(1996) 02 MAD CK 0017

In the Madras High Court

Case No : H.C.P. No. 1345 of 1995

G. Amsavalli APPELLANT

Vs

State of Tamil Nadu And Another RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:
Customs Act, 1962 — Section 135
Foreign Trade (Development and Regulation) Act, 1992 — Section 3(3)

Citation : (1996) 2 LW(Cri) 452

Hon'ble Judges : Janarthanam, J;A. Raman, J

Bench : Division Bench

Advocate : B. Kumar, for the Appellant; I. Subramanian, Additional Public Prosecutor on behalf of the First respondent (State) Mr K. Ashokan, Additional Central Government Standing Counsel for the 2nd respondent, for the Respondent

Final Decision : Dismissed

Judgement

Janarthanam, J.—One G. Amsavalli (petitioner) is the wife of the detenu Ganesan. The detenu, it is said, is a lorry driver by profession and

he took a passport in Madras to go abroad for the purpose of seeking a job. However, he could not secure a job in foreign shares.

2. (a) On 12/13-6-1995 he was stated to have arrived as a passenger from Singapore by a flight No. SQ.410/12.6.1995 along with two checked

in baggages viz., the red stone blue coloured zipper bags, bearing tag Nos. SQ.446530 and SQ.446532 and one blue coloured zipper band bag

and one plastic hand bag. He was then holding an Indian Passport No. P.066043 issued at Madras on 27-5-1993.

b) On being questioned by the Superintendent, Customs as to his having in his possession any gold, silver or any other contraband like computer parts concealed in his baggage or in his person, he appeared to have replied in the negative and, declared that he had baggage goods valued at Rs.

10,000/- only. Thereafter, the red stone blue zipper bag, bearing tag No. 446530 was stated to have been examined in the presence of two

independent witnesses and himself. During the course of examination, a packet wrapped in newspaper was found along with the baggage goods

such as cordless telephones, calculators, digital watches etc. The news paper packet was opened and was found to contain 102 numbers sims,

24Hos CPU chips, 4 watches and one 10 tola gold bar. His person was also searched but nothing incriminating was found. As he was not found in

possession of any valid permit issued by competent authority for legal importation of the said goods, they were stated to have been seized under

mahazar for taking action under the Customs Act 1962 read with Foreign Trade (Development and Regulation) Act 1962. The other things found

in his baggage were also inventorised and seized under the same mahazar. The travel documents such as flight ticket, boarding pass, customs

clearance card and baggage tags were also seized under the same mahazar.

3. A statement was also slated to have been recorded from him by the Customs Officers. The statement so recorded reveals the details as fool-

lows:-

He was residing at No. 3, 10th Street, Thiruvallur, Madras. 51. He was working as a lorry driver, earning Rs. 2,000/- per month. He took a

passport in Madras to go abroad for the purpose of seeking a job. Since he could not get a job for the last two years, he used to go to Singapore

often and bring goods for sale at Madras and earn some profit, He used to get Rs. 1,500/- per month in this trade. He left for Singapore on 10-6-

1995 and stayed there with his friends. He brought gold, computer parts and electronic goods purchased at Singapore for Singapore Dollars

6300, which he borrowed from his friends. He brought them for sale at Madras with a view to earn profits. He also narrated the sequence of

events leading to the seizure of the goods. He knew that it-was an offence to bring computer parts gold and electronic goods without declaring to

customs"".

4. On 13-6-1995, a further statement was stated to have been recorded from him. In that statement, he appeared to have stated that while

checking in at Singapore Airport, the two checked in baggages were found excess and hence, they were booked in the name of one Abdul Azeem

and that the said Abdul Azeem has no connection with the same.

5. The goods so seized from him were valued at Rs. 7,54,000. Under St l(2)(n) of the Customs Act, 1962 read with Section 3(3) of Foreign

Trade (Development and Regulation) Act, 1992 import of gold/electronic goods, computer parts etc., without valid permit from the competent

authority is prohibited. In the absence of any such licence, the electronic goods, computer parts and gold bar totally valued at Rs. 7,54,004/- have

become liable for confiscation u/s 111(d)(1) and (m) of the Customs Act, 1962. By attempting to import the aforesaid goods gold without license

from the competent authority by way of non declaration of customs and thus rendering the same liable for confiscation under the aforesaid

Sections, he had rendered himself liable for penal action under S.I 12 of the Customs Act, 1962. Hence, he was liable to be prosecuted in a Court

of Law u/s 135 of the Customs Act.

6. Accordingly, he was arrested on 13-6-1995 and produced before Additional Chief Metropolitan Magistrate, E.O.I., who remanded him to

Judicial custody.

