(1977) 01 CAL CK 0033

In the Calcutta High Court

Case No : Civil Rule No. 6015 (W) of 1974

Jay Krishna Saha and Another — APPELLANT

Vs

D.N. Lal and Others — RESPONDENT

Date of Decision : 20-01-1977

Acts Referred:
Gold (Control) Act, 1968 — Section 16(1), 16(5), 16(6), 7(1), 74

Citation : AIR 1977 Cal 468 : 81 CWN 539

Hon'ble Judges : T.K. Basu, J

Bench : Single Bench

Advocate : R.N. Bajoria and A.N. Mukherjee, for the Appellant;Malay Kumar Basu, for the Respondent

Judgement

T.K. Basu, J.—In this application, the petitioner challenges certain proceedings sought to be initiated by a notice under the Gold (Control) Act, 1968 (hereinafter referred to as the Act). The facts leading to the present application may be briefly noted.

2. On the 11th July, 1973, a search was made at the premises of Joy Krishna Saha and Charu Bala Saha who are related to each other as man and wife. In course of the search 226 pieces of gold sovereigns and a sum of Rs. 90,000 were seized. Statements were also recorded from both the petitioners. The statements of both the petitioners were almost identical. The gold sovereigns, according to them, were given to Charu Bala Saha by the father of her husband Joy Krishna Saha. The father of the husband died in the year 1956. They could not definitely say when this gift was made by the late father of the petitioner No. 1. Certain statements were made with regard to the cash but we are not concerned with that in the present application.

3. The only other fact that need be noticed in this connection is an allegation in paragraph 4 of the petition which is as follows:

"The ornaments belonging to your petitioner No. 2 were, however, not seized by the said Customs Officers and were left with your petitioner No. 2."

It is to be noted that this allegation in the petition that certain ornaments belonging to the petitioner No. 2 were found in the course of the search but they were not seized has not been denied in the affidavit-in-opposition filed on behalf of the respondents.

4. Thereafter the petitioners were served with a notice to show cause why the 226 pieces of gold sovereigns which were seized as aforesaid should not be confiscated.

5. It is this notice dated the 29th December, 1973 issued under the provisions of the Act which is challenged before me in this application.

6. Before I deal with the respective contentions of the parties, it will be useful to set out the notice which is in the following terms:

"Shri Jay Krishna Saha, Bama Bhavan, 16/B, B. K. Pal Avenue, Calcutta-7.

2. Smt. Charubala Saha, wife of Jaykrishna Saha. Bama Bhavan, 16/B, B. K. Pal Avenue, Calcutta-

Subject:-- Seizure of 226 pcs. of gold sovereigns bearing inscriptions indicating their foreign origin valued at Rupees 45,000 (approx. m. v.) wg. 180 3.40 gms. and Indian currencies from the premises No. 16/B, B. K. Pal Avenue occupied by Shri Jay Krishna Saha and his wife on 11-7-73 in contravention of the Gold (Control) Act, 1S68. Notice to show cause.

1. In pursuance of an information received in this Customs House to the effect that contraband gold and sale proceeds thereof have been secreted in the premises at 16/B, B. K. Pal Avenue occupied by Shri Jay Krishna Saha, the officers of this department searched the said residential premises on the strength of search authorisation No. Gold Control Act 52/P and S/A No. 203 of 1973 on 11-7-73. As a result of the search 226 pcs, of gold sovereigns bearing inscription indicative of foreign origin were recovered from one small aluminium box kept inside a Godrej safe stored in the bedroom of Shri Jay Krishna Saha and his wife on the 3rd floor of the building. Further, Indian currency notes amounting to Rs. 90,000 were recovered from inside a secret chamber at the bottom of a steel almirah made by M/s. Bombay Steel Works placed in another bedroom on the same floor. As Shri Jay Krishna Saha was unable to produce any document in support of the legal importation/ possession of the sovereigns and the Indian currencies in question the sovereigns were seized in the reasonable belief that those were smuggled and unauthorisedly acquired by Shri Jay Krishna Saha in contravention of the Customs Act, 1962 and also possessed in contravention of the provisions of the Gold Control Act, 1968. The Indian currencies were seized in the reasonable belief that those were the sale proceeds of the smuggled gold.

