
(1989) 03 CAL CK 0020
In the Calcutta High Court
Case No : Appeal No. 88 of 1987

Collector of Customs and Others APPELLANT
Vs
Jeena and Co. and Another RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 108

Citation : (1990) 29 ECR 89

Hon'ble Judges : Padma Khastgir, J; Mahitosh Majumdar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Padma Khastgir, J.—This Court on 2nd March, 1989 heard and disposed of an appeal filed by the Collector of Customs, Calcutta and others in the Appeal No. 88 of 1987. The respondents, M/s. Jeena & Company, Custom House Agents, filed a copy of the shipping bill dated 18th August, 1986 for shipment of 38 packages of tourist purchases in the name of one J. Sala. In course of examination of the said goods and when opened at random by the Custom Authorities for inspection, it was found that some packages contained packets of Hashis (charas) skilfully wrapped with cellophane paper covered with brown paper having yellow costing. As a result of such inspection, 193 kgs. net (240 kgs. gross) of Hashis was found from those packages. The approximate value of such Hashis contents was Rs. 1,15,00,000/-. In course of investigation, the office of the writ petitioner, M/s. Jeena and Company was searched and several persons including two executives of M/s. Jeena & Company were interrogated. Summons were issued u/s 108 of the Customs Act. The result of such searches and seizure and/or interrogation and/or various documents seized from the office of M/s. Jeena & Company revealed that K. K. Bhattacharjee, an officer handling the particular cargo, and Janardhan Thakur had put their signatures on the relevant documents. One piece of rubber stamp of M/s. Doona & Company of Srinagar was also found inside the drawer of the table used by K. K. Bhattacharjee in the

office of M/s. Jeena & Company. According to the Collector of Custom, Calcutta, the Custom House Agents did not comply with the regulation of the Custom House Agents Licensing Regulations and also they aided and abetted one J. Sala, a French national, in his attempt to export the said quantity of as his under the coverage of tourist packages. The chalan stated to have been issued by M/s. Doona & Company was dated 18th August, 1986. But the receipt of some of the goods by M/s. Jeena & Company also bore the date 18th August, 1986, although it was stated that those goods were consigned from Kashmir by M/s. Doona & Company.

2. The said K. K. Bhattacharjee put his signature on behalf of M/s. Doona & Company, Srinagar. Hence it appeared that the said form was submitted to the Export Agency, Calcutta, after it being filed and prepared in the office of M/s. Jeena & Company inasmuch as the Collector of Customs was satisfied and had reasons to believe that the writ petitioner Jeena & Company had not only contravened the Customs Agents Licence and Regulation but has also aided and abetted in such attempt for illegal exportation of prohibited goods. Thereby they had committed an offence under the Narcotic Drugs and Psychotropic Substance Act, 1985 as well as they had violated the provisions of the Customs Act As a consequence K. K. Bhattacharjee and Janardhan Thakur, senior personnel of the writ petitioner, were arrested. The Collector of Custom G. Sarengi issued on 26th August, 1986 an order suspending the writ petitioner from further acting as Customs House Agent pursuant to the licence granted in its favour with immediate effect. The notice itself had set out in several paragraphs the facts and circumstances and also the ground upon which the Collector of Customs had exercised its power under Regulation 21, Sub-clause (2).

3. Being aggrieved thereby a writ petition was filed which was ultimately heard and decided by S.R. Roy J. (as he then was). The learned Judge in the judgment itself had set aside the said order passed by the Collector of Customs and further the learned Judge observed that the power given under Regulation 21, Sub-rule (2) was bad inasmuch as it did not afford an opportunity to the person of any hearing and also of making any representation on its behalf. From the order that has been passed it indicated that it was only an interim suspension which was passed on 26th August, 1987. Instead of showing a cause to that effect a writ petition was immediately moved on 1st September, 1987. The said order for interim suspension was not a quasi judicial order which was passed under the Rules framed under the statute authorising the Collector of Customs in a given case to pass such order with immediate effect. Regulations 21 and 23 of course provide that the procedure as to how such show cause notice will have to be given and what opportunity of hearing and representation will be given to the person concerned including his right to cross-examination witnesses and challenge the evidence that have been adduced by the authority concerned.

4. The matter appeared in the list before this Court on 20th Feb., 1989 onwards. On 1st March, 1989 the appeal was called on and in the first call when the

learned lawyer on behalf of the respondent Jeena & Co. Shri Sitiesh Sinha asked for an adjournment on the ground of Mr. Samarjit Gupta, learned Sr., engaged in the matter. This Court passed over the matter and went on hearing other appeals. The matter was not called on for the second time on 1st of March. On the 2nd March, 1989 in the first call the appeal was passed over and in the second call in the presence of both the learned lawyers representing the Collr. of Cus. as also M/s. Jeena & Co this Court went on with the hearing of the appeal. After elaborate submissions had been made not only by the learned lawyers appearing on behalf of the appellant but also after affording ample opportunity to Mr. Sitiesh Sinha who was present in Court to make his submissions on behalf of the respondent and after he made elaborate submissions on behalf of M/s. Jeena & Co. this Court immediately after hearing was concluded dictated the judgment in open court upon giving reasons as it will appear from the said dictated judgment. This Court was of the view that the order passed by the learned trial Court by making the Rule absolute and also by making certain observations regarding the emergent powers that have been given in favour of the Customs authorities under Rule 21, Sub-rule (2) was enormous. This Court did not agree with such finding of the learned trial Court. As a result this Court allowed the appeal in favour of the appellant by giving reasons in the said dictated judgment. The said judgment was passed on 2nd March, 1989. Till 10th of March, 1989 the respondent M/s. Jeena & Company did not take any steps whatsoever of preferring an appeal, being aggrieved by the said judgment before the Supreme Court of India. Instead on 10th March, 1989 an application was taken out, praying in the said application, for stay of the operation of the order dated March 2, 1989, and also for setting aside and/or recalling the said order. The said application was moved before another Division Bench when directions were given by the said Division Bench for moving that application before this Court. Today, on 13th March, 1989, this application was moved by the learned Senior Lawyer, Mr. Samarjit Gupta, assisted by the learned Junior Mr. Sitiesh Sinha as a review application before this Court. From the nature of the application, the cause-title and the prayers it did not indicate that this application was an application by way of review of the order passed by this Court on 2nd March, 1989. Not only this application was defective in form but it also does not disclose the grounds on which such review application could be entertained by this Court for review of this order passed on March 2, 1989. On the contrary this appeared to be an out and out appeal from an order passed by this Court on March 2, 1989, which, in our view, is not maintainable neither as an application for review nor as an appeal from an order passed by an Appellate Bench of this Court, The only ground that had been taken in this application is that through inadvertence which has escaped the notice of this Bench that although this matter appeared from the month of February in the list of this Court but in view of a determination made in favour of this Court by the learned Chief Justice that this Court will have the jurisdiction in addition to the Appellate Side list to hear appeals from orders (pre-1984) under Article 226 of the Constitution and application relating thereto, appeals from civil orders and decrees (pre-1984) and application thereto.

5. The learned lawyer Mr. Samarjit Gupta, while making submission in support of this application, submitted that there was no Bench constituted before 9th March, 1989 to hear the appeals for the post-1984 period. He submitted that inasmuch as there has been a determination in favour of this Court to hear matters of pre-1984 period under these circumstances any order and/or judgment passed by this Court in respect of the matter which is an appeal of post-1984 period is a nullity inasmuch as this Court had no jurisdiction to hear that appeal at all. He further submitted that the subject matter of this appeal from orders under Article 226 was foreign to the jurisdiction of this Court inasmuch as this Court lacked jurisdiction entirely inasmuch as the question relating to the root of the matter this Court having no jurisdiction in the matter the order and/or judgment by this Court was a nullity. As a result the said order should be set aside by this Court.

6. From the determination as it appears from the cause list clearly indicates that in addition to the Appellate Side list this Court will have ample jurisdiction to hear appeals from orders under Article 226 of the Constitution which order falls fairly and squarely within such jurisdiction inasmuch as the impugned order which have been set aside by this Court holding that the Collector of Customs had ample jurisdiction to pass under Regulation 21, Rule 2, under emergent circumstances, to pass an order suspending the licence of a Custom House Agent was an order passed in respect of a matter which was the subject matter of an application under Article 226 of the Constitution. The very use of the word "pre-1984" does not take away the jurisdiction to hear matters by way of appeal from an order passed under Article 226 of the Constitution by a learned Single Judge. The determination of hearing pre-1984 matters was a determination made by the Letters Patent and also under the Rules of the Calcutta High Court to make determination and this Court is fully aware of such power of the Chief Justice to make such determination it does not appear that the Chief Justice has determined that under no circumstances this Court shall not hear matters relating to post-1984 period. In the instant case not only the learned lawyer appearing for the writ petitioner Jeena & Company prayed for adjournment on the ground of the absence of the senior lawyer but also without taking any objection thereto had fully participated in the hearing of the appeal and had made his submissions on merits. After that, finding that the order and/or judgment went against, the writ petitioner, found out an ingenuous mode of challenging the said order instead of following the regular course of moving the learned Supreme Court to set aside the order passed by this Court. To our mind this Court not only had territorial, pecuniary and other jurisdiction to deal with appeals under Article 226 of the Constitution but also there has been a valid and proper determination by the learned Chief Justice in favour of this Court to hear said appeals arising under Article 226 of the Constitution and all applications relating thereto. This Court is of the view that it is not such a lack of jurisdiction which goes to the root of the matter in view of this Court not having either territorial, pecuniary or other jurisdiction to entertain such appeal. Under these

circumstances to our mind the judgment passed by this Court is not a nullity. Nor this Court has any jurisdiction in the present application, which is not a review application in form, nor does it contain any ground for such review. Under these circumstances this Court is unable to entertain this application by way of review and set aside the order which have been passed by this Court.

