
(1991) 06 BOM CK 0029

In the Bombay High Court

Case No : Writ Petition No's. 2057 and 1819 of 1991

Jeramdas Punjabi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-06-1991

Acts Referred:

Customs Act, 1962 — Section 113, 114

Citation : (1992) 41 ECR 632 : (1992) 57 ELT 36

Hon'ble Judges : M.L. Pendse, J;A.V. Savant, J

Bench : Division Bench

Advocate : Shri Ashok Desai and Mr. Rajiv Mohite, for the Appellant; Shri C.J. Shah and Shri K.C. Sidhwa, for the Respondent

Judgement

Pendse, J.—Rule returnable forthwith. Shri Shah waives service on behalf of the respondents. Heard counsel.

2. On February 26, 1991, the Officers of Air Intelligence Unit of Customs Air Collectorate, Sahar, intercepted the petitioner in the Transit Lounge. The petitioner had arrived from Frankfurt by Lufthansa flight. The petitioner was waiting in the Transit Lounge for boarding the flight of Cathay Pacific to Hongkong. The petitioner was questioned by the Officers as to whether the petitioner was carrying any foreign currency and on receiving an affirmative reply, the person of the petitioner was searched as well as the bag in his possession. A large foreign currency of equivalent value of Rs. 63,64,875/- was found on the person and in the bag of the petitioner. The Customs Officer enquired from the petitioner as to whether the petitioner had in possession any documentary evidence in support of the acquisition or possession of the foreign currency and the answer was in the negative. The foreign currency was attached and seized under a panchnama. The Customs Officer thereafter commenced investigation and also the Director of Enforcement to ascertain whether there is any violation of the Foreign Exchange Regulation Act, 1973. The Passport of the petitioner was also taken in custody. Thereafter notices were served from time to time on the petitioner for recording

his statement and after recording the statement, Customs authorities decided to commence adjudication proceedings.

3. The petitioner thereupon approached this Court by filing Writ Petition No. 1819 of 1991 during Summer Vacation and on May 21, 1991, Single Judge recorded a statement on behalf of the respondents that the case against the petitioner would be completed within two weeks. The Single Judge directed that the petition should be posted before the Division Bench in the Summer Vacation on May 27, 1991 to examine the claim of the petitioner about return of Passport and return of foreign currency. The petition then came up before the Division Bench in Summer Vacation on May 27, 1991 and the Division Bench directed the respondents to return the Passport on petitioner giving certain undertakings. The petition was again taken up in Summer Vacation by the Division Bench on June 3, 1991 and interim relief as claimed by the petitioner in terms of prayer (c) was granted. The petitioner claimed that the respondents should be directed to deposit the entire seized currency in the High Court and the Prothonotary and Senior Master was directed to deposit the foreign currency in the Fixed Deposit initially for a period of six months in a non-resident account of the petitioner on condition that the petitioner shall not withdraw the amount till further order of the Court. Before this order could be enforced and for non-enforcement of which the petitioner threatened contempt proceedings, the Additional Collector of Customs commenced adjudication proceedings in pursuance of the service of show cause notice dated May 31, 1991. The petitioner was called upon to explain as to why the seized currencies should not be confiscated u/s 113(d) of the Customs Act and penalty be imposed u/s 114 of the Customs Act. The Additional Collector of Customs, Bombay Shri Rajendra Prasad by impugned order dated June 7, 1991 held that the seized currency was illegally secured by the petitioner while waiting in the Transit Lounge and was attempted to be smuggled out of India. The Adjudicating Authority thereupon directed absolute confiscation of the entire foreign currency and also imposed penalty of Rs. 8,00,000/- on the petitioner. The order passed by the Adjudicating Authority is under challenge.

4. By consent of parties, Writ Petition No. 1819 of 1991 which the petitioner had filed earlier and in which interim orders were secured during Summer Vacation is also taken on board and called out for hearing. By this judgment, we propose to dispose of both the petitions. As regards earlier Writ Petition No. 1819 of 1991 by an interim order, the passport of the petitioner is returned back on certain conditions. The order of the return of the passport on those conditions is not disturbed and the conditions would remain in operation till the disposal of the adjudication proceedings. The interim relief in terms of prayer (c) granted in the earlier Writ Petition is vacated. The other reliefs sought in the petition challenging the seizure no longer survives and the rule issued in that petition stands discharged without any order as to costs.

