
(2005) 05 KL CK 0021
In the High Court Of Kerala
Case No : A.S. No. 293 of 1992

Mathew Fernandez

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 14
Customs Act, 1962 — Section 11, 150, 155
General Clauses Act, 1897 — Section 2(22)

Citation : (2005) 3 ILR (Ker) 65 : