

(1999) 08 BOM CK 0108
In the Bombay High Court
Case No : Criminal W.P. No. 87 of 1997

Joseph Prabhakar Bangera

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Customs Act, 1962 — Section 107, 135

Citation : (2000) 118 ELT 572 : (2000) 1 MhLj 37

Hon'ble Judges : D.G. Deshpande, J

Bench : Single Bench

Advocate : J.M. Baphna, for the Appellant; D.S. Mhaispurkar, APP and J.C. Satpute, for the Respondent

Judgement

D.G. Deshpande, J.—Heard Mr. Baphna for the petitioner, Mr. Satpute for the respondent No. 2 and APP for the State.

2. Petitioner who is an accused No. 20 in complaint case filed by the customs u/s 135 of the Customs Act has filed this petition under Article 227 of the Constitution of India read with 482 of the Criminal Procedure Code against the Order, dated 31-7-1996 passed by the Sessions Judge, Raigad rejecting the petitioner's criminal revision application which was directed against the order of framing charge passed by the Chief Judicial Magistrate, District Alibag.

3. Mr. Satpute appearing for the respondent No. 2 raised a preliminary objection to the tenability of the petition on the ground that the Order of the Chief Judicial Magistrate directing the framing of charge was an interlocutory order against which no appeal nor revision was provided. However, the petitioner challenged the said order by filing a revision before the Sessions Judge, Alibag, and on dismissal of the said revision, the petitioner has come to this Court by filing this petition, which, in fact a second revision and even if the petition is termed as petition under Article 227 of the Constitution of India, the same is not

maintainable. Mr. Satpute also relied upon certain judgments of the Supreme Court and of this Court in support of his contention. I would have accepted the preliminary objection raised by him without referring to any authority cited by him. However, there is one important aspect which negatives the contentions made by Mr. Satpute. Though this writ petition is mainly intended to challenge the order of the Sessions Judge, it is intended to cover all subsequent development i.e. passing of an order by the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) in CD(BOM)49/85, dated 18-4-1995 in an appeal against the order imposing penalty of Rs. 10,000/- on the appellant-petitioner. This order of the CEGAT is, dated 18-4-1995 and according to the petitioner it was this order that gave him a right to challenge the order of the Sessions Court, Alibag, or file this petition u/s 227 of the Constitution of India. Since I find considerable force in the submissions made by the counsel for the petitioner, preliminary objection is required to be rejected.

4. So far as merits of the matter are concerned, it was contended by the counsel for the petitioner that as is revealed by the copy of the complaint the customs officers effected a raid at Wadkhal and Alibag on 24-10-1982 wherein they found that vessel SEAKING was carrying smuggled goods. After investigating the matter, they filed a complaint u/s 135 of the Customs Act against as many as 21 accused including the petitioner who was accused No. 20. It is alleged by the complainant - customs that on the date of the raid it was this petitioner who was the owner of the vessel.

5. According to Mr. Baphna even prima facie this contention is required to be rejected because even though the raid is dated 24-10-1982 the petitioner had, three weeks before the raid, transferred the ownership of the vessel to one Dalip Singh and that the change of ownership was intimated to the customs department and necessary change in the registration of the vessel was made by the customs department. Further, according to the petitioner this factum of change of the ownership is accepted and recognised by the customs and also by CEGAT in its order, dated 18-4-1995. My attention in this respect was invited to para 5 of Exhibit "E" which is order of the CEGAT wherein it has been observed "We also note that the transfer of the vessel and change in the name of the vessel have been carried out in the records of the Customs Department on 30-9-1982, much prior to the interception of the vessel with contraband on 24th/25th October, 1982. This goes to at least indicate that the appellant was not in control of the vessel."

