

(2006) 09 RAJ CK 0038

In the Rajasthan High Court

Case No : Habeas Corpus Petition No. 6338 of 2006

Ishwar Dass Moolrajani

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Constitution of India, 1950 — Article 21, 22, 22(1)
Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(2), 167(5)
Customs Act, 1962 — Section 104, 111, 114, 122, 135

Citation : (2006) 4 RLW 3268

Hon'ble Judges : Shiv Kumar Sharma, J; Chatra Ram Jat, J

Bench : Division Bench

Advocate : S.R. Bajwa, V.R. Bajwa and Sameer Jain, for the Appellant; K.K. Sharma, Tej Prakash Sharma, Sushil Sharma and R.P. Kuldeep, Public Prosecutor, for the Respondent

Judgement

Shiv Kumar Sharma, J.—Ishwar Dass Moolrajani, petitioner herein, has approached this Court with the prayer that his custody be declared illegal and a writ in the nature of Habeas Corpus be issued directing release of the petitioner forthwith.

2. As per the facts stated in the writ petition the petitioner has been engaged in the trade of manufacture and sale of wrist watches "ROCHEES" known for low priced watches to cater the need of masses who cannot afford costly watches. The Custom Authorities acting on the false information and frivolous insinuations propagated by the business rivals, initiated inquiry which culminated in arrest of petitioner on July 24, 2006.

3. It is averred by the petitioner that arrest of the petitioner as well as orders granting remand by learned Additional Chief Judicial Magistrate (Economic Offences) Jaipur City are per se violative of statutory mandate of Articles 21 and 22 of the Constitution of India. The reasons as stated in writ petition are:

IN REGARD TO ARREST:

(i) The arrest was made contrary to the pre-condition required u/s 135(1)(a) of the Customs Act 1962 (for short "The Act"). The provision of Section 135(1)(a) always apply in PRESENTI. Once assessment was officially made u/s 17 of the Act, the same cannot be reassessed except in special circumstances and that too after following the statutory procedure. Import once assessed and cleared by customs authorities cannot be rendered illegal retrospectively.

(ii) Goods of the companies of petitioner cannot be treated as improperly imported goods defined in Section 2(25) of the Act. Section 111(m) of the Act can be invoked only at the time when goods are inspected before assessment of customs duty.

(iii) The statutory presumption u/s 17 of the Act read with Section 114(e) of the Evidence Act stares in face of arrest.

(iv) The statutory estoppel gets attracted and goods once assessed and cleared for home consumption cannot entail petitioner's liberty for arrest u/s 104 of the Act.

(v) Liability to confiscation u/s 122 of the Act is yet to be adjudged.

(vi) Mandatory notice u/s 28 of the Act before reopening assessment has not been issued as yet.

(vii) At the time of making arrest of the petitioner on July 24, 2006 K.S Meena, Intelligence Officer DRI Jaipur (Respondent No. 2) had no reasons to believe that the petitioner was, in any way, guilty of offence u/s 135 of the Act.

(viii) The arrest of petitioner was unwarranted as the alleged inquiry was at the preliminary stage. Except wild suspicion, there was hardly any tangible material. Even suspicion was yet to be verified and it was practically in nebulous form.

IN REGARD TO REMANDS:

(i) The statutory requirements to be followed while granting remands were blatantly flouted.

(ii) The initial remand was granted without entertaining satisfaction regarding existence of adequate grounds to do so. Such mechanical grant of remand renders the custody illegal.

(iii) Whenever remand is granted in invalid exercise of power, the custody is rendered unlawful and remedy of Habeas Corpus gets attracted.

(iv) The remand of the petitioner in the instant case, was granted by Sh. Rajendra Kumar Bansal who had no jurisdiction to take cognizance for an offence punishable u/s 135 of the Act.

(v) While granting second remand on August 8, 2006 the Learned Magistrate completely ignored the statutory mandate of Section 167(2)(b) of the Code of Criminal Procedure. The petitioner was not produced before the Magistrate and in

his absence remand order was passed.

