

(1961) 03 RAJ CK 0005
In the Rajasthan High Court

Gulab Rai

APPELLANT

Vs

Rajasthan State and Others

RESPONDENT

Date of Decision : 13-03-1961

Acts Referred:

Constitution of India, 1950 — Article 20, 226

Citation : (1962) CriLJ 666 : (1961) RLW 376

Hon'ble Judges : Sarjoo Prosad, C.J;B.P. Beri, J

Bench : Division Bench

Judgement

Sarjoo Prosad, C.J.—This is an application under Article 226 of the Constitution.

2. The petitioner Gulab Rai Utu Mal is a Saraf of Jodhpur and carries on business of sale and purchase of bullion in the city. On 27th September, 1958, the police of Jodhpur, headed by the Deputy Superintendent of Police, who is a respondent to the application, raided the petitioner's shop situate in Sarafa Bazar. They seized three books of account of the petitioner being his Sahi Bahi, Kachchi Rokar and Pakki Rokar. This search and recovery appears to have been made in connection with the investigation of some complaint dated 26th September, 1958 purporting to refer to offences under various sections of the Indian Penal Code as also u/s 167(81) of the Sea Customs Act (VIII of 1878) read with Section 23 of the Foreign Exchange Regulation Act (VII of 1947). Nearly a month after the search, i.e., on 28th October, 1958, the said Deputy Superintendent of Police summoned the petitioner and asked him to produce four bill books of his shop. He was again summoned on 30th October, 1958, and asked to produce the Khata Bahi.

It is alleged by the petitioner that even after the seizure of these books of account the police authorities did not make any final report against the petitioner as they should have done during all this period nor did they return his account books in spite of repeated demands, on the contrary they appear to have handed Over the books of account to the Land Customs authorities. On 18th May, 1960, the petitioner received a letter from the Superintendent, Customs Division,

Jodhpur, in which it was stated that the said Officer had scrutinised the petitioner's records and since notices on certain persons from whom gold appears to have been purchased by the petitioner were not served, he was asked to furnish correct addresses of those persons. The petitioner challenge, the above action of the authorities as being wholly without jurisdiction and unwarranted in law. He accordingly prays that a writ of mandamus, or any appropriate direction may be issued to the respondents compelling them to return the books of account to the petitioner of which they are in illegal possession and also preventing them from taking any action to force the petitioner to make certain disclosures as required by the Customs authorities.

3. An affidavit in reply has been filed on behalf of the Deputy Superintendent of Police, Jodhpur, as also on behalf of the Customs Officials. It is stated by the police authorities that on receipt of a report that a fairly large gang of smugglers were engaged in the offence of illegal smuggling of huge quantities of foreign gold and were also responsible for forging valuable securities, the Deputy Superintendent of Police obtained an order from the City Magistrate, Jodhpur, on 26th September, 1958, for investigation ^n regard to offences under the Sea Customs Act, the Foreign Exchange Regulation Act as also under the various sections of the Indian Penal Code. During the investigation the Investigating Officer felt that the Bahis and other books of account found in the shop of the petitioner were of great evidentiary value and if no immediate steps were taken to search the premises and recover the books, all that evidence would be lost. The petitioner's shop was, therefore, searched and the Bahis taken possession of and after the search a copy of the search memo was duly transmitted to the Magistrate on 1st October, 1958.

It is further alleged that although no gold was recovered from the shop of the petitioner, the Bahis contained entries which led the authorities to believe that Sold was received by the petitioner through clandestine sources. The bill books and the Khata Bahi were, therefore, similarly seized. The stand taken by the police authorities is that there was a general conspiracy to smuggle gold into India in which a large number of persons were involved. It appears that the Bahi entries, according to them, had been fabricated in order to conceal the crime of smuggling and in order to test the correctness of the entries a very large number of persons had to be interrogated when it was discovered that many of the names mentioned therein were fictitious. Since it also transpired that the alleged offences were against the Customs law, which could be the subject-matter of departmental proceedings under the Customs Act or form the basis of a complaint by the Customs authorities, the matter was referred to those authorities.

