**(2000) 03 DEL CK 0045**

**In the Delhi High Court**

**Case No :** Criminal M. (M) No. 1492/97

Directorate of Revenue Intelligence APPELLANT

Vs

Mohd. Salim Khatri and Another RESPONDENT

**Date of Decision :** 27-03-2000

**Acts Referred:**

**Citation :** (2000) 5 AD 360 : (2000) CriLJ 3165 : (2000) 85 DLT 655 : (2000) 54 DRJ 234 : (2000) 70 ECC 399

**Hon'ble Judges :** Kripa Shankar Gupta, J

**Bench :** Single Bench

**Advocate :** Sh. Satish Aggarwala and Sh. Sunit Purohit, for the Appellant; Sh. Naveen Malhotra, for the Respondent

## Judgement

K.S. Gupta, J.—This petition u/s 482 Cr.P.C., seeks the setting aside of an order dated 6th May, 1995 passed by Additional Chief Metropolitan Magistrate, New Delhi dismissing the application of the petitioner seeking permission to dispose of nine Honda cars.

2. Application for permission to dispose of nine Honda cars dated 11th July, 1994 was filed alleging that these cars were seized by the Directorate of Revenue Intelligence in August/September 1992 and have been exhibited in Court on 10th February, 1994. Cars are presently parked in open space at IGI Air Cargo Complex and their condition is deteriorating day by day thereby resulting in depreciation in their value. Out of the nine cars, only three cars have been claimed by Accused No.1. It was prayed that said cars may be permitted to be disposed of on the terms and conditions as may be deemed fit and proper by the Court.

3. Both the accused/respondents contested the application by filing separate replies. In the reply filed by respondent No.1 it is alleged that he is not claiming any right, title or interest in any of the cars nor is he in any way concerned with the importation thereof.

 

4. It is alleged by respondent No.2 in the reply that even though he is not claiming any title in any of the cars but being case property, they are to be produced before the Court during the course of trial. It is stated that no provision has been cited in the application under which the disposal of the cars is being sought and the application is not maintainable even u/s 451 Cr.P.C., as the trial is yet to start.

5. It was contended by Sh. Satish Aggarwala appearing for the petitioner that due to constraints of storage space, nine Honda cars are parked at IGI Air Cargo Complex in open and are likely to further depreciate in value and the A.C.M.M. ought to have permitted their disposal u/s 451 Cr.P.C. Reliance was placed on the decision in Department of Customs Vs. M/s. Eastern Road Carriers 1994 2 AD (Del) 105 . He further invited my attention to an order dated 30th December, 1997 placed on record passed by the Customs Excise & Gold (Control) Appellate Tribunal, New Delhi dismissing appeal Nos.149 & 160/96-NB filed by the respondents against the order dated 29th March, 1996 of the Commissioner of Customs, New Delhi imposing penalties of Rs.25 lacs and Rs.10 lacs respectively on them in regard to the importation of the cars in question in India. On the other hand, it was urged by Sh.Naveen Malhotra for the respondents that the goods seized u/s 110 of the Customs Act, 1962 (for short to be hereinafter referred to as the ''Act'') on the belief that they are liable to confiscation, can only be disposed of as per the provisions of the Act and the A.C.M.M., New Delhi had thus rightly dismissed the application dated 11th July, 1994 on the ground of his having no jurisdiction in the matter. In support of the submission, my attention was drawn to Sections 110, 111, 112, 122 and 129-A of the Act in addition to Section 4 Cr.P.C., Reliance was also placed on the decision in Randhir Singh and Others Vs. Director of Revenue Intelligence, and Susanta Kumar Adhikary and Ors. Vs. State of West Bengal 1983 Cri 829.

6. Under sub-section (1) of Section 110 of the Act if the proper officer has reason to believe that any goods are liable to confiscation, he may seize such goods. Sub-section (1-A) of said Section 110 which is relevant provides as under:-

^p "The Central Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant consideration, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified."