5. In Writ Petition No. 2057 of 1991, Shri Desai, learned counsel appearing on behalf of the petitioner, submitted that the Adjudicating Authority proceeded to

pass adjudication order without giving sufficient opportunity to the petitioner to meet the case. The learned counsel urged that though the investigation was not completed and though the time available to the petitioner to present the defence in an effective manner after supplying of documents was not sufficient, the Adjudicating Officer Proceeded to pass impugned order under a belief that the High Court had directed that the adjudication should be completed within two weeks. The Adjudicating Officer carried that impression in view of what transpired before the Vacation Judge on May 21, 1991. The learned counsel appearing on behalf of the respondents assured the Single Judge that the case will be completed within two weeks and that statement was recorded by the learned Judge. It appears that the Adjudicating Authority, therefore, carried an impression that it is incumbent to complete the Adjudication proceedings within two weeks. The perusal of the Adjudication order leaves no manner of doubt that the Adjudicating Authority was handicapped because of non-completion of the investigation. The investigation is bound to take time in view of seizure of large foreign currency. The Investigating Agency is required to ascertain whether the claim of the petitioner of carrying cash of such a large extent while coming down from Frankfurt is true or otherwise. The Investigating Agency is also required to ascertain whether the alleged confirmation produced by the petitioner from foreign concerns is genuine or otherwise. The Investigating Agency is also required to ascertain whether the foreign currency found with the petitioner was withdrawn from the foreign Banks and if no, whether such a large currency in cash was available to the petitioner. The Investigating Agency is also required to ascertain whether the foreign currency was handed over while the petitioner was waiting in Transit Lounge in return of some other goods. This is not a matter which can be concluded in a hurry and we fail to appreciate how the Adjudicating Authority can pass an Adjudication order even when the investigation is not over. The investigation may throw many facets of the matter which are not available and it is futile for Shri Desai to urge that the documents and the circumstances relied upon by the petitioner are so conclusive as to hold that the petitioner is not guilty of any breach. We are not prepared to accept whatever is claimed in the petition as gospel truth.

There is some merit in the contention of Shri Desai that the petitioner had not sufficient opportunity to defend the proceedings in view of late supply of the documents relied upon by the Adjudicating Authority. To avoid any such complaint, we propose to set aside the impugned order of adjudication and direct that the Adjudicating Authority should hold de novo proceedings and pass a fresh appropriate order. The Adjudicating Authority will naturally give copies of all the documents to be relied upon and the Adjudicating authority is not bound to pass an order within a stipulated period. It is open for the Adjudicating Authority to conclude the proceedings after the investigation is over and after the petitioner is given sufficient opportunity to meet the show cause notice. The only direction which we propose to give is that the fresh proceedings should be conducted by Officer other than Shri Rajendra Prasad who has passed the impugned order. We

are giving this direction not because we have any doubt about the integrity of Shri Rajendra Prasad but only because the petitioner should not carry an impression that Shri Rajendra Prasad had already made up his mind and may repeat the same order in fresh proceedings. We also make it extremely clear that we are not expressing any opinion about the conclusions recorded by Shri Rajendra Prasad on merits and we leave it open to the new Adjudicating Authority to determine the case on fresh appreciation after the investigation is over and after the petitioner is given full opportunity to put forward his defence.

We make it extremely clear that the interim order dated June 3, 1991 passed in Writ Petition No. 1819 of 1991 is vacated and no proceedings should be taken against the respondents for non-enforcement of that order and if any such proceedings are instituted, they should result in dismissal.

6. Accordingly, rule in Writ Petition No. 1819 of 1991 is discharged without any order as to costs but the order as regards return of Passport on certain conditions is maintained. The petitioner would be entitled to use the passport subject to those conditions till the disposal of the Adjudication proceedings. All other interim orders passed in Writ Petition No. 1819 of 1991 stand vacated.

Rule is made absolute in Writ Petition No. 2057 of 1991 and the impugned order dated June 7, 1991 passed by the Additional Collector of Customs, Bombay is set aside and the proceedings are remitted back to the Adjudicating authority for fresh determination by officer other than Shri Rajendra Prasad. In the circumstances of the case, there will be no order as to costs.