2. Shri Jay Krishna Saha made a voluntary statement to the Customs Officers on 11-7-73 in response to summons issued u/s 108 of the Customs Act 1962 stating

that the Customs Officers seized 226 pcs, of gold sovereigns and Indian currency of Rs. 90,000 from the apartment on the 3rd floor of his residence at 16/B, B. K. Pal Avenue. The sovereigns under seizure were given to his wife by his father before his death in 195G. But he could not say wherefrom his father acquired the sovereigns. Neither he nor his wife had made any declaration before any authority with regard to the gold sovereigns under seizure. Regarding the Indian currencies under seizure he stated that out of the amount only Rs. 40,000 belonged to him and the remaining Rs. 50,000 belonged to his wife. Of the amount of Indian currencies belonging to him, Rs. 20.000 were savings made during the last few years whereas the balance amount belonged to his two brothers-in-law @ Rs. 10,000 each. The amount of Rs. 50,000 was given by his father, when he was alive, to his wife Smt. Charubala Saha as gilt.

3. Smt. Charubala Saha, wife of Shri Jay Krishna Saha also stated voluntarily before the customs officer on the seizure in response to summons issued to her u/s 108, Customs Act, 1962 that her father-in-law, when he was alive, gave her a good number of sovereigns. The sovereigns were kept with her. At present the sovereigns were kept in Godrej safe on the 3rd floor of the residence. She never counted the number of the sovereign given by her father-in-law and she never used any one of them. Her husband knew about her receipt of the sovereigns. Her father-in-law also pave her Rs. 50,000 out of affection, a few months before his death. The amount was kept in a safe deposit vault hired jointly by herself and her husband. About 10/15 days ago the amount was brought from the vault and was kept inside the chamber at bottom of the steel almirah. She could not say why the Indian currencies were brought from the locker and were kept in the residence. There was no written document for the gift of Rs. 50,000 with her or with her husband. The sovereigns and money were given before the partition of India by her father-in-law. The keys for the Godrej safe and the steel almirah wherefrom the sovereigns and the Indian currency had been recovered were always held by her husband.

4. The copy of the statements given by Shri Jay Krishna Saha and Smt. Charubala Saha as referred to above is enclosed.

5. The sovereigns were weighed in the Indian Government Mint, Alipore and a sample was drawn in presence of Shri Jay Krishna Saha for assay on 24-8-73 to ascertain the purity of the gold sovereigns. The assay certificate (copy enclosed) indicates that the fineness of the gold is 916.2 per mille.

6. u/s 8(5) of the Gold (Control) Act, 1968 a person may accept by way of gift gold coins not exceeding five in number subject to the condition that the total holding of gold coins of the donee does not exceed fifty grammes.

7. Section 16 (1) provides that any person who owns, possesses or is in the custody or control of gold articles shall make a declaration to Gold Control Authority in the prescribed form as to the quantity, description and prescribed particulars of such articles owned, possessed, held and controlled by him subject

to the relaxation and limitations of fifty grammes of gold coins (articles) provided in Section 16 (5) of the said Act.

8. Section 71 (1) of the Gold (Control) Act, 19G8 (as amended) provides that any gold in respect of which any provision of this Act or any rule has been contravened shall be liable to confiscation.

9. Section 74 of the Gold (Control) Act, 1968 provides that any person who in relation to any gold does any act which act would render such gold liable to confiscation under this Act or abets the doing of such an act shall be liable to penalty.