The Customs authorities on their part issued notices to the various parties concerned and had even taken steps against some of them. According to the respondents a large number of persons are still to be investigated and the police authorities are, therefore, awaiting the result of the enquiry by the Customs

Officials before taking any further action in the matter and the delay is natural and inevitable in a case of such magnitude. The account books are at present in the hands of the Customs Officials who are taking appropriate steps for investigation on the basis of the entries made in those books.

4. The Customs Officials have in substance supported the statement made by the police authorities in their affidavit. In reply they allege that since the books had already been seized by the police, they obtained those books from the police authorities. According to them several entries of persons from whom the petitioner is alleged to have purchased gold were fictitious; the petitioner was, therefore, requested to explain those entries and give correct addresses if the entries were genuine as claimed by the petitioner. In case the correct addresses were furnished, these persons could be called and interrogated or the petitioner himself could volunteer to produce them so as to satisfy the authorities about the genuineness of the transactions. They further submit that a number of persons whose signatures purport to be in the books came forward and disclosed that they did not sell any gold to the petitioner, which strengthens the belief of the Customs Officers that the entries were really fictitious and that they were made in order to conceal the receipt of smuggled gold. The matter is still under investigation and they complain that since a very large number of persons are involved and the petitioner is not cooperating with the authorities in giving out the names of persons, from whom he had purchased gold or to whom he had sold the same, the matter has been naturally delayed, for which the petitioner himself is responsible and not the Customs authorities.

5. It is contended by Shri Hastimal Parekh, the learned Counsel for the petitioner, that the Police Officers had no authority in law to search the petitioners' shop and seize the account books of the petitioner. Evidently this argument is based on the assumption that there was no compliance with the provisions of Section 165 of the Code of Criminal Procedure or with some of the other relevant provisions of the Code, authorising the search of the premises and the seizure of the books by the Deputy Superintendent or Police. In this case the record discloses that on receipt of an information that certain persons were engaged in the illegal practice of smuggling gold and cheating the Government of its revenue by resort to illegal and clandestine activities, the Deputy Superintendent of Police submitted report to the City Magistrate, Jodhpur, for permission to investigate the matter and the Magistrate on a perusal of that report permitted the investigation.

It was in the course of this investigation duly authorised by the Magistrate that the Police Officer searched the premises of the petitioner and recovered the documents in question. This the Officer did after making a record of his reasons for making the search, as required by Section 165 of the Code and then submitted a report of the result of the search and the seizure of the documents to the City Magistrate. The other documents, viz., the bill books and the Khata Bahi subsequently seized by the police, were handed over by the petitioner

himself. In the circumstances, it is difficult to sustain the contention that the police acted without any warrant in law in searching the premises of the petitioner and taking possession of the document; in question. It is submitted on behalf of the police authorities that these documents were relevant for purposes of investigation of the various offences alleged in the information received by them and in case they had not taken prompt action in the matter all that evidence would have been secreted or lost.

6. The next contention of the learned Counsel is that in any case the Police had no jurisdiction to hand over these documents to the Customs authorities. The learned Counsel urges, that if there was anything to show that an offence under the Sea Customs Act had been committed by the petitioner it was open to the Customs authorities to take action under the law by obtaining permission of the Magistrate to search the petitioner's premises, but it was not open to the police authorities to hand over these documents surreptitiously to the Customs Official. If the police themselves could not find anything against the petitioner, the appropriate course for the police authorities was to submit a final report and to return those documents leaving the Customs authorities to pursue their own remedies.

The difficulty, however, which appears to be in this case, as shown in the replies submitted on behalf of the police and the Customs authorities supported by affidavits, is that the offences whether under the Indian Penal Code and/or under the Sea Customs Act are alleged to have been committed as a part of a conspiracy to smuggle gold and cheat the revenue authorities. The offences, therefore, whether under the Indian Penal Code or under the Sea Customs Act, if proved, may appear to be part of the same transaction and as such when the police noticed that the Customs authorities were also concerned in the matter it was not either illegal or unnatural on their part to refer the matter to the Customs authorities and place them in possession of the materials which the police had recovered on search of the premises of the petitioner. It is true that if the Customs authorities were left to themselves they had to take their own initiative in the matter and proceed to act in accordance with the provisions of the Sea Customs Act; but since the police had already recovered those documents we do not think that they are guilty of anything illegal or unauthorised in handing over the documents to the customs officials for scrutiny and investigation.