7. Although in the application it has been stated that only on the 9th March that the writ petitioner Jeena & Company were verbally intimated by the agents of the Collector of Customs that in view of the order passed by this Division Bench the petitioners will not have the right to work on the basis of the licence under the said regulation but in the petition itself it had admitted that no such intimation was delivered to the office of the petitioners as on the date when such application was taken out i.e. on the 10th of March, 1989 there is no reason why the writ petitioner could not wait till 13th March and move this application before this Bench. Apart from that although it had been submitted on behalf of the learned Lawyer that it was only on the 9th March, 1989 that the writ petitioner could come to know of the order that had been passed by this Bench it is strange that the deponent Kamil Amiji Patel, the Manager of the Calcutta Branch of M/s. Jeena & Company who had verified in paragraphs 1-16 of the petition although that the facts and circumstances of the case were true to his knowledge would contend now that he did not have any knowledge earlier although he was the Manager of the Calcutta Branch. He has stated in all the foregoing paragraphs of the petition how the matter appeared from February onwards, how the fresh determination was made and how this matter was heard by this Court on 2nd March, 1989 which he verified as true to his knowledge. It was also within his knowledge that an order had been passed against the writ petitioners. Hence there was no occasion for the writ petitioner for the first time to know on the 9th March, 1989 that such order and/or judgment had been passed allowing the appeal preferred by the Collector of Customs. Under these circumstances, this Court is of the view that this is nothing but a frivolous and vexatious application which has no merit. The decisions referred to by the learned Lawyer appearing on behalf of the petitioner reported in *South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others*, lays down the principle that the jurisdiction to try a suit, appeal or proceedings by High Court under the power reserved by Section 20, Sub-section (1)(b) arises only if the suit, appeal or proceedings is properly instituted in a court subordinate to the High Court and the suit, appeal or proceedings is in exercise of the power of the High Court transferred to it. Exercise of this jurisdiction is conditioned by the lawful institution of the proceedings in a subordinate court of competent jurisdiction and the transfer thereof to the High Court. It was held that the power to try and dispose of proceedings after transfer from a court lawfully ceased if it does not involve a power to entertain a proceedings which is not otherwise within the cognizance of the High Court. Section 151 preserves the inherent power of the High Court as should be necessary for the ends of justice or to prevent abuse of the process of the Court. That power may be exercised where there are

proceedings lawfully before the High Court. It does not however authorise the High Court to invest itself with jurisdiction where it is not conferred by law. It has been observed that by jurisdiction, is meant the extent of the power which is conferred upon the Court by its Constitution to try a proceedings. This exercise cannot be enlarged under extraordinary situation if it requires.

8. Under the circumstances this Court is of the view that the observations of the learned Judges of the Supreme Court in the case referred to above has no application to the facts and circumstances of this case. This Court is not hearing an appeal which this Court has no jurisdiction to hear because the learned Chief Justice after the determination had conferred this Court to hear appeals from orders passed under Article 226 of the Constitution which this Court has heard and determined. There is no inherent lack of jurisdiction on the part of this Court to entertain and/or hear such appeal when, in fact, there is such a determination in favour of this Court. It is only for the purpose of convenience of disposing of the matters earlier to 1984 which are vast in number and in arrears that the learned Chief Justice thought it fit to make the determination so that the earlier appeals pending can be disposed of expeditiously and earlier to the current appeals. That determination did not rob the jurisdiction of this Court to hear an appeal from orders passed under Article 226 of the Constitution.