10. Shri Jay Krishna Saha/Smt. Charu-bala Saha has failed to produce any document in respect of the declaration of the 226 pcs. of gold sovereigns wg. 1803.40 grammes to the Gold Control Authority. The gold sovereigns, therefore, appear to be liable to confiscation u/s 71 (1) of the Gold Control Act and Shri Jay Krishna Saha/Smt. Charu-bala Saha appears to be liable to penalty u/s 74 ibid.

11. Shri Jay Krishna Saha/Smt. Charu-bala Saha is, therefore called upon to explain and to show cause,

(i) Why the gold sovereigns under seizure should not be confiscated u/s 71 (1) of the Gold Control Act, 1968 and,

(ii) Why penal action should not be taken against him/her u/s 74 ibid.

12. The written explanation should be submitted to the undersigned within 10 days on receipt of this notice along with all the original or certified copies of evidence he/she relies on in support thereof.

13. He/she should clearly state in the written explanation whether he/she will desire to be heard in person before the case is decided.

14. He/she should note that in the event of failure to submit the explanation within stipulated time and/or to appear in the personal hearing when it is so fixed, the case will be liable to be adjudicated on the basis of evidence on record without any further reference to him/her.

15. The documents may be inspected on any working day on prior arrangements with the R. I. (T.) (adjudication),

16. The above notice is without prejudice to any other action that may be taken in this regard under Gold (Control) Act, 1968 or under any other law in force in the Union of India. Enclo: (As above)

Sd/- (A. K. Bandopadhyay) Collector of Customs Calcutta."

7. Mr. K. N. Bajoria, learned Advocate appearing on behalf of the petitioners, contended before me that, even if the allegations in the notice are taken to be true, they do not amount to any contravention of the provisions of the Act. He relied on the well-known proposition of law laid down by the Supreme Court in

more than one case that if proceedings are initiated by a notice under an Act, and, assuming that the allegations in the notice are all true, they do not disclose any offence under the Act, such a notice must be held to be without jurisdiction and quashed.

8. Mr. Bajoria next submitted that the only factual basis of the notice which is set out hereinabove is the two statements made by the petitioners, in other words, apart from these two statements there is no other material indicated in the notice on the basis of which these proceedings are sought to be initiated. Further, there is no indication in the said notice that apart from what is contained in the said two statements the authorities were in possession of any other factual material.

9. Similarly there is no allegation in the impugned notice that any of the facts mentioned in the said two statements by the two petitioners are factually Incorrect or untrue. In the circumstances, Mr. Bajoria submitted that the Court must proceed on the baste that the statements of the petitioners regarding the possession of the gold sovereigns are true and correct.

10. On the above tactual basis, Mr. Bajoria submits that taking all the allegations in the notice to be correct, it does not disclose any offence or contravention of the provisions of the Act, The impugned notice mentioned two substantive provisions of the Act viz. Section 8 (5) and Section 16 (1) thereof. Although the notice does not mention what exactly is the contravention of above provisions of the Act, Mr. Bajoria invited me to assume that these provisions have been allegedly contravened. On that basis Mr. Bajoria submitted that, on a proper construction of the above two provisions, it will be evident that the petitioners have not been guilty of any violation thereof.

11. Section 8 of the Act imposes certain restrictions on the acquisition, possession and disposal of gold. In Section 2 of the Act a distinction is made between the primary gold and ''articles'' which means anything other than ornaments in a finished form and includes a gold coin. Section 8 (3) and (4) contain certain restrictions regarding the acquisition, ownership, possession etc. of ''articles'' the meaning of which I have already indicated.

12. In this light the provisions of Section 8 (5) are significant and may be set out herein below:--

"8 (5) Notwithstanding anything contained in Sub-sections (3) and (4), a person may accept or transfer, by way of gift or exchange, gold coins, not exceeding five in number, if, together with the gold coins received by way of gift or exchange, the total holding of gold coins of the donee or transferee, as the case may be, does not exceed fifty grammes."

13. This Sub-section clearly imposes a ceiling on the number of gold coins which may be accepted by gift which is live and on the total weight of gold coins in the possession of the donee Which is 50 grammes.

