our opinion, which were admittedly present at the moment when the gold was taken by the Customs Officer at the Central Station did tend to raise a reasonable suspicion that the gold seized had been obtained illicitly and this was sufficient to constitute, in the words of the statute, "a reasonable belief that the goods (gold) were smuggled" "".

13. In the same volume we may refer to another decision- Pukhraj Vs. D.R. Kohli, , where-Gajendragadkar J, as he then was, observed as follows:--

Now Section 178-A places the burden of proof proving that the goods are not smuggled goods on the person from whose possession the said goods are seized, where it appears that the said goods are seized under the provisions of the Sea Customs Act in the reasonable belief that they are smuggled goods. Once it is shown that the goods were seized in the manner contemplated by the first part of Section 178A, it would be for the appellant to prove that the goods were not smuggled goods and since it has been held by the Collector of Central Excise that the appellant had not discharged the onus imposed on him by Section 178-A, the statutory presumption remained unrebutted and so, the goods must be dealt with on the basis that they are smuggled goods. As soon as we reach this conclusion, it follows that u/s 167 (8) of the Sea Customs Act, the said goods are liable to confiscation. That is the view taken by the High Court when it rejected the appellant's prayer for a writ quashing the order of confiscation passed by the Collector of Central Excise in respect of the gold in

question, and we see no reason to interfere with it".

The learned Judge further observed later as follows:--

The argument is that the question as to whether there was a reasonable belief or not is justifiable and since there is not material on the record to

show that the belief could have been reasonable, the statutory presumption cannot be raised. In our opinion, this argument is not well-founded.

There are two broad features of the seizure which cannot be ignored. The first feature on which the officer relied is supplied by the quantity of gold

in question. It was found that the appellant was carrying on his person five pieces of gold bullion weighing as much as 290.6 tolas. This large

quantity of gold valued at nearly Rs.30000 itself justified a reasonable belief in the mind of the officer that the gold may be smuggled".

14. In the present case, the adjudicating officer had the entire material before him and he is entitled to come to a conclusion that the seizing officer

had reasonable belief that the goods are smuggled goods. In coming to the factual conclusion the Officer has taken into account two

circumstances, viz., (1) seizure was of 2657 diamond pieces weighing 228 carats and 51 cents, (2) the petitioner's admission that he had no

accounts, bills or vouchers for the purchase of the diamonds at Zaveri Bazar Bombay and locally at Madras and that he was unable to account for

the diamonds seized. Taking into account the large quantity of diamonds seized and his failure to explain the source from which he obtained the

same, his admission that he does not keep accounts or vouchers showing from whom the purchases had been made, we are of opinion that the

order of the adjudicating officer is correct. The case falls squarely within the decision in Nathella's case and Pukhraj's case, referred to above. We

are further of opinion that the order rejecting the account books produced before the authorities long after the seizure is justified.

15. It is no doubt true that the Magistrate issuing a warrant should have reasonable belief that the goods seized are smuggled goods. The

authorities need not disclose to the petitioner the source of information on which a warrant is sought for, but they must have information on the

basis of which the warrant for seizure is obtained. We are of opinion that in the instant case the warrant was issued by the Chief Presidency

Magistrate on the basis of information which the concerned officer had. Further

the adjudicating officer rightly relied upon the large quantity of diamonds seized, viz., 2657 diamonds pieces weighing 228.51 carats, which was not accounted for. We are of opinion that on the facts and circumstances of the case the view of Kailasam, J., is correct.

16. In the result, the writ appeals fail and are dismissed with costs. Counsel's fee one set which we fix at Rs.250/-.

17. Appeals dismissed.