(2016) 01 SC CK 0021

In the Supreme Court Of India

Case No : Criminal Appeal Nos. 679-680 and 533 of 2010

Ishwar Das Moolrajani APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Customs Act, 1962 — Section 104, Section 111, Section 123, Section 135;, Section 2(25)

Citation : (2016) 332 ELT 387

Hon'ble Judges : V. Gopala Gowda and R.K. Agrawal, JJ.

Bench : Division Bench

Advocate : Saurabh Kirpal, Wattan Sharma and Gautam Awasthi, Advocates, for the Appellant; Yashank Adhyaru, Sr. Advocate, Rajiv Nanda, P.K. Dey and B. Krishna Prasad, Advocates, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the parties. These two appeals are filed by the Appellant-Ishwar Das Moolrajani and the Union of India and Anr. questioning the correctness of the condition imposed upon the detenu to deposit an amount of Rs. 4.5 crores for granting him bail vide Order dated 8-9-2006 passed by the Division Bench of the High Court of Judicature for Rajasthan, Jaipur Bench (hereinafter referred to as "the High Court"). The High Court has entertained the Habeas Corpus Petition filed by the detenue. In the writ petition, certain factual aspects and legal grounds were urged inter alia contending that the arrest of the detenu was unlawful and therefore he had sought for issuance of a writ of habeas corpus to the Respondents, in his appeal, and to produce him before the Court and enlarge him on bail. The said case was examined by the High Court and after adverting to certain factual aspects, legal contentions, relevant statutory provisions of the Customs Act, Code of Criminal Procedure and also referring to the judgments of this Court to examine the case put forward by the Appellant-detenu, granted the relief sought for in the habeas corpus petition with certain conditions, one of them is that he should deposit Rs. 4.5 crores with competent

authority. While granting the relief of bail in favour of the detenu, he was directed to deposit the amount found due under protest. That portion of the order is under challenge in the appeals filed by the Appellant-detenue and another.

2. In the connected criminal appeal filed by the Union of India and Anr., their challenge to the impugned judgment passed by the High Court is with regard to the maintainability of the Habeas Corpus Petition filed by the detenu before the said Court contending that the detenu was lawfully arrested in exercise of the statutory power conferred Under Section 104 of the Customs Act 1962 with the Officer of Customs empowered in this behalf by general or special order of the Principal Commissioner of Customs or Commissioner of Customs for the alleged offence punishable Under Section 111 read with Section 135 and Section 2(25) of the Customs Act, is said to have been committed by him for which he has been arrested without mentioning that there was a seizure of the smuggled goods from the detenu as provided Under Section 123 of the Customs Act The detenu was produced before the learned Additional Chief Judicial Magistrate Jaipur, pursuant to his arrest made by the Intelligence Officer, Directorate of Revenue Intelligence, Regional Unit, Jaipur. The learned Chief Judicial Magistrate while examining the bail petition filed by the detenu, by recording his reasons rejected the bail. Thereafter, he approached the learned Additional District Judge seeking for enlarging him on bail. That petition was also rejected. During the pendency of the proceedings before the said Court, the detenu has filed a Writ Petition for grant of writ of habeas corpus and the same is allowed holding that initiation of the said proceedings against the aforesaid detenu are without jurisdiction, therefore, the bail granted with certain conditions is void ab initio in law. On the other hand, it is contended by Mr. Yashank Adhyaru, learned Senior Counsel appearing on behalf of the Union of India that in view of fact of arrest of the detenu, as provided Under Section 104 of the Customs Act, his arrest was lawful. The Union of India and Anr. are also before this Court in Criminal Appeal No. 533/2010 questioning the correctness of the order granting bail with conditions and prayed for quashing the said order.

3. This Court on 7-11-2006 in the criminal appeals filed by the Appellant-detenu stayed the directions of deposit of Rs. 4.5 Crores with the Competent Authority.

4. Mr. Yashank Adhyaru, learned Senior Counsel appearing for the Union of India made a submission that since the detenu has been enlarged on bail and the direction to deposit the amount payable on the imported goods are stayed, after lapse of nine years'' period, the proceedings have become academic, therefore the proceeding does not survive for consideration of this Court. His submission is placed on record. He made further submission that the proceedings under the provisions of the Customs Act for non-payment of the duty on illegally imported goods without obtaining licence culminated in finality, therefore there is no need for this Court to examine the maintainability of the impugned order passed by the High court in habeas corpus writ petition or the conditions incorporated in the

order of bail passed by the High Court.

5. Further, when we put the question to the learned Senior Counsel appearing for the Union of India as to what criminal proceedings are initiated against the detenu insofar evasion of the duty payable to the Revenue on the illegally imported goods in respect of which the arrest of detenu was made Under Section 104 of the Customs Act during the pendency of the proceedings before this Court, he submits that no such proceedings are initiated and no satisfactory explanation is given for not taking action for having arrested him for the alleged offence, under the relevant provisions of the Customs Act as adverted above. In the absence of any satisfactory explanation on behalf of the Union of India and Anr., this Court is required to give appropriate directions to the Central Bureau of Investigation (C.B.I.) to conduct an investigation against the concerned persons/ officials as to why the criminal proceedings were not initiated against the detenue and other concerned persons when he was arrested and produced on a definite allegation that he had acted contrary to the statutory provisions Under Sections 111 and 135 read with Section 2(25) of the Customs Act and imported the goods to India in contravention of the provisions of the Customs Act.

6. Learned Senior Counsel for the Union of India also submits that there is no need for this Court to give such a direction to the C.B.I. We are unable to accede to his submission, particularly having regard to the case of the economic offence alleged to have committed by the detenu as per the Appellants in the connected appeal and Respondent in the criminal appeal of the detenu. We find that not taking action against the detenu during the relevant period of time prima facie is a serious dereliction of duty on the part of the concerned officials who, were/ have been in office of the Customs Department, therefore, we direct the C.B.I. to conduct investigations in this matter and submit a report to the Competent Authority to take appropriate action in this regard and submit compliance to this Court for its perusal and giving appropriate further directions in this regard.

7. With the above observations and directions, the appeals filed by the Appellant-detenue are allowed by quashing the conditions imposed in the impugned order passed by the High Court. The appeal filed by the Union of India & Anr. is dismissed. We direct the Registry to send a copy of this order along with one set of criminal appeals paper books to the Director, Central Bureau of Investigation, New Delhi, to comply with the aforesaid directions.

