

(2025) 02 DEL CK 1224
In the Delhi High Court
Case No : Writ Petition (C) No. 1110 Of 2025

Gayrat Djabarov

APPELLANT

Vs

Commissioner Of Customs

RESPONDENT

Date of Decision : 27-02-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Customs Act, 1962 — Section 111(d), 111(j), 111(m), 112(a), 112(b), 125

Citation : (2025) 02 DEL CK 1224

Hon'ble Judges : Prathiba M. Singh, J; Rajneesh Kumar Gupta, J

Bench : Division Bench

Advocate : Ravi Rathore, Maroof Khan, Richa Kumari, Pawan, Piyush Beriwal, Sandip Munian, Jyotsna Vyas

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. This is a petition under Article 226 of the Constitution of India filed by the Petitioner, who is an Uzbekistan National having passport number FB0490132. It is his case that he came to India by flight No. HY 421, as a tourist, and landed at Indira Gandhi International (IGI) Airport on 26th April, 2024.
3. He was carrying some gold chains and gold earrings etc., and the same was detained by the Customs Department at the Airport itself. The following is the details of the detained goods:
“(i) Four Gold Chains Purity 587 Weight 65 gm
(ii) Two gold rings Purity 587 Weight 06 gm
(iii) One pair and three gold earrings Purity 616 Weight 29 gm
(iv) Two gold bracelet purity 586 Weight 12 gm”

4. It is the case of the Petitioner that after the detention receipt bearing DR No. DR/INDEL4/26.04.2024/52613 was issued, he did not receive any communication relating to show cause notice or any order which has been passed against him. It is claimed that representations were made by him repeatedly; however, no reply has been received.

5. On behalf of the Respondent-Department, Order in Original dated 2nd July, 2024 has been placed on record. According to the said order, the Petitioner had been permitted to redeem the goods on payment of fine. The operative portion reads as under:

"i) I deny the 'Free Allowance' if any admissible to the passenger, Gayrat Djabarov for the various acts of commission and omission;

ii) I declare the passenger, Gayrat Djabarov is "an ineligible Passenger" for the purpose of the Notification No. 50/2017-Cus dated 30.06.2017 (as amended) read with Baggage Rules, 2016 (as amended);

iii) I order confiscation of "(i) Four gold chains having purity 587, weight 65 grams, valued at Rs.2,67,435/- (ii) Two gold rings having purity 587, weight 06 grams, valued at Rs.24,686/- (iii) One pair & Three gold earrings having purity 616, weight 29 grams, valued at Rs. 1,25,212/- (iv) Two gold bracelets having purity 586, weight 12 grams, valued at Rs.49,288/- aforesaid gold jewelry collectively valued at Rs.4,66,621/-" recovered from the Pax Gayrat Djabarov and detained vide DR No. DR/INDEL4/26.04.2024/52613 dated 26.04.2024, under Section under Section 111(d), 111(j) & 111(m) of the Customs Act, 1962;

iv) I give an option to redeem the goods confiscated above, on payment of a fine of Rs.58,000/- (Rupees Fifty Eight Thousand Only) under Section 125 of Customs Act, 1962 and allowed the same for re-export from India only by the Pax since the passenger is an Uzbekistan national having Uzbekistan Passport No. FA1519856. The redemption is to be allowed after the completion of legal formalities in this regard and also fulfilment of any regulatory clearances/ approvals required. The offer of redemption, if accepted, shall be subject to condition that the Pax shall not dispute the identity and valuation of the detained goods. The offer of redemption shall cease after 'One Hundred Twenty Days' from date of the receipt of this order;

v) I also impose a penalty of Rs.47,000/- (Rupees Forty Seven Thousand Only) on the passenger Gayrat Djabarov under Section 112(a) & 112(b) of the Customs Act, 1962."

6. In addition, it is submitted by Id. Counsel for the Respondent-Department that the Petitioner is guilty of concealing material facts. It is submitted that he had in fact appointed one Mr. Rishabh Atri as an authorised representative. An authorization letter along with the Bar Council of Delhi identity card has been placed on record. According to the Respondent-Department, the said Order in Original was received by his authorised representative on 2nd July, 2024.

7. Considering the above submissions and the documents placed on record , this Court is of the opinion that the Petitioner has failed to disclose all the relevant facts in the Petition.

8. The present petition being a writ petition under Article 226, non-disclosure of relevant facts would go to the root of the matter. The Supreme Court in *Shri K Jayaram & Ors vs Bangalore Development Authority*; Civil Appeal No(s). 7550-7553 of 2021 has held that non-disclosure of past & present litigations concerning dispute amounts to suppression of material facts which would disentitle a litigant from discretionary remedy under Article 226 of the Constitution. The relevant paragraphs read as under:

"12. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the Court without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

16. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations was or is pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.

17. In the instant case, since the appellants have not disclosed the filing of the suit and its dismissal and also the dismissal of the appeal against the judgment of the civil court, the appellants have to be non-suited on the ground of suppression of material facts. They have not come to the court with clean hands and they have also abused the process of law. Therefore, they are not entitled for the extraordinary, equitable and discretionary relief"

A perusal of the above would show that a Petitioner who approaches the Court with unclean hands by suppressing litigation and his involvement therein is disqualified from seeking discretionary relief under Article 226 of the Constitution.

9. On a query from the Court as to why the copy of the authority letter and the

fact that the authorized representative had received the order, was not stated in the petition, it is submitted that the authority letter has been cancelled, however, no copy is being placed on record. Also no convincing answer is forthcoming.

10. The receipt of the Order in Original by the said authorised representative has been placed on record by the Respondent. A perusal of the same would show that the Petitioner had complete knowledge of the said order and that he has failed to avail of his remedies in accordance with law.

11. At this stage, Id. Counsel for the Petitioner submits that the Petitioner is willing to pay the fine which is being imposed in the Order in Original for release of the goods fine and penalty.

12. In view thereof, since the order has itself permitted the Petitioner to redeem the goods subject to the payment of a fine of Rs. 58,000/- and a penalty of Rs. 47,000/-, let the Petitioner deposit the same with the Customs Department within a period of four weeks from the date of release of this order.

13. Upon the said deposit being made, the goods shall be released to the Petitioner or his authorised representative after confirming their identity. The Petitioner shall send a specific email confirming his personal presence or the presence of his representative to the concerned official.

14. The petition is disposed of. The pending application(s), if any, also stands disposed of.