(2007) 10 AHC CK 0113

In the Allahabad High Court

Maa Tarni Roadlines APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 05-10-2007

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 35B

Citation : (2007) 10 AHC CK 0113

Hon'ble Judges : Prakash Krishna, J;Bharati Sapru, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petitioner is a Transport Company and is carrying on the business of transporting goods from one place to another in the Country. While it was transporting mild steel ingots booked from Koenjhan (Orissa) to Ghaziabad (U.P.), on Truck No. HR-38J/5456 vide G.R. No. 356 dated 14.12.2004 valued at Rs. 3,31,98.00 booked by Konark Enterprises and Pragati Traders, the consigners, were detained by the check post official i.e. Assistant Commissioner Incharge, Sahayta Kendra, Trade Tax, Naubatpur, Chandauli on 20.12.2004. The goods were detained, as per allegation of the petitioner on the statement of the driver of the Truck that the consignment was to be delivered to Rathi Udyog, Ghaziabad, whereas accompanying documents including Form-31 indicated that the goods were to be delivered to Pragati Traders, Ghaziabad.

2. Similarly another Truck of the petitioner bearing registration No. HR-38H/7243 carrying the goods of the same cosigner for the same consignee vide G.R. No. 357 dated 19.12.2004 valued at Rs. 3,34,435.00 was detained by the check post authorities on 24.12.2004. '' This was detained on the ground that Form -31 accompanying the goods was a forged document.

3. By means of the present writ petition, the petitioner has sought a writ of certiorari quashing the order dated 5.3.2005 passed by the Deputy Commissioner (Sahayta Kendra) Trade Tax refusing lo give any direction to the

check post official at the instance of the petitioner against the detention orders vis-a-vis the aforesaid two trucks. The petitioner has also prayed for a mandamus directing the respondent No. 3 to release the goods detained on 20.12.2004 and 24.12.2004.

4. The case of the petitioner is that it is prepared to pay the requisite security for the release of the aforesaid two consignments. At the same time it contends that the petitioner is not engaged in any business. activity and as such the goods cannot be detained for the Trade Tax dues outstanding against M/s Star Enterprises.

5. It is also not in dispute that the Form-31 which were accompanying with the goods were issued to M/S Star Enterprises, Flawada Road, Khatauli. It is also not disputed that a sum of Rs. 14,13,505/- is outstanding towards the Trade Tax dues and is payable by M/s Star Enterprises.

6. A counter affidavit on behalf of the respondents has been filed on the pleas inter alia that the Form-31 accompanying the goods was issued by the Department to M/s Star Enterprises, Flawada Road, Khatauli but the same was being utilised in order to conceal the real consignee, in the name of M/s Pragati Traders, Ghaziabad; no reply to the show cause notice on detention of goods has been submitted by any person nor the consigner or consignee has come forward to claim the goods. It has been further stated that an FIR has been lodged against the driver of the truck, M/s Star Enterprises and M/s Pragati Traders, vide Annexure-1 to the counter affidavit. It is a case, according to the Department, of misuse of Form 31 and the transporter of the goods has no right to get the goods released in his favour, vide paragraph 10 of the counter affidavit. Apart from above, Form 31 was issued by the Department in the name of M/s Star Enterprises for the purpose of purchase and sale of Rori Gitti and Balu but it was being utilised for the purposes of iron ingots for which it could not have been utilised. M/s Star Enterprises has been found to be a bogus entity and steps have been taken for cancellation of its registration.

7. In the rejoinder affidavit, only this much has been stated that the goods seized are liable to be released in favour of the petitioner, has much as the goods have been seized from its custody even if Here are huge arrears of tax against M/s Star Enterprises, Muzaffarnagar. It has also been averred that the petitioner''s responsibility towards the goods is as that of a bailee of goods to deliver the same to the consignee.

8. Shri Kunwar Saxema, learned Counsel for the petitioner strenuously submits that the petitioner is prepared to submit the insecurity of 40% of the value of the goods, the maximum prescribed under the U.P Trade Tax Act for the release of the goods. He submits that the goods were seized from his custody and therefore, the Department is liable to return the goods to it on payment of such security as may be fixed by the Court.

9. The learned standing counsel, on the other hand submits that the present writ

petition at the instance of the petitioner is not maintainable. It is in fact a litigation by proxy. Neither equity nor law is in his favour but he is fighting the litigation on behalf of the consigners and consignee including Star Enterprises who had obtained the Form-31 from the Department for the purpose of Rori Gitti and Balu has sold it to M/s Pragati Traders. It is a case of fraud on revenue and the matter should be dealt with by the Court with firm hands, submits the learned standing counsel.

