
(1964) 07 CAL CK 0008
In the Calcutta High Court
Case No : Matter No. 358 of 1963

Kanungo and Co.

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

Date of Decision : 21-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Imports and Exports (Control) Act, 1947 — Section 3(1), 3(2)
Sea Customs Act, 1878 — Section 167(8), 19

Citation : AIR 1965 Cal 248 : (1965) CriLJ 547

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.N. Banerjee, J.—The petitioner company carries on business as importer and dealer of watches. For importation of wrist watches in contravention of import control restrictions, the shop room of the petitioner, at No. 129, Radha Bazar Street, Calcutta, was searched by the Customs authorities, on October 17, 1959, and 390 pieces of wrist watches were seized. The petitioner company tried to explain the possession of the wrist watches on a twofold basis, namely, purchase of the wrist watches locally and receipt of some wrist watches from its customers for repair. In this Rule, I need not concern myself with the earlier phase of the dispute between the petitioner and the Customs authorities, when some of the seized watches were released, order of confiscation was passed in respect of the rest and then again the order was quashed on appeal for non-compliance with the principles of natural justice. Ultimately, on August 21, 1961, there was a notice served upon the petitioner in respect of 280 pieces of wrist watches, requiring the petitioner to show cause why the said watches should not be confiscated as unlawfully imported watches. The material portion of the notice is set out below:

"The importation of watches into India without a valid import Trade Licence is

prohibited u/s 19 of the Sea Customs Act read with Section 3(1) of the Imports and Exports (Control) Act 1947 and Govt. of India Ministry of Commerce and Industry order No. 17/55, dated 7-12-55 (as amended), the offence being punishable u/s 167(8) of the Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act

In view of the foregoing, M/s. Kanungo and Co., are required to explain the matter in writing within one week from the date of receipt of this notice. They are also called upon to show cause in writing within the same period of time why the said 280 pcs watches should not be confiscated u/s 167(8) Sea Customs Act read with Section 3(2) of the Imports and Exports (Control) Act 1947 and why penal action should not be taken against them u/s 167(8) of the Sea Customs Act."

2. In the earlier part of the notice, there was a long recitation as to why the Customs authorities disbelieved the story of local purchases and custody for repair of some of the watches as alleged by the petitioner.

3. The petitioner challenged the notice, before this Court, inter alia, on certain preliminary grounds, namely;

(a) "(X) No notification has been issued u/s 19 of the Sea Customs Act and the purported notification dated 7-12-55 does not appear to have been made u/s 19 of the Sea Customs Act and is not a notification u/s 19 of the Sea Customs Act and the provisions of the Sea Customs Act are not attracted to the seized goods and the provisions of Section 167(8) of the said Act does not apply and cannot apply to the seized goods."

(b) "(XI) In any case your petitioner firm was carrying on business since 1950 and the said purported notification was issued on 7-12-55 and the said notification does not apply to the facts and circumstances of the present case and your petitioner's goods seized as aforesaid."

(c) "(XII) In any case the order, dated 7th December, 1955, is not a notification u/s 19 of the Sea Customs Act and the said notification does not purport to be under the said section of the said Act and the Respondent had no jurisdiction to apply the provisions of the said order to the seized goods."

and obtained a Rule, being Matter No. 216 of 1901. The said Rule was disposed of by consent, on January 25, 1962, on the following terms:

"This Rule is disposed of by consent.

It is agreed that the customs authorities shall decide grounds 10, 11 and 12 mentioned in paragraph 27 of the petition on which this Rule was issued as preliminary issues first of all. If the customs authorities decide the preliminary issues against the petitioner, then only they will be entitled to proceed with the case against the petitioner on merits.

It is further agreed that the petitioner shall file its explanations showing cause

against the charges levelled against it within a fortnight from today and the customs authorities shall take up the case against the petitioner within one week thereafter.

It is also agreed that the customs authorities shall deliver a judgment on the preliminary issues and then proceed with the case, if at all. The petitioner will have liberty to move against the preliminary judgment if it likes."

4. After the matter went back, the Customs authorities decided the preliminary objections against the petitioner. Aggrieved by the order the petitioner again moved this Court, under Article 226 of the Constitution, and obtained a Rule being Matter No. 151 of 1982. Two points were argued in support of that Rule:

(1) Section 3(1) of the Imports and Exports (Control) Act, 1947 did not by itself prohibit importation of scheduled articles but an order made u/s 3 would do so. The Customs authorities were in error in proceeding upon the basis that the restriction of importation of watches was contained in Section 3 of the Act itself.

(2) No Customs frontier for India was ever prescribed by the authorities and therefore the charges of importation of wrist watches from beyond the Customs frontier must fail.