14. Admittedly, the gold coins received by the petitioner No. 2 were far in excess of five and total weight was much in excess of 50 grammes as mentioned in Section 8 (5) of the Act. Mr. Bajoria however points out the very significant fact that these gold coins were, according to the petitioners, received by the petitioner No. 2 as a gift from a person who died in the year 1956. Obviously the gift must have taken place sometime before the year 1956 although the petitioners could not mention the exact year as they did not remember it, Mr. Bajoria again points out that in the impugned notice there is no allegation that these statements as to the receipt of these gold coins by way of gift from a person who died in 1956 is incorrect or untrue. He next points out the fact that the Act came into force on 1st September, 1968, consequently, when the gift in the instant case took place, the present Act was not in force. Since the Act is prospective in operation, there can be no contravention of Section 8 (5) of the Act by the petitioners in the facts of the instant case.

15. In my view, this contention of Mr. Bajoria is sound and should be accepted, if there was any allegation in the impugned notice that the statement of the petitioners regarding the acquisition of the gold coins was incorrect or untrue or any indication that the authorities were in possession of any material to show that these gold coins were acquired by way of gift after the Act came into force, the position might have been otherwise. In view of the statements contained in the impugned notice however, it must be held that the petitioners have not contravened the provisions of Section 8 (5) of the Act.

16. The next branch of the argument centred round the provisions of Section 16 of the Act. Section 16 (1) provides that a person who owns, possesses or is in custody or control of any article or ornament at the commencement of the Act shall furnish a declaration in the prescribed form subject to certain conditions.

17. Section 16 (5) of the Act however prescribed certain circumstances in which no declaration u/s 16 (1) of the Act is necessary. Section 16 (5) of the Act is in the following terms:--

"(5) No declaration referred to in Sub-section (1) or Sub-section (3) shall be required to be made,--

(a) in relation to articles, unless the total weight of articles owned, possessed held or controlled by,--

(i) a minor, who is not a member of a family, exceeds twenty grammes,

(ii) an individual (other than a minor), who is not a member of a family, exceeds fifty grammes,

(iii) a family, exceeds fifty grammes,

(iv) any person referred to in Clauses (b) to (f) and (h) to (m) of Sub-section (2), exceeds fifty grammes;

(b) In relation to any ornaments, or both articles and ornaments, where both articles and ornaments are owned, possessed, held or controlled, unless the total weight of such ornaments or both articles and ornaments, as the case may be, owned, possessed, held or controlled by,

(i) an individual who is not a member of a family exceeds two thousand grammes,

(ii) a family, exceeds four thousand grammes:

....

Section 16 (6), which is also material for our purpose, provides as follows:--

"(6) For the purpose of this section, ''family'' shall be deemed to consist of-

(i) the husband, wife and one or more minor children, or

(ii) any two or more of them, but shall not be deemed to include any other person."

18. Relying on the above provisions contained in Sections 16 (5) and 16 (6) of the Act, Mr. Bajoria contends that the limit of holding of the petitioners in the instant case without the requirement of a declaration under the Act must be held to be four thousand grammes. This is because the petitioners satisfy the definition of ''family'' as mentioned in Section 16 (6) of the Act. This is because they are husband and wife which constitute a family.

19. It is next contended that since the petitioners own both articles and ornaments the ceiling of their holding of these things without any obligation to declare is four thousand grammes.

20. It was sought to be argued by Mr. Arun Kumar Dutt, learned Advocate on behalf of the respondents that there is nothing in the notice to show that the petitioners possessed any ornaments. This argument might have had some force if this case had to be decided on the basis of the statements contained in the impugned notice alone. But, as I have already mentioned above, the allegations in paragraph 4 of the petition that certain ornaments belonging to the petitioner No. 2 were found in course of the search but were not seized remains uncontradicted. In that state of affairs, the conclusion is inescapable that the petitioner No. 2 was the owner of a certain quantity of ornaments.