(vi) The learned Magistrate while granting second remand on August 8, 2006 did not care to record his satisfaction regarding existence of adequate grounds for further grant of remand. Non-recording of adequate ground and fact of satisfaction there about, renders the remand illegal. The custody consequently becomes illegal.

(vii) Granting of remand u/s 167 CrPC is very much a part of fairness in procedure enshrined in Article 21 of the Constitution. No person can be deprived of his life and personal liberty, except according to procedure established by law. Opportunity of leaving the detainee at the time of granting remand is part of fairness in procedure.

4. The respondents in their return raised objection about maintainability of the writ petition. It is further pleaded that the companies owned and controlled by the petitioner were involved in importing the watch-parts and other items in India suppressing the actual transaction value and mis-declaring the description of goods as well as quantity. Details of suppression and mis-declaration have been incorporated in the reply. Denying the averments made in the petition, it is stated that there was sufficient reasonable belief, in the form of documentary evidence that the petitioner has committed offence punishable u/s 135 of the Act therefore he was arrested in accordance with law. It is further pleaded that the learned Magistrate passed the remand orders after having satisfaction regarding existence of adequate grounds. The respondents have also stated that the petitioner has committed white-collar crime, which is injurious to the health of Indian Economy as well as domestic Industry. Being master mind and Influential person, the petitioner is likely to influence, other persons/employees/witnesses etc., who are yet to be examined by DRI. Further a number of imported consignments lying in the factory premises and at various ports are also to be examined. The amount of duty invasion of Rs. 4.5 Crores have been worked out on the basis of documentary evidence available on record. The respondents have prayed not to grant relief to the petitioner at the crucial stage of investigation in view of fact that huge amount of government revenue is at stake.

5. We have pondered over the submissions advanced before us and scanned the material on record as well as the case law placed for our perusal.

6. The right of personal liberty means in substance a person's right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification. Every imprisonment is prima facie unlawful and it is for a person directing imprisonment to justify his act. The justification is usually that the person is arrested detained pending trial in court on a charge of crime, or after trial by a court of competent jurisdiction he has been convicted and sentenced to imprisonment or some other kind of detention provided by statute. For wrongful deprivation of liberty the following remedies are available:

(i) Civil Proceedings for damages in respect of false imprisonment.

(ii) Criminal prosecution for wrongful confinement.

(iii) Application for a writ of Habeas Corpus to obtain release.

7. In origin the writ of Habeas Corpus, found in Edward I's reign, was merely a command by the court to some one to bring before itself person whose presence was necessary to some judicial proceeding. In other words, it was Originally intended not to get people out of prison, but to put them in it. Habeas Corpus was a prerogative writ issued by the King against his officers to compel them to exercise their functions properly. In the form of HABEAS CORPUS AD SUBJICIENDUM (the form now commonly used) it came to be available, under certain conditions to private individuals. In the seventeenth century members of the parliamentary opposition imprisoned by Command of the King availed themselves of the writ to seek release. (1627) The Five Knights case, 3 St. Tr.J. Holdsworth, History of English Law Vol. VI PP. 32-37 and it is from this application that originated its construction importance as the classic British guarantee of personal liberty.

8. There is a difference between Habeas Corpus Ad Subjiciendum and any other Habeas Corpus. The former is a writ of right against which no privilege of person or place can avail. But although a writ of right, it is not a writ of cause, but can only be issued on probable cause. A writ of Habeas Corpus cannot be granted when a person committed to Jail custody by a competent court by an order which prima facie does not appear to be without jurisdiction or wholly illegal Kanu Sanyal Vs. District Magistrate, Darjeeling and Others,

9. It is therefore to be adjudged as to whether the custody of the petitioner is ex facie illegal?

10. Canvassing that the petitioner was arrested in a routine manner and without a reasonable cause learned Counsel for the petitioner placed reliance on Joginder Kumar Vs. State of U.P. and others, wherein Three Judge Bench of Hon"ble Supreme Court formulated following three guidelines:

(i) An arrested person being held in custody is entitled if he so requests to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as practicable that he has been arrested and where he is being detained.