6. Further Mr. Baphna drew my attention to the judgment reported in Company Cases Vol. 67 page 391 *Jewels of India and Ors. v. State and Anr.* wherein Delhi High Court quashed the criminal prosecution on the ground that customs cannot initiate prosecution on a set of facts and evidence which the departmental authorities themselves disbelieve to be existing and in that situation the Courts will be justified in interfering u/s 482 of the Criminal Procedure Code. Mr. Baphna therefore contended that the ratio laid down by the Delhi High Court in the

judgment of *Jewels of India v. State and Anr.* as referred to above, squarely applies to the facts of the present case and since CEGAT has given a finding against the customs in respect of the very same vessel and in respect of the adjudication proceedings, the complaint was liable to be quashed insofar as it related to present petitioner.

7. It is true that CEGAT by its order, dated 18-4-1995 at Exhibit "E" has allowed the appeal and set aside the order of the customs, dated 31-7-1984 imposing penalty of Rs. 10,000/-. It is also true that CEGAT has taken into consideration that the transfer of vessel and the change in the name of the vessel was carried out in the records of the customs department on 30-9-1982 much prior to the interception of the vessel i.e. prior to 24/25-10-1982 and also the further observation that this indicated that the appellant was not in control of the vessel. However, there is one most important aspect to this case on account of which neither the judgment or observations of the CEGAT nor the judgment of the Delhi High Court can be made applicable to the facts of the present case and in favour of the petitioner, and that aspect is that firstly this is a criminal prosecution and secondly statement of the petitioner has been recorded by the customs authorities u/s 107 of the Customs Act. The said statement is made pursuant to the powers granted to the officer of the customs to summon persons to give evidence and produce documents. Copy of the statement is filed in the petition at Exhibit "A". It is recorded on 21-1-1983, whereas the raid was carried on the night of 24/25-10-1982 i.e. within three months of the raid this statement is recorded. I am reproducing the following portion of the petitioner's statement:

"As the business was running at loss that is why I kept the boat idle for approx. 5 months and then gave it on hire to one Mr. Anthony Peres, residing of C. Doctor Pvt. Ltd., Sayaji at the Signal Hill Road, Mazagaon Bombay-400010 and subsequently sold it to him for Rs. 75,000/-. As he did not pay me the full amount I still kept the ownership of the boat with me though Anthony Peres was using the vessel. A sale deed was also made on 30th July, 1962 in the name of Anthony Peres and Customs informed accordingly. I am giving photographs of proof for your perusal. Page No. 1 to 17 which makes my position clear. One day Anthony Peres came and requested me to transfer the ownership not in his name but in the name of "Dalip Singh Sadhu Singh" residing at 35, Parel Tank Road, Bombay-400038. I have never met this person Dalip Singh before as all the documents taken was made by Anthony Peres. It was only while signing the affidavit, I had glimpse of this person, but due to my age and cataract trouble will not be able to recognise him."

8. The aforesaid statement of the petitioner creates prima facie strong suspicion about the so-called bona fide transfer of the vessel by him in the name of Dalip Singh. Admittedly, the customs officials could not trace the said Dalip Singh. It is therefore not known whether Dalip Singh is really in existence or not or he is a fictitious person. The ignorance pleaded by the petitioner in the aforesaid statement that he will not be able to recognise Dalip Singh now, is also

suspicious. The petitioner is now contending that because of old age and cataract trouble he is not in a position to recognise or identify Dalip Singh. If this was so, the petitioner does not say that he could not carry on business because of his old age or cataract trouble, what he says that he was suffering loss and therefore he had to keep his boat idle.

9. Further, if he had already sold the vessel to Anthony for Rs. 75,000/- there was no question of Anthony approaching him again for sale of the vessel to the said Dalip Singh. These circumstances are totally and completely suspicious circumstances and coupled with the fact that neither the petitioner could give any assistance to the customs to locate the said Dalip Singh nor he could produce Dalip Singh before the customs authorities, the contention of the petitioner that there was a genuine bona fide transaction of sell three weeks or four weeks before the raid cannot at all be accepted. For all the reasons there is no merit in this petition, the same is dismissed. Rule discharged. Stay vacated. Petitioner to appear before the trial Court on 1-9-1999. Trial Court is directed to proceed with the trial as expeditiously as possible, preferably within a period of nine months from the date of appearance of the parties. Certified copy expedited.