7. On 13-6-1995, he appeared to have filed a bail application before the said court, in which he had stated that he had not committed any offence

and the Customs Officers extorted an involuntary statement from him. The said Court, by its Order dt. 16-6-1995, however, released him on bail

on execution of due bonds.

8. On 17-6-1995, he also addressed a letter to the Commissioner of Customs, stating that a statement had been involuntarily obtained from him on

torture by the Officers and that the contents of the statement were not true and he retracted the same.

9. The Sponsoring Authority placed the relevant documents to the Secretary to the Government, Public (SC)Department, Fort St. George,

Madras.9 (1st respondent) with a view to take action under the relevant provisions of Conservation of Foreign Exchange and Prevention of

Smuggling Activities Act,1974 (Central Act 52 of 1974 got short ""the COFEPOSA ACT""). The first respondent, after taking into consideration,

the documents so placed and deriving subjective satisfaction, passed the impugned order of detention on the detenu in G.O. No. SR.I/878/5/95

dt.27-7-1995 u/s 3(l) (i) of ""the COFEPOSA ACT"") with a view to preventing him from smuggling goods in future.

10. The present action had been resorted to by the Petitioner, challenging the detention of her husband the detenu, impleading the first respondent,

besides impleading the Union of India, represented by the Secretary to Government, Ministry of Finance Department, of Revenue, New Delhi

(2nd respondent).

11. From the pith and substance of the submissions made by Mr. B. Kumar, learned Counsel appearing for the Petitioner and Mr. I. Subramanian,

learned Additional Public Prosecutor, representing the first respondent, and ably supported by Mr. K. Ashokan, learned Additional Central

Government Standing Counsel, representing the second respondent, the following points arise for consideration.

1. Whether the furnishing of further xerox copy of the passenger ticket and baggage check stated to have been utilised by their detenu for making

the trip from Singapore to Madras on the relevant date, pursuant to the representation stated to have been made by the Petitioner''s wife, asking

for a fresh copy of the said passenger ticket and baggage check stated to be illegible could have affected in any way the right of representation

inhering in his favour under Article 22(5) of the Constitution of India?

2. Whether the non application of mind on the part of the first respondent detaining authority is getting reflected in the process of penning down the

impugned order of detention by the averments made in paragraph iv of the grounds of detention?

12. Point No. l, as above, may now fall in the arena of discussion. It is not as if the detenu was not furnished with a copy of the passenger ticket

and baggage check. The plain fact is that he, in fact, was given a xerox copy of such a document, which is available at page 20 of the booklet of

documents supplied to him. Nevertheless the Petitioner-wife of the detenu made a representation and in the representation so made, it was stated

that xerox copy of the passenger ticket and baggage check furnished to the detenu was illegible and therefore, again a xerox copy of the passenger

ticket and baggage check has been furnished to the detenu. The contention of the Petitioner was that the xerox copy of the passenger ticket and baggage check furnished subsequent to the representation made by the Petitioner, was also illegible and consequently, she could not make an

effective representation and therefore, she would say, that such furnishing of an illegible copy should have to be construed as a factor vitiating the

impugned order of detention.

13. We have perused the xerox copy of die passenger ticket and baggage check as is available at page 20 of the booklet of documents furnished

to the detenu as well as the subsequent xerox copy of the said document furnished to the detenu as produced by the learned Counsel appearing for

die Petitioner. From a perusal of both the documents, we are able to find that the ticket number and the baggage tag numbers are so legible as is

not possible to commit any mistake therefore. It is not at all the case of the detenu that he was not traveling on the relevant date from Singapore by

flight No. SQ.410/12-6-95. The ticket number as well as the baggage tag numbers, as available in those documents, are also specifically

mentioned in the contemporaneous mahazar as well as the confession statement stated to have been made by him before the Customs Authorities.

The relevant particulars, viz., the ticket number and the baggage tag numbers are fully legible in those documents, which alone could be construed

to be material in making a representation in the context of their importance in the formation of satisfaction for the detention. The other particulars,

though appeared to be illegible, cannot at all be stated to affect his right of representation and in that view of the matter the ground of attack of the

impugned order of detention of illegibility of the document, as aforesaid, must have to necessarily fall to the ground.

14. For appreciating the second ground of attack as to the sustainability of the impugned order of detention, better it is, we feel to reproduce

paragraph (iv) of the grounds of detention and the same reads as unders:

Under Section 1 l(2)(n) of the Customs Act, 1962 read with Section 3(3) of Foreign Trade(Development and Regulation) Act, 1992, import of

gold, electronic goods, computer parts etc., without valid permit from the competent authority is prohibited. In the absence of any such licence the

electronic goods, computer parts and gold bar totally valued at Rs. 7,54,004/- MV seized from you have become liable for confiscation u/s 111 (1

)(n) of the Customs Act, 1962. By attempting to import the aforesaid goods/gold without any license from the competent authority, by way of non

declaration of Customs and thus rendering the same liable for confiscation u/s 111(d)(1) and (m) of the Customs Act, 1962 you have rendered

yourself liable for penal action u/s 112 of Customs Act, 1962. You are also liable to be prosecuted in a Court of law u/s 135 of the Customs Act,

1962.