10. Considered the respective submissions of the learned Counsel for the parties. From the pleading of the parties, it is evident that neither the consignee nor the consigner is coming forward to claim the goods in question. The averment made in the counter affidavit that no application for its release was filed by anybody remains un controverted. The fact that M/s Star Enterprises got the Form-31 issued for the business of Rori Gitti and Balu is also not in question in the rejoinder affidavit filed by the petitioner. It has also come on record, that M/s Star Enterprises is in arrears of huge Trade Tax liability amounting to Rs. 14,13,505/-.

11. Pointedly, a query was put to the learned Counsel for the petitioner as to why anyone either the consigner or the consignee or the owner of the goods or M/s Star Enterprises who got the Form-31 issued is not coming forward. The learned Counsel for the petitioner could not give any satisfactory reply except that the petitioner who is a bailee of the goods as a goods transporter, is to see that the goods entrusted to it for delivery reaches to its destination.

12. The learned Counsel for the petitioner was asked to make submissions with the reference to law of bailment in this regard and for this purpose the hearing of the case was adjourned. On the next day, he did not press the plea of bailment and has given it up and took the shelter that the act of detention of goods being contrary to Section 28A of U.P Trade Tax Act, is liable to be quashed. He did not press the plea of bailment any further and so we are not required to examine it any further.

13. The learned Counsel for the petitioner submits that the goods should be released in favour of the petitioner as they were seized from his custody. Various provisions of Section 28-A were referred in support thereof. The learned Counsel for the petitioner could not point out any specific provision compelling the check post authorities to release the goods in favour of the petitioner who happens to be transporter of goods.

14. On the peculiar facts of the present case, we are of the opinion that the writ petition is misconceived and is not maintainable. Neither the consigner nor the consignee of the goods is coming forward to claim the goods. The reasons are not far to seek.

15. The facts, speak for themselves that the goods were being imported in the State of U.P in a clandestine manner. The Form-31 was obtained for the purpose of Rori, Gitti and Balu. It was not supposed to utilise for the purpose of importing

Iron Ingots. Secondly, Form-31 was supposed to be used by M/s Star Enterprises for the import of the goods by it in the State. How the said Form-31 has changed Hands so as to reach to Pragati Traders is under cloud. The case of the Department is that Star Enterprises has sold away the said form to M/s Pragati Traders and this act is not permissible under law. First Information Reports have been lodged against the truck driver and the Pragati Traders and M/s Star Enterprises at two police stations as mentioned in the counter affidavit. The investigation was under progress. The facts of the resent case, are indicative of the fact that these persons have somehow colluded with each other and formed a caucus to import f goods in the State of U.P to evade tax.

16. In Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., the Apex Court has held that fraud and justice never dwell together, following the other judgements it has been held that the effect of fraud would normally be to vitiate any act or order. It has referred the observation of Denning LJ in Lazarus Estate Ltd. v. Beaslev 1956 1 QB 702 that:

No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.

17. The above principle has been reiterated in Indian National Congress (I) Vs. Institute of Social Welfare and Others, wherein in para 34 of the report it has been statec that a power to cancel/recall an order which has been obtained by forgery or fraud applies not only to the courts of law but also statutory tribunals which do not have power of review. In Vijav Shekhar and Anr. v. Union of India and Ors. JT 2004 Su 1 SC 523 the effect of fraud on judicial proceedings has been examined in detail and it has been held that a fraudulent act even in judicial proceedings cannot be allowed to stand. While doing so it has quoted its observation made in the case of Ram Chandra Singh v. Savitri Devi and Ors. 2003 (8) SCC 319.

18. In S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, it has been held that the courts of law are meant for imparting justice between parties One who comes to the court must come with clean hands. A person, whose case is cased on falsehood has no right to approach the court. He may be (summarily thrown out at any stage of the litigation. This ground, thus, is sufficient to dismiss the writ petition.

The Apex Court in N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others, , following its earlier decision in the case of T. Arivandandam Vs. T.V. Satyapal and Another, has held that in such cases heavy costs should be imposed.

19. In Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), the Apex Court has observed that u/s 35B of CPC an order may be made requiring the defaulting party to pay to other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the court on that date, and payment of

such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of the suit or the defence. It is observed that judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded on the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. It has been further held that when Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental cost besides the payment of the court fee typing, etc.

20. The rulings relied by the counsel for the petitioner on Ruby Traders versus CIT 1984 UPTC 1249; Ram Pal Singh, Ghaziabad v. State of U.P and Ors. 1986 UPTC 438; The Commissioner, Trade Tax, U.P v. S/s Sardar Paramjeet Singh 2005 (28) NTN 313 are distinguishable on facts and have no application to the case on hand. In view of the above discussion, we do not find any merit in the writ petition. The writ petition is dismissed with costs.