Section 171A of the Sea Customs Act empowers an Officer of Customs employed in checking smuggling to summon any person, whose attendance he considers necessary, either to give evidence or to produce any document; and u/s 172 of the Act, a Magistrate may, on application by a Customs Collector, issue a search warrant in relation to the recovery of any dutiable or prohibited goods or in respect of any documents relating to such goods which are said to be secreted in any place within the local limits of the Magistrate's jurisdiction. Does it make any difference if the police obtained such a permission to search the premises

under the Code of Criminal Procedure and recovered the documents which they later handed over to the Customs Officials for scrutiny and investigation? In either case the authority of the law is there justifying the action. The police have not yet completed investigation and submitted any final report; they are awaiting the result of the investigation by the Customs authorities.

7. We were of course impressed with the contention of the petitioner that although the documents were seized or taken possession of as early as in September and October, 1958, yet no legal action has been taken against the petitioner one way or the other so far, and the only object of the authorities was to harass the petitioner by retaining possession of his, documents, some of which he requires for his day to day transactions. Prima facie there has been inordinate delay in reaching to some conclusion either for or against the petitioner; protracted investigations dragging a tiresome and lengthy course and covering a period of nearly a couple of years do cause mischief and harassment and it is the duty of the authorities concerned to expedite the investigation and reach certain definite results. On a close scrutiny of the matter, however, we are satisfied that the authorities are not entirely to blame and that with the attitude of the petitioner and the complex nature of the Investigation some delay was inevitable. It does not appear that after the seizure of the books and papers the authorities concerned have been simply sitting over the matter; on the contrary it appears that they have been working on the trail.

(After going through the documentary evidence their Lordships observed:)

8. The above documents reveal at any rate that the Customs authorities have not been lying idle but have been carrying on investigations in respect of the transactions entered in the Bahis of the petitioner. They are legitimately entitled to claim that the petitioner should cooperate with them in furnishing the necessary information as required by Section 171A of the Sea Customs Act and give the addresses, if possible, of the persons with whom, he transacted business. He has, however, preferred not to do so. The learned Counsel on behalf of the petitioner urges that under the aforesaid provision of the Sea Customs Act it was not open to the authorities to compel the petitioner to give evidence against himself which was clearly in negation of the protection afforded by Article 20(3) of the Constitution. Article 20(3) provides that no person accused of any offence shall be compelled to be a witness against himself. It is not necessary for us at this stage to enter into any elaborate discussion of the import and implication of this Article. The interpretation sought to be put upon It by the learned Counsel for the petitioner, if accepted, would cast the net so wide as to exclude a large volume of relevant evidence which might otherwise be properly admissible under the law.

It is enough to observe that before the projection under Article 20(3) of the Constitution can be invoked at least two essential requirements had to be fulfilled : firstly, the person concerned must be accused of an offence and, secondly, he should not be compelled to give evidence against himself. This

element of compulsion is as necessary as the fact of a definite accusation against the person concerned of an offence before he can plead the bar of Article 20(3) of the Constitution. The accusation must be in the shape of a formal charge and cannot relate merely to a stage of investigation when no charge has been formally preferred against the person as an accused. The point has been well illustrated in a very recent decision of the Supreme Court in, *Mohammed Dastagir v. State of Madras* AIR 1960 SC 756 where Imam J. observed as follows:

Before this provision of the Constitution comes into play two facts have to be established (1) that the individual concerned was a person accused of an offence and (2) that he was compelled to be a witness against himself. If only one of these facts and not the other is established, the requirements of Article 20(3) will not be fulfilled.

In, this case we do not find that there is any formal accusation levelled against the petitioner. The police have obviously not yet preferred any formal charge sheet against him; but it is suggested by Shri Hastimal, the learned Counsel for the petitioner, that the information supplied to the police, does indicate the commission of certain offences both under the Indian Penal Code as also under certain sections of the Sea Customs Act. It must be, however, remembered that the matter is still at the stage of preliminary investigation before the police, who do not appear to have made up their mind whether to present or not to present any formal charge sheet against the petitioner, in respect of any of the alleged offences. In that event it cannot be said that the petitioner stands accused of any formal charge.