5. At that time, Mr. G. P. Kar, learned Advocate for the Customs Authorities, made a twofold concession-

(a) that there was a notification made u/s 3 of the Imports and Exports (Control) Act, 1947, being Notification No. 17/55 dated December 7, 1955, and if the Customs authorities failed to bring the wrist watches within the mischief of the notification, the charge against the petitioner must fail:

(b) that there was a notification defining the Customs frontier of India made u/s 3A of the Sea Customs Act and if the petitioner was found guilty of having imported wrist watches from beyond such frontier, then only the charge against the petitioner would be taken to have proved. The relevant portion of the two notifications referred to above are hereinbelow set out:

"(a) Notification No. 17/55, dated December 7, 1955 known as Imports (Control) Order, 1955.

3(i). Save as otherwise provided in this Order, no person shall import any goods of the description specified in Schedule I, except under, and in accordance with a licence or a customs clearance permit granted by the Central Government or by any officer specified in Schedule II,

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Schedule I (Item 308) Clocks, Watches, and parts thereof."

(b) Notification u/s 3A of the Sea Customs Act, dated August 6, 1955.

"In exercise of the powers conferred by Section 3A of the Sea Customs Act 1878 (VIII of 1878), and in supersession of the notification of the Government of India in the Ministry of Finance (Revenue Division) No. 25 Customs, dated 1st April, 1950, the Central Government hereby defines the Customs Frontiers of India as the boundaries of territories, including territorial waters of India."

On the basis of the concession made, Matter No. 151 of 1962 was discharged with the following observations:

"With the two clarifications agreed upon by Mr. Kar namely (1) that if the petitioner is found guilty of having violated the order u/s 3 of the Imports & Exports (Control) Order made in 1955 and (2) if it be found to have imported watches across the customs frontiers as notified u/s 3A of the Sea Customs Act, then only the charge will be taken as established, I do not think that the charge levelled against the petitioner suffers from vagueness as complained or by the petitioner any longer. With the two clarifications made in the charge the adjudication proceeding against the petitioner should now proceed.

Subject to the clarifications as hereinbefore made, I discharge the Rule. Let the adjudication proceedings against the petitioner now proceed on the charges as hereby clarified."

Thereafter, respondent No. 3 made the following order upon the petitioner:--

"The party originally sought to connect the watches under seizure with certain transactions some of which have been found on enquiry to be false and fictitious. The result of the enquiries and the evidence on which the charges were framed were made known to the party specifically under paras 6 to 19 of the show cause notice. The party in his reply to the show cause notice has merely denied the charges but could not make any submissions in rebuttal of those specific allegations. The watches under seizure are of foreign origin. The cash memos and vouchers etc. produced by the party in disclosure of his knowledge about the source from which these watches were obtained and in proof of their licit source have been found on enquiry to be false and fictitious. Besides in respect of 11 pieces of watches (item Nos. 22, 24, 65, 68, 74, 80 and 95 of the inventory), no document whatsoever showing their licit source could be produced. It is clear that these watches could not have been legally imported. I therefore hold that these watches were imported into India clandestinely from a foreign country and the party made a desperate attempt to connect these watches with some false and fictitious transactions.

The importation of the watches is prohibited without a License granted by the Import Control Authorities, under Import Control Order No. 17/55 dated 7-12-55 (as amended) issued in pursuance of Section 3(1) of the Imports and Exports (Control) Act 1947. The restriction imposed u/s 3(1) of the Imports and Exports Control Act is deemed to be restriction u/s 19 of the Sea Customs Act by virtue of Section 3(2) of the Imports and Exports Control Act. The watches under seizure are therefore, liable to confiscation u/s 167(8), Sea Customs Act."

6. After the order, the petitioner again moved this Court, under Article 226 of the Constitution, praying for the quashing of the order and a mandate upon the respondents not to give effect to the order and obtained this Rule, limited to the following three grounds:

I. That the direction given by this Hon^{ble} Court by the said order dated 25th January, 1962 and 7th March, 1963, have not been followed or complied with and the said order is absolutely bad and illegal and without Jurisdiction inasmuch as the Customs Authorities failed to establish before the said Respondent any violation of Order u/s 3 of the Import and Export (Control) Order 1955 or that the said seized watches have been imported into India across any Customs frontier as notified u/s 3A of the Sea Customs Act.

II. That there is no finding by the said Respondent that the said seized watches were imported into India after 1955 and there is no evidence or materials before the Additional Collector of Customs that the said watches were imported after 1955 and the Additional Collector of Customs should have held that there has been no violation of the provisions of Section 3 of the Import and Export Order 1955 and should have directed release of the goods.

