

(1982) 05 AHC CK 0022

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 7989 of 1980

Masood Ali

APPELLANT

Vs

Metropolitan Magistrate, Corporation and Others

RESPONDENT

Date of Decision : 28-05-1982

Acts Referred:

Customs Act, 1962 — Section 110

Citation : (1982) 6 ACR 379

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : Navin Chandra, for the Appellant;

Judgement

N.N. Mithal, J.—The facts disclosed in this application u/s 482 Code of Criminal Procedure are that the applicant came to India on a tourist passport by Air India flight 852 on 8-10-80 in connection with his marriage to be solemnised in the month of January, 1981. On his arrival in India, his entire baggage was checked and examined by the customs authorities at the Airport and on the same night he boarded Gomti Express and reached Kanpur. On 9-10-80, the applicant was arrested by police of P. S. Colonelganj and all his articles in the baggage were seized and a case u/s 410/411 Indian Penal Code was registered against him. On 10-10-80, he applied to the court for release of his goods, stating therein that the goods have already been checked by the customs authorities at Delhi and they were not stolen property. Another application dated 23-10-80 was also moved by the applicant for the same purpose. On 25-10-80 the investigating officer in charge reported to the court that the goods were not stolen property. On 28-10-80 an inspector of customs, Kanpur moved to the court that some of the goods may not be returned to the applicant at all and the remaining be returned to him only in his presence. No charge was made till then that the goods were smuggled goods. After examining the goods on 30-10-80, the inspector of customs applied to the court on 3-11-80, that the police authorities be directed to hand over possession of the goods to the customs authorities as

the said goods were of foreign origin and as these goods were such as could be confiscated u/s 111, these were liable to seizure u/s 110 of the Customs Act, 1962. By an order dated 1-12-80, the Metropolitan Magistrate, Kanpur directed that the goods be handed over to the customs authorities for adjudication according to the Customs Act. The present petition has been filed for quashing this order.

2. The main submission of the learned Counsel for the applicant is that the goods can be seized by a proper officer of the Customs Department only when he has a reason to believe that the goods were liable to be confiscated under the Act, as held in *Shyam Lal Roshan Lal v. Punjab State*, 1962 Punjab 496. In that case the expression "seize" in the context in which it is used in Sea Customs Act in Section 178-A was defined as "take possession of goods contrary to the wishes of the owner of the property." According to the learned Counsel for the applicant, the goods had been seized initially by the police and on the application of the customs inspector, they are sought to be transferred from police custody to the custody of custom's inspector. None of them is an unwilling party. As such the element of unwillingness implied in the case of "seizure" is missing. The goods are still in the custody of the police and have not yet come into possession of the applicant. He, therefore, submits that u/s 110 of the Customs Act, the proper officer could seize the goods if he had reason to believe that the goods are liable for confiscation. When no seizure at all could be made due to there being no unwilling on the part of either the court or the police, no action u/s 110 of the Act could be taken on a mere request in writing. The application of the custom's inspector that these goods are liable to be confiscated, therefore, could not be allowed by the court. In the application dated 3-11-80 the inspector of custom had merely stated that the goods in question were of foreign origin and were liable to be confiscated u/s 110 of the Customs Act. On this request alone, it cannot be said that the goods were being seized by the custom's officer. Seizure must take place from the custody of an unwilling person in possession of goods that are liable to be confiscation. The order passed by the Matropolitan Magistrate, Kanpur was, therefore, clearly wrong and without jurisdiction. When the goods were initially seized from the possession of the applicant they had been seized by the police and not by the customs authorities. Thereafter no fresh seizure has taken place. If the goods had been handed over by the Matropolitan Magistrate to the applicant and then they had been seized by the custom's authorities, then probably it could be said that seizure had taken place within the meaning of Section 110 of the Act. In the circumstances of the present case, therefore, the learned Magistarate was not right in directing the police to hand over the goods in question to the customs officers. The order dated 1-12-80 is, therefore, bad in law.

3. The application is allowed and the order dated 1-12-80 is hereby quashed.