(1999) 10 BOM CK 0025

In the Bombay High Court

Case No : Criminal Writ Petition No. 1230 of 1991 with Criminal Writ Petition No. 343 of 1993

Jagar Namasivayeh Arjunan APPELLANT

Vs

State of Maharashtra and Others RESPONDENT

Date of Decision : 11-10-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Customs Act, 1962 — Section 108, 124, 135(1)
Imports and Exports (Control) Act, 1947 — Section 5

Citation : (2000) 5 BomCR 903 : (2000) BomCR(Cri) 903

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : Ms. V.P. Bhosale and K.M. Sangani, for the Appellant; Ms. R.P. Sabarwal, Assistant Public Prosecutor and J.C. Satpute, for the Respondent

Judgement

S.S. Parkar, J.—These two petitions have been filed by the same petitioner and arise in respect of the same set of facts but the only difference is that by Criminal Writ Petition No. 1230 of 1991 the petitioner is seeking to quash the process issued by the learned Additional Chief Metropolitan Magistrate presiding in 32nd Court, Esplanade, Bombay in Case No. 74/CW/91 while in Criminal Writ Petition No. 343 of 1993 the petitioner is seeking quashing of show-cause notice issued u/s 124 of Customs Act on 4-2-1991 bearing Reference No. CTU-INF-2/90/S/10-8/91 CTU. As both the petitions involve same set of facts, they are disposed of by this common judgment.

2. The complaint filed by the Customs Authority against the petitioner briefly stated is as follows:

The petitioner who is a Singapore National and having Singapore Passport had arrived in Bombay from Singapore on 8th August 1990 on his way to Cairo. He made a halt at Bombay and kept his goods, which he was carrying, in the customs warehouse at the Airport. On 14th August, 1990 on the basis of prior information the Customs Officers of Central Intelligence Unit kept a watch on petitioner at the Airport. He was supposed to go to Cairo. He had taken his goods which consisted of computer parts from the Customs warehouse and was supposed to board the plane for Cairo. However, after going through the formalities at the Airport he deliberately missed the flight for Cairo and was waiting for some person to collect the goods from him. He was apprehended by the Customs Officers and was found in possession of Air India ticket Bombay/ Bangkok/Singapore. His wife had also arrived there. Both, the petitioner as well as his wife, were interrogated. Their statements were recorded u/s 108 of the Customs Act in which they had admitted that the suitcases containing contraband were given to them by one Chiman of Singapore which were to be handed over to accused No. 1 by name Khetsi Hirji Shah @ Raju. As per their statements the goods were to be surreptitiously handed over to accused No. 1 and thereafter they were to take flight for Singapore and not for Cairo as represented by the petitioner at the time of arrival on 8th August 1990. After the enquiries and the investigation, the complaint dated 9th July 1991 was filed by the Customs Authorities in the Chief Metropolitan Magistrate''s Court. The learned Addl. Chief Metropolitan Magistrate''s 32nd Court Esplanade, Bombay issued process which is under challenge in Criminal Write Petition No. 1230 of 1991.

3. Ms. Bhosale the learned Advocate appearing on behalf of the petitioner contended that the contraband was not found in possession of the petitioner but was in fact in the custody of the Customs Authority and therefore, no offence either u/s 135 of the Customs Act or section 5 of the Imports and Exports (Control) Act was committed by the petitioner and, therefore, the process issued by the trial Court is liable to be quashed.

4. Reading the complaint dated 9th July 1991 there cannot be any doubt that a prima facie case has been made out against the petitioner for proceeding against him under the above provisions. The allegations made in the complaint are based on the statements made by the petitioner and his wife u/s 108 of the Customs Act which are admissible in law. The goods in question which were carried in suitcase by the petitioner were taken out from the Customs''s warehouse for the purpose of boarding the plane meant for Cairo. The allegations made in the complaint, in my view, sufficiently make out a prima facie case to proceed against the petitioner u/s 135(1)(a) and (b) read with section 135(1)(ii) of the Customs Act as well as under the provisions of the Imports and Exports (Control) Act and, therefore, the process issued by the Magistrate cannot be faulted with and consequently cannot be quashed as prayed for in the petition.

5. On the basis of the aforesaid facts the respondents had started adjudication proceedings and show-cause notice was issued u/s 124 of Customs Act on 4-2-1991 for confiscating the goods and for imposing penalty. That show-cause notice is challenged in the companion petition being Cri.W.P. No. 343 of 1993. The said petition was admitted by this Court on 1-4-93 and was directed to be heard along with Cri.W.P. No. 1230 of 1991. The only interim relief granted in

that petition is, no final orders to be passed in adjudication proceedings in the meanwhile i.e. pending the above petition. That means the adjudication proceedings could have continued but only final order could not have been passed pending these petitions. Since Customs Department is entitled to adopt the said proceedings, in the aforesaid facts, in addition to the prosecution which is lodged against the petitioner the show-cause notice cannot be quashed at this stage, particularly, in view of the statements of the petitioner and his wife recorded u/s 108 of the Customs Act.

6. Mr. Satpute the learned Advocate appearing on behalf of the Customs Department has opposed the above two petitions on the additional ground that the petitioner is absconding and has not abided by the conditions of bail so also the order passed by this Court on 20th April 1993 allowing him to go to Singapore for a period of four weeks only in order to see his ailing mother and thereafter to again surrender his passport to the Customs Authorities after his return. The Deputy Commissioner of Customs, Central Intelligence Unit Ravindranath has filed affidavit dated 20th September, 1999 stating that after the petitioner was allowed to go to Singapore to see his ailing mother for a period of four weeks he has not returned or surrendered the passport to the Customs Authorities within 48 hours of his return after expiry of four weeks period as directed by the order of this Court dated 20th April 1993. It was further pointed out that the petitioner was released on bail by this Court by the order dated 20th October 1992 on the condition of his reporting to the Customs Authorities daily until further orders and although that order was in operation he had violated the condition of that order in as much as after the expiry of four weeks when he was allowed to visit Singapore he has not reported to the Customs Authorities even once since April 1993. It is submitted that in view of the violation of the above two orders the petitioner is not entitled to be heard in the aforesaid petitions which are liable to be dismissed on that ground also. The submission of Mr. Satpute is not without substance. In my view, both the aforesaid petitions are liable to be dismissed on the aforesaid additional ground also.

7. In the result both the petitions are dismissed. The rule in both the petitions is discharged. Consequently the interim reliefs granted by this Court in both the petitions shall stand vacated.

8. Petitions dismissed.