^p 7. Section 111 enumerates the category of goods which are liable to confiscation under said Section 110(1). Penalty for improper importation of goods etc. has been provided in Section 112. Section 122 provides for the adjudication of confiscation and penalties. A person aggrieved by any of the orders falling under sub-section (1) of Section 129-A may appeal to the Appellate

 

Tribunal constituted under the Act. u/s 129-DD, a revision cab be filed by an aggrieved person before the Central Government in certain cases. Said Section 4 Cr.P.C. provides for trial of offences under the Indian Penal Code and the other laws. Sub-section (1) of Section 4 deals with the offences under the Indian Penal Code while sub-section (2) thereof provides that all offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Considering the scheme of the said two Acts, it is manifest that where the Customs Act, 1962 prescribes the offences and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of Code of Criminal Procedure shall not apply to that extent. It may be noticed that the notification issued under aforesaid sub-section (1-A) of Section 110 only is the source of power to dispose of the goods of the nature noted in said sub-section by the proper officer under the Act. It is not in dispute that the notification issued by the Central Government in exercise of the power under said sub-section (1-A) did not specify at the relevant time the "conveyance" as an item which could be disposed of by the proper officer. It is further not in dispute that after taking cognizance by the A.C.M.M. of the offences under Sections 132 and 135(1)(a) of the Act against the respondents by the order dated 26th March, 1993, the case was fixed for recording pre-charge evidence and by now statements of as many as 4 PWs have been recorded and the cars in question have been exhibited as Exhibits P-1 to P-9 being the case property. As is manifest from the replies filed by the respondents to the application seeking permission to dispose of the cars in question, the respondents do not claim that they are the owners of any of the nine Honda cars. Further, as the case is at the stage of recording pre-charge evidence, final disposal thereof is likely to take sometime and in the meantime the value of the cars would further diminish considerably. In my view, in the absence of notification under aforesaid sub-section (1-A) to the said effect and the above facts and circumstances of the case, in the ends of justice the A.C.M.M. in exercise of the powers u/s 451 Cr.P.C. which is not contrary to the provisions of the Act, should have made an order for disposal of the cars in question and the impugned order cannot thus be legally sustained. Case is based mainly on documentary evidence and the respondents who do not claim ownership to the cars are not likely to be prejudiced if the cars are not produced further during the course of trial. In M/s. Eastern Road Carriers'' case (supra). order passed by the trial court directing the handing over of 450 cardboard boxes containing Close Up toothpaste to the respondent on executing indemnity bond even before that property was produced and exhibited in Court, was upheld by this Court. Cases of Randhir Singh and Susanta Kumar Adhikary''s (supra) on which reliance was placed on behalf of the respondents are distinguishable on facts. In the former case by the time application for release of two trucks was filed and also Crl. M. (M) No. 496/85 and Crl. R.No.131/85 came to be decided, the trucks were not produced in the course of enquiry/trial. In the latter case by the time application for return of seized articles under the Act was moved, the Criminal Proceedings were not even launched against the accused. This decision in addition to the decisions reported in Vinayak Gururao Inamdar and others Vs. Bhaskar Vasudeo Shirsat and others, have heavily been relied upon by the A.C.M.M. in the impugned order. Decisions reported in AIR 1984 Pat 145 seems to have been misquoted as it pertains to a matter under the Provincial Insolvency Act. Decision reported in Vinayak Gururao Inamdar and others Vs. Bhaskar Vasudeo Shirsat and others, too has no applicability as in that case the impugned order directing the release of VCR was passed by the Magistrate when no Criminal Proceedings were pending before him. For the foregoing discussion, impugned order deserves to be set aside u/s 482 Cr.P.C.

8. Petition is, Therefore, accepted and the order dated 6th May, 1995 is set aside. Petitioner is permitted to dispose of nine cars in question after taking their photographs, certifying them as true and filing those photographs in the case before A.C.M.M., New Delhi.

 