21. It is next sought to be argued by Mr. Arun Kumar Dutt, on behalf of the respondents that even if I come to the conclusion that the petitioners between themselves were the owners of both ornaments and articles which I have already said include gold coins then I should hold that within a total holding of four thousand grammes which is permissible under the Act without declaration, the total holding of articles by family must be limited to 50 grammes and the permissible holding of ornaments without a declaration can be up to 3950 grammes. Otherwise it was submitted that if a family could keep 3999 grammes of articles and one gramme of ornaments it could evade the duty of declaration

under the provisions of Section 16 of the Act. This, it was submitted, would make the working of Section 16(5)(a) of the Act nugatory.

22. I am unable to accept this contention of Mr. Dutt. As I read the provisions of Section 16 (5) of the Act, with Section 16 (6) thereof, they seem to contemplate two classes of families. One class of family are those who own only ''articles''. The ceiling in such a case would be 50 grammes. Any holding in excess of 50 grammes will have to be declared before the authorities. The second class of family contemplated by those provisions are families which possess or own both articles and ornaments. In the case of such families, the ceiling, in my view, is four thousand grammes without any obligation to furnish a declaration under the Act. In my view, there is no warrant for breaking up of this total holding of 4000 grammes of both articles and ornaments into any particular ratio or proportion. It seems to me that the Legislature intended that in case of families which merely keep articles like gold sovereigns they would have to be declared as soon as the total weight exceeds 50 grammes, The Legislature further intended that if a family owned both articles and ornaments, and it is a well-known fact which the Court can take judicial notice of, viz., that most Indian families own ornaments, that the obligation to furnish a declaration would be subject to a much higher limit viz., 4,000 grammes. I enquired of learned Advocates for both the parties as to whether it was possible to find out either from the Notes on Clauses which are furnished to the Members of Parliament along with the Bill ''before it becomes an Act or any Parliamentary debates if they threw any light on this aspect of the matter. Nothing however could be produced before me although I adjourned this case from time to time on this ground. In the circumstances, I have given my own interpretation of the above provisions of this Act as indicated above.

23. Before I leave this discussion, reference may be made to a decision of a Division Bench of Madras High Court in the case of J.A. Abdul Hamid Vs. The Collector of Central Excise, . Veeraswamy C. J. at paragraph 4 of the Report observes as follows:--

"But learned counsel for the respondent contends that Clauses (a) and (b) of Section 16 (5) will have to be read and construed in conjunction with each other and harmoniously, and that, so read, Clause (b) only means that articles not exceeding 50 grams in weight taken with ornaments in total not exceeding 4,000 grams would be the limit. It is said that any other construction would defeat the intention of Section 16 (5) (a). We are unable to construe the provisions in the manner suggested. To do so, would be to insert words in Clause (b) of Section 16 (5) which are not there. What it speaks of are articles and ornaments, and, if both of them are owned, possessed, held or controlled by an individual or family, then the proper provision which will be attracted is Clause (b). There is no justification for the construction that the limit placed by Section 16 (5) (a) should be imported into Clause (b). There is no warrant for it in the language used.''''

24. The above interpretation given by the Madras High Court fully accords with

my interpretation of the two Sub-clauses of Section 16 (5) of the Act and I respectfully agree with the same.

25. In the light of the above interpretation of the law, it must be held that the petitioners cannot be said to have contravened any of the provisions of Section 16 (1) read with Section 16 (5) of the Act.

26. The contention of Mr. Bajoria that the impugned notice must be held to be without jurisdiction as not disclosing any offence under the Act should ''be upheld.

27. In the result, this application succeeds and the Rule is made absolute. There will be writ in the nature of mandamus directing the respondents to forthwith recall, cancel and withdraw the notice dated the 29th December, 1973 and to forbear from giving effect thereto in any manner whatsoever.

28. There will be no order as to costs of this application.

29. The petitioner is restrained by an order of injunction from taking any steps to obtain return of the gold sovereigns in question for a period of four weeks from today.