III. That there is no finding by the said respondent that the said seized watches were imported into India across any Customs Frontiers as notified u/s 3A of the Sea Customs Act and there is no evidence before the Additional Collector of Customs to hold whether the same has been brought into India across any Customs frontier or across which customs frontier and the Additional Collector of Customs should have held that there has been no violation and/or no violation of Section 3 of the Import and Export Control Order 1955 and should have directed release of the seized goods.

7. Mr. Bankim Chandra Dutt, learned Advocate for the petitioner, contended that the ones of proving that the wrist watches had been legally imported into India by the petitioner, was wrongly placed upon the petitioner and that made the adjudication order bad. He further contended that the Customs authorities made enquiries behind the back of the petitioner and disbelieved the explanation submitted by the petitioner on the basis of such enquiry; but they did not apprise the petitioner of the nature of the enquiry made and did not afford to the petitioner any opportunity of showing that the materials collected on enquiry were all wrong.

8. The charge was one of importation of wrist watches without import licence. The petitioner admittedly had no licence. He, however, claimed to have legally purchased the watches or received some of them from customers for repair (vide his case as set out in the show cause notice--annexure "A" to the petition). Even if this case be found to be unsubstantial, even then the case of unlawful importation of wrist watches by the petitioner, is not established. The petitioner may not have come to possess the wrist watches by lawful means, as alleged, but that does not lead to the further conclusion that the petitioner must have

unlawfully imported the watches from across the Customs barrier and thus come to possess the same. The burden of proving unlawful importation (excepting in cases u/s 178A of the Sea Customs Act and this case is not one such) is upon the Customs authorities. This is the view which was expressed by the Supreme Court in *Arabalal v. Union of India* AIR 1961 SC 264 and followed by Division Bench of this Court in *Mangala Prosad v. V. J. Manerikar* 68 Cal WN 383. The question, therefore, is whether the Customs authorities failed to discharge this onus

9. Mr. G. P. Kar, learned advocate for the respondents, contended that the Customs authorities had disclosed to the petitioner materials on which they disbelieved the explanation given by the petitioner, namely, that the petitioner had locally purchased some of the watches and received others for repairs from different persons and thereafter the onus shifted with the petitioner to prove that the wrist watches had been lawfully imported. I am unable to uphold this argument. If the Customs authorities had led any prima facie evidence of illicit importation of the watches, I might have considered the question of shifting of the onus. Here the Customs authorities did nothing of the sort. Apart from showing that the petitioner had no valid importation licence and could not successfully explain how it came to possess the watches, the Customs authorities proved nothing more. What the Customs authorities proved do not lead to the inevitable inference that the petitioner must have illicitly imported the watches. The explanations given by the petitioner may be disbelieved but there may be other explanation for it. One such explanation of his possession of the wrist watches may be that he was in unlawful possession of the lawfully imported watches--say, for example, in possession of stolen watches, which had been lawfully imported. That may make the petitioner liable under the law of crimes but that would not enable the Customs authorities to confiscate the watches. I, therefore, hold that the mere possession of the watches by the petitioner company will not lead to the inevitable inference that he must have imported or been concerned in the importation of the watches seized from it. A contention similar to that made by Mr. Kar was made and overruled by the Supreme Court in the case of AIR 1961 SC 264 (*Supra*).

10. Mr. Kar next contended that the respondent No. 8 proceeded on evidence and arrived at the finding that the watches had been illicitly imported and that sitting in the Constitutional Writ Jurisdiction I should not interfere with that finding. He particularly relied on the following observation by the Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, in support of this contention:

""The question about the limits of the jurisdiction of High Courts in issuing a Writ of Certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction

conferred on it, the Court or Tribunal acts illegally improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a Writ Court."

I have already held that about the illicit importation of the watches by the petitioner there is no evidence. It is difficult to understand why Mr. Kar relies upon the above decision, which expressly permits interference, under Article 226 of the Constitution, in cases where the finding is based on no evidence whatsoever.

11. Mr. Kar lastly contended that if the watches had been unlawfully imported, then even if the unlawful importer was not detected, the penalty of confiscation might be imposed upon the goods so imported, in whosoever possession the goods were. Theoretically, Mr. Kar is right in this contention. The Supreme Court has reiterated this proposition in several decisions, for example, in the cases of *Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others*, and in *Pukhraj Vs. D.R. Kohli*, . But the charge as levelled against the petitioner does not justify that course, in this case, although it may be open to the Customs authorities to take recourse to such action against the petitioner on a fresh charge to that effect and on proof thereof.

12. Since the Customs authorities failed to prove that the petitioner had imported the wrist watches without valid licence from beyond the Customs frontier of India, the penalty imposed upon the petitioner cannot be sustained. The impugned order is, therefore, quashed. Let a Writ of Certiorari issue accordingly. If the seized watches be not made the subject matter of any other

proceedings under the Customs law, they must be returned to the petitioner. I make no order as to costs.