15. The crux of such submission is that no permit of license is required at all for the purpose of importation of electronic goods, computer parts

although a license for the importation of gold is necessary and such being the case for the Detaining Authority to say in paragraph (iv) of the

grounds of detention that ""by attempting to import the aforesaid goods gold without any license from the competent authority"" is an indication of

non application of mind and therefore, the impugned order of detention is liable to be set aside. Such a ground of attack appears at first sight to be

attractive and to wear the credible look of tenability. But if a deep probe is made by carefully analysing the averments made in paragraph (iv) of the

grounds of detention, the utter untendability taking shelter under such submission would emerge the surface. In the said paragraph, the various

provisions such as S.ll(2)(u) of the Customs Act, 1962, Section 3(3) of Foreign Trade (Development and Regulation) Act 1962 and S.l 11(d)(1)

and (m) of Customs Act 1962, had been referred to and the violations of these provisions by way of non declaration of customs would render the

goods liable for confiscation.

16. Sub-section (1) of Section 11 of the Customs Act prescribes that if the Central Government is satisfied that it is necessary so to do for any of

the purposes specified in Sub-section (2), it may, by notification in the official Gazette, prohibit either absolutely or subject to such conditions (to

be fulfilled before or after clearance) as may be specified in the notification the import or export of goods of any specified description.

17. Sub S.(2)(u) thereof reads as below:-

2. The purposes referred to in sub S.(1) are the following:-

(a)to(t)

(u) the prevention of the contravention of any law for the time being in force.

18. Sub S.(l) of Section 3 of Foreign Trade (Development and Regulation) Act

1992, prescribes that the Central Government may, by order

published in the Official Gazette, make provision for the development and Regulation of foreign trade by facilitating imports and increasing exports.

19. Sub S.(2) of the said S.states that the Central Government may also, by order published in the Official Gazette, make provision for prohibiting,

restricting or otherwise regulating, in all cases or in specified classes of cases and subject to such exceptions, if any, as may be made or under the

order, the import or export of goods.

20. Sub S.(3) thereof provides that all goods to which any order under sub S.(2) applies shall be deemed to be goods the import or export of

which has been prohibited u/s 11 of the Customs Act, 1962 (52 of 1962) and all the provisions of that Act shall have effect accordingly.

21. S. 111 of the Customs Act 1962 deals with the confiscation of improperly imported goods etc. Section 111(d)(1) and (n) are relevant for our

present purposes and they read as under:

The following goods brought from a place outside India shall be liable to confiscation.

(a)to(c)... ...

(d) any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being

imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force:

(e)to(k)... ... ...

(1) any dutiable or prohibited goods which are not included or are in excess of those included in the entry made under this Act, or in the case of

baggage in the declaration made u/s S.77:

(m) (any goods which do not correspond in respect of value or in any other particular) with the entry made under this Act, or in the case of

baggage with the declaration made u/s S.77 in respect thereof.

22. S. 77 of the customs Act, 1962, dealing with declaration by owner of baggage provides that the owner of any baggage shall, for the purpose

of clearing it, make a declaration of its contents to the proper officer.

23. From a survey of the provisions above, it is crystal clear that for any baggage brought to India, the contents of such baggage must have to be

declared. It is also not in dispute that in respect of computer parts and electronic items, duty is leviable at a particular percentage, and therefore,

their entry into India is regulated and consequently, they must have to be declared to the competent authorities and non declaration will entail penal

consequences under the Customs Act, 1962. So far as gold is concerned, there is no pale of controversy whatever that for the import of the gold

licence or permit is necessary, when especially the detenu is not stated to be an eligible passenger entitled to bring gold into India.

24. In the backdrop and setting of the provisions of law, as stated above, it goes without saying that it behaves upon the detenu to have declared

the contents of the baggage to the customs officials, when he was questioned in respect of those items. He did not do so. The sum and substance

of paragraph (iv) of the grounds of detention would amount to non declaration of dutiable goods and also non production of the requisite licence

for the import of goods. In such circumstances, it cannot at all be stated that there was non application of mind on the part of the first respondent

detaining authority in penning down paragraph (iv) of die grounds of detention. The second ground of attack also bristles next to nothing.

25. For the reasons as above, it goes without saying that this H.CP.deserves to be dismissed and the same is accordingly dismissed.

