(1988) 09 CAL CK 0010

In the Calcutta High Court

In Re: Swadesh Ranjan Sarkar

Date of Decision : 22-09-1988

Acts Referred:
Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 3

Citation : (1989) 1 CALLT 415 : (1989) 19 ECC 158 : (1989) 21 ECR 100 : (1993) 64 ELT 190

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Prasenjit Bose and Aniruddha Bose, for the Appellant;N.C. Choudhuri and P. Mukherjee, for the Respondent

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by the petitioner, who claims to be the Officer-in-Charge of Lalgola Police Station, District-Murshidabad, praying inter alia for issuance of a writ of mandamus commanding the respondents to rescind, withdraw and/or cancel the Order, dated 12.12.85, 12.8.86 and 30.5.88 respectively passed by the Assistant Collector of Customs, respondent No. 2. The Collector of Customs (Appeal), respondent No. 3 and the Member (Judicial) of Customs and Excise and Gold (Control), respondent No. 4. The copies of the said Orders are marked as Annexures ''C'', ''D'', and ''E'' to the writ petition. It is stated that being a Police Officer the petitioner is to combat with the miscreants, anti-socials in order to protect the life, property and safety of the public at large and for the said purpose the petitioner is to carry a revolver all the time. It is further stated that the petitioner''s own elder brother went to England for higher studies and the said petitioner''s elder brother purchased a .32 bore Smith and Wesson Revolver and 50 cartridges and exported the said revolver as a gift to the petitioner. The Office of the Indian Airlines duly sent a Notice, dated 7,11.85 stating that the said revolver with the cartridges had arrived at Calcutta. Thereafter the petitioner duly approached the Customs Authorities at Dum Dum Airport to take delivery of the said articles after observing customs formalities and on payment of the Duty and other Charges as leviable thereon. It is alleged that unfortunately the Assistant Collector of

Customs, respondent No. 2, by his Order, dated 12.12.85 refused to clear the said goods inasmuch as the petitioner could not produce the Customs Clearance Permit and confiscated the same u/s 111(d) of the Customs Act. A copy of the said Order is annexed hereto as Annexure ''C to the Writ Petition. Being aggrieved the petitioner preferred an appeal before the Collector of Customs (Appeal) u/s 129 of the Customs Act and by an Order, dated 12.8.86 the respondent No. 3 also rejected the Appeal. A copy of the said Order is Annexure ''D'' to the Writ Petition. Being aggrieved further the petitioner preferred an appeal to the Appellate Tribunal u/s 129A of the Customs Act. The Tribunal also has rejected the said appeal and also refused to exercise the discretion in favour of the petitioner in permitting him to redeem the goods on payment of fine. Being aggrieved by these Orders the petitioner has filed the present Writ Petition on the ground that the respondent Nos. 2 to 4 have passed their respective Orders without considering the case in its proper perspective and without applying their minds arbitrarily rejected the petitioner''s contention in taking delivery of the revolver which was imported as a gift.

2. The Writ Petition is contested by the respondents Customs Authorities.

3. Mr. Bose, Learned Advocate appearing for the petitioner has submitted that Section 11 of the Customs Act cannot stand in the way of importing a small fire arms as a gift in favour of the petitioner, who is a Police Officer and particularly when it was imported there was no specific Order of prohibition by the respondent No. 1 which only came into effect in the year 1986. He has further argued that on 6.11.85 when the said goods have arrived at Calcutta Airport there was no Order of prohibition by the respondent No. 1 for importing fire arms as a gift and even if the petitioner could not produce the Customs Clearance Permit, the respondent No. 2 could release the said goods after imposing fine in addition to duty in lieu of confiscation as provided by Section 125 of the Customs Act.

4. Mr. Roychoudhury, Learned Advocate appearing for the Customs Authorities, has mainly argued that in the instant case the imposition of fine and/or levying of duty are not in question; the question is as to whether the Tribunal and/or the Authorities mentioned in the Writ Petition have properly exercised their discretion in not permitting the petitioner to redeem the imported item in the manner as prayed in the writ petition. Mr. Roy choudhury has further submitted that the matter may well be sent back on remand to the Tribunal to consider exercise of jurisdiction as required under the law. He has submitted that it is not for the Court to exercise discretion but the Authorities concerned should consider to exercise their discretion in the manner as observed by the Hon''ble Supreme Court in a case reported in AIR 1982 SC 1982 (Harvind Das K. Joshi and Anr. v. Collector of Customs and Ors.).

5. Having anxiously considered the contention of the Learned Lawyers appearing the respective parties, it appears to this Court having regard to the parties, it appears to this Court that with regard to the imported item the question of

realisation of fine and/or for the duty are not in doubt. The petitioner will have to pay the necessary duty and/or to pay such fine as required under the law; but the question has been, raised as to the background of the case whether it would be justified to exercise the discretion to permit the petitioner to redeem instead of absolute confiscation of the item itself. Looking to the decision as reported in AIR 1982 SC 1982 (supra), this Court finds that the Collector of Customs passed an Order for absolute confiscation of the imported item without giving the petitioner an option to redeem the same on payment of such fine as may be considered appropriate by him. Reliance was placed upon Section 125(1) of the Customs Act in support of the plea that the Collector had the discretion to pass such an Order and he should address himself to the question whether or not the discretion should be so exercised having regard to the facts and circumstances of the case. Considering the materials on records the Hon''ble Supreme Court directed that the matter be remitted to the Collector of Customs for this limited purpose to the limited extent as to whether or not to give an option to the importer to redeem the confiscated goods on payment of such fine as may be considered appropriate by him in lieu of confiscation. It was, however, kept open to the Authorities concerned to take a decision one way or the other in accordance with law as would be considered appropriate in the facts and circumstances of the case after hearing the petitioner. It was, however, made clear that the Supreme Court had no doubt that the concerned Authorities will take into consideration all the relevant circumstances including the submissions urged on behalf of the appellant.

6. With the spirit of the said decision it was submitted that instead of disposing of the matter finally, this Court may also remit the matter to the appropriate Authorities to consider the case of exercising discretion in order to redeem the goods on payment of necessary fine as would be called for.

7. This Court has anxiously considered the entire background of the case and all the materials placed before this Court. It is not in dispute that the petitioner is a Police Officer who is to go around with a sophisticated weapon at all material point of time. In particular, the activities of the terrorists with sophisticated weapons is very evident. The matter has been pending for over three years. Having considered all the relevant circumstances the goods have been confiscated. The Tribunal has clearly found that since the Authorities concerned and/or the Subordinate Authorities did not consider their discretion the Tribunal does not feel inclined to exercise such discretion to permit the petitioner to redeem the goods. The question of further consideration in the situation does not arise. For any academic purpose this Court does not feel that the matter should go back on remand keeping the entire matter in cold storage for many more years and the entire purpose to carry weapon will lose its force and purpose. Instead of remitting the case back on remand further to permit the Authorities to exercise discretion, if this Court finds that upon relying the facts the Authorities ought to have exercised the discretion and once they have failed to exercise the discretion, this Court is well within its power to ask the Authorities concerned to

immediately exercise the discretion and permit the petitioner to redeem the item on payment of necessary fine. Considering this aspect of the matter the writ petition is disposed of by the following Order.

8. Let a writ of mandamus issue commanding the respondents to revoke and/or cancel the Orders refusing to exercise discretion and to permit the petitioner to redeem the goods on payment of fine and necessary duties. The respondents are directed to pass necessary Orders permitting the petitioner to redeem the goods on payment of fine and necessary duties within three months from the date of communication of this Order.

9. There will be no Order as to costs.