In *Mohammed Dastagir's* case cited above, it was urged on the facts that the appellant must be regarded as a person who was accused of an offence at the time when the Deputy Superintendent of Police asked him to produce the money which was, intended to be offered as a bribe. The contention was refuted by the Supreme Court and it was observed that there was no formal accusation against the appellant relating to the commission of an offence. So long, therefore, as a charge sheet is not actually preferred against the petitioner or a regular complaint filed against him in respect of the commission of any specific offence or offences either under the Indian Penal Code or under the Sea Customs Act it cannot be argued with any show of reason that the petitioner was in the position of a person accused of an offence within the meaning of Article 20(3) of the Constitution.

9. The question then is whether the Customs authorities have preferred any charge against the petitioner and have definitely accused him of any offence so as to entitle him to the protection of Article 20(3) of the Constitution. In the earlier letter dated 18th May, 1960, although it is stated that the account books were seized by the police on information that the petitioner was a person concerned in dealing in smuggled gold, yet that is much too vague to be regarded as a definite charge against the petitioner. Shri Hastimal, however, refers to the next letter which was sent on the 22nd of November, 1960, after

the issue of the rule by this Court on this writ application. Even that letter cannot be construed as preferring a formal charge against the petitioner. At the end of the letter the Superintendent of Customs of course calls upon the petitioner to show cause why action should not be taken against him u/s 167(8) of the Sea Customs Act or further prosecution launched against him for Mai u/s 167(81) of that Act; but it is obvious that all this is still at the stage of investigation.

The whole object of the letters is to obtain information from the petitioner so as to be satisfied, if possible, about the genuineness of the account book entries. No goods have been seized from the petitioner except those books and documents. Besides, the confiscation of any property u/s 167(8) of the Sea Customs Act or imposition of any penalty thereunder does not prevent the infliction of any punishment to which the person affected thereby is liable under any other law, as it is clear from Section 189 the Act itself. See also *Maqbool Hussain Vs. The State of Bombay*, . Therefore, the information sought by the Customs Officers from the petitioner cannot be regarded as a testimony of compulsion within the meaning of Article 20(3) of the Constitution.

So far as the. alleged offence u/s 167(81) is concerned the law requires that a conviction in such a case can only be recorded by a Magistrate and for that purpose a complaint in writing has to be lodged by the Chief Customs Officer or any other officer of Customs not lower in rank than an Assistant Collector of Customs authorised in this behalf by the Chief Customs Officer as provided by Section 187A. Until such a complaint has been lodged, there cannot be said to be any formal charge against the petitioner within the meaning of the Act. We are unable to see how in supplying the addresses required or even in producing some of the persons concerned the petitioner will be giving evidence against himself. As to what adverse inference may be drawn against him in case the information furnished by him is proved to be false by the police and the Customs authorities or whether those materials may be admissible at all against the petitioner in case a formal charge is preferred against him are matters over which we need express no opinion, since they do not arise at present. Apart from all this it is for the petitioner to consider whether it is not in his own interest to satisfy the investigating authorities in respect of the enquiries which they are making under the law or leave them to take whatever action they are advised to take under the circumstances.

10. The learned Counsel for the petitioner has further contended that on the face of the letter dated 22nd of November, 1960, there is no case against the petitioner and, therefore, no action should be taken against him. The petitioner does not dispute the position that if on investigation the authorities are satisfied that there are materials available for his prosecution, the authorities would be entitled to initiate any appropriate proceeding known to law. In the writ petition all that he prays is to direct the police and the Customs authorities to return the books of account to him and not to force the petitioner to disclose the addresses of the various customers as required by the letter dated 18th May, 1960. We

have already said that we see no reason to interfere with the investigation which is being conducted by the authorities on these grounds. It is difficult for us to say at this stage whether or not they have any adequate material for launching any prosecution against the petitioner either under the Indian Penal Code or under the Sea Customs Act; but before parting with the case we would like to observe that the matter has already covered a long period and it is desirable and even essential in the interest of justice that the investigations should be completed at an early date and the authorities should make up their mind one way or the other whether to prosecute the petitioner or to submit a final report in his favour. It is also desirable that the books of account and other documents seized, unless otherwise needed for the exigencies of the investigation, should be returned to the petitioner as early as possible.

11. For the reasons, aforesaid this application fails and the rule is discharged with costs.