9. Similarly in the case reported in (I) Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, referred to by the learned lawyer appearing on behalf of the writ petitioner from paragraph 13 onwards explain as to what is meant by jurisdiction. Where it was observed that the jurisdiction may be defined to be the power of a court to determine a cause to adjudicate and exercise any judicial power in relation to it. In other words by jurisdiction is meant the authority which a court has to decide matters that are rejected before it or to take cognizance of matter presented in a formal way for its decision. The jurisdiction will have to be considered with reference to the place, the value and nature of the subject matter. Here the place, value and the nature of the subject matter indicate that it was within the jurisdiction of this Court to hear such appeal. The case must be legally before the Court for such determination,

10. The learned Lawyer appearing on behalf of the writ petitioner strongly relied upon the observations made by the learned Judges of the Supreme Court in the case reported in Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, where it has been observed by the learned Judges of the Supreme Court that from the discussion as made in the earlier paragraphs it was clear that before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject matter of the suit. It's jurisdiction must include power to hear and decide the questions at issue that is the authority to hear and decide a particular controversy that has arisen between the parties. u/s 141 of the CPC it has been provided that the procedure provided in

the Code in regard to suits shall be followed as far as it can be made applicable in all proceedings in any court of civil jurisdiction. Under explanation to that section it has been specifically provided that the proceedings under Article 226 of the Constitution. There the question arises whether the learned Trial Court had power to grant relief as was asked for in the application which was the essence of the matter. There the question arose whether the learned trial Court had jurisdiction to permit the settler to revoke a particular clause for the trustee and to authorise him to alter the quantity of interest given to it by the beneficiaries. There the question which calls for determination was whether the trial Court could pass such an order for determination whether under the Indian Trust Act such relief could be granted in the said application. Under the said provision the Court could only give opinion, advice or direction in respect of the management or administration of the trust property and not in any other matters. The relief prayed for by the settler did not relate to the management or administration of the trust property but, on the other hand, had asked for authority to alter the quantum of interest given to the beneficiaries under the deed. There the learned Judges were of the view that the jurisdiction conferred on the Court u/s 34 was limited jurisdiction. Under the provision the court has not been conferred with overall jurisdiction in matters arising under a trust deed. The settlor had prescribed what the court could do and inferentially what it could not do. Under those circumstances what was the jurisdiction of court and what were its limitations had been discussed by the learned Judges of the Supreme Court.

11. In the case reported in (2) ILR 1975 (Cal.) 363 a Division Bench of this Court presided over by Sankar Prasad Mitra, J. (the then Chief Justice) in a reference the question arose whether an application under Article 226 of the Constitution should be maintained on the Original Side of this Court when all the respondents were outside the jurisdiction of this Court. But part of the cause of action was alleged to have arisen within the jurisdiction. The Court held that such application was maintainable. At page 368 in paragraph 13 the learned Judges of the Division Bench observed that for the purpose of convenience of business determination was made order the learned Judges were empowered to decide which application should be made on the Original Side and which on the Appellate Side. Referring to a judgment delivered by B. C. Mitra, J. on September 20, 1973, where the learned Judges observed:

This Court in entertaining the writ petition and dealing with the same derives its jurisdiction not from the rules framed by this Court but from Article 226 of the Constitution. It is the Constitution which has conferred upon this Court the jurisdiction to entertain and deal with the writ petition and the rules set out framed only for convenience of business. There the writ petition which should not have been marked as Original Side matter it should have been marked as Appellate Side matter and should have been moved before one of the learned Judges who had jurisdiction to deal with the writ petition on the Appellate Side.

12. The application was, however, moved on the Original Side in contravention of

those rules. Dealing with the same, the learned Judge B. C. Mitra observed that the learned Judge who issued the rule nisi was at the relevant time one of the Judges of this Court who had jurisdiction to deal with the writ petitions in the Original Side. Even assuming that the writ petition ought to have been marked as an Appellate Side matter and ought to have been moved before one of the learned Judge of this Court taking the writ petitions in the Appellate Side, even assuming the marking of the writ petition and the issue of rule nisi by Ghose, J., in the view of the learned Judges, was a mere irregularity which did not affect the jurisdiction of this Court to issue a rule nisi. It could by no means be said that the said rule nisi issued by Mr. Justice Ghose was a nullity and was altogether void merely because he was dealing with the writ petitions of the Original Side of this Court at that point of time. It was further observed that the rules framed by this Court do not in any way curtail the jurisdiction of the learned Judge who is dealing with the writ petition in the Original Side from entertaining the application which though marked as "Original Side" ought to have been marked as "Appellate Side".

13. As observed earlier, this Court does not lack jurisdiction to entertain appeals from an order passed under Article 226 of the Constitution inasmuch as there is such a determination by the learned Chief Justice in favour of this Court to entertain such an application.

14. Under those circumstances, not only on the maintainability of an application for review which is not in form but also on merits, this Court is of the view that no order should be passed on this application. As a result this application is dismissed.

15. There will be no order as to costs.

16. This Court is of the view that it was open to the writ petitioner being aggrieved by the order and judgment passed by this Court to move the Hon"ble Judges of the Supreme Court and and pray for necessary order and not to move any other Court.

17. Prayer for stay is refused.

Mahitosh Majumdar, J.

18. I agree.