(ii) The police officer shall inform the arrested person when he is brought to the police station of this right.

(iii) An entry shall be required to be made in the diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22 (1) and enforced strictly.

These requirements are in addition to the rights of the arrested persons found in the various police manuals and it is incumbent on the Magistrate before whom the arrested person is produced to satisfy himself that these requirements have

been complied with.

11. A look at the record of the case on hand demonstrates that the petitioner was arrested on July 24, 2006 and an endorsement was made on the arrest memo that the information of the arrest of petitioner was communicated to his brother Nanak Raj Moolrajani on the said day in presence of one Om Prakash Saini.

12. We however notice that on July 25, 2006 when the petitioner was produced in the court the Presiding officer of Special Court of Additional Chief Judicial Magistrate (Economic Offences) Jaipur was busy in taking charge of Malkhana and link Magistrate of the said Court remanded the petitioner to Judicial custody till August 8, 2006. In State of Tamil Nadu Vs. Paramasiva Pandian, the Hon"ble Supreme Court indicated that the special court constituted for trial of cases under the NDPS Act can not exercise the power of remand of an accused arrested in EC Act cases.

13. We also notice that on August 8, 2006 the petitioner was not produced before the Magistrate still he was remanded to judicial custody till August 22, 2006. Placing reliance on Manoj Vs. State of Madhya Pradesh, , learned Counsel for the petitioner contended that the arrest of petitioner has now become otiose in view of non-production of petitioner at the time of seeking remand and detention made as a sequel to the arrest would become unlawful on the ground of flouting the mandate of Section 167(5) Cr.P.C.

14. In State of T.N. v. Paramasiva Pandian (supra) their Lordships of the Supreme Court observed as under:

Though the detenus as already held are in remand which remand is being without jurisdiction, ordinarily the detenus should be set at liberty. However in the interest of justice and on the facts in the case instead of setting the detenus at liberty.. We hold this is imminently a fit case where this Court would be justified in enlarging the detenus on bail....

15. A look at the scheme of the Act reveals that the case registered against the petitioner is compundable and triable by the First Class Magistrate. Even the Settlement Commissioner may grant the petitioner immunity from prosecution under certain circumstances. On the facts of the case instead of setting the detenie at liberty, we in order to render substantial justice, hold that this is a fitcase where this Court would be justified in enlarging the detenie on interim bail.

16. But while considering the right of personal liberty of the petitioner we, at the same time cannot ignore the contention of the respondents that amount of duty evasion of Rs. 4.5 crores has been found due against the petitioner on the basis of documentary evidence. In C.R. Patil Vs. State of Gujarat and Others, their Lordship of Supreme Court indicated as under - (Para 9)

As is clear, we are allowing bail to the two petitioners persuaded by very peculiar

facts and circumstances of this case, and guided mainly by the consideration that their retention in jail would be adverse to the interest of the several investors/depositors of the Bank while the latter are likely to be benefited by the release of the petitioners on temporary bail, it is hoped that the petitioners shall make a genuine effort making use of their liberty to clear the debts. If the petitioners are found to have failed in discharging their obligation or misusing their liberty in any way, the order of bail shall be liable to be recalled.

17. In view of the fact that huge amount of government revenue is at stake, we dispose of the instant petition in the following terms:

(i) We in the interest of justice instead of issuing a writ of habeas corpus, grant interim bail to the petitioner and direct that on furnishing personal bond in the sum of Rs. 50,000/- with two sureties in the sum of Rs. 25,000/- each to the satisfaction of the trial court, the petitioner shall be released for a period of two months on the following conditions:

(a) The amount found due against the petitioner shall be deposited under protest with the competent authority.

(b) The petitioner shall appear before the trial court on November 9, 2006. If the amount found due against the petitioner is deposited, the bail granted to the petitioner shall stand continued till the decision of the case. If the petitioner fails to deposit the amount, his bail bonds shall stand cancelled and he shall be taken into custody.

The petitioner shall not leave India without the prior permission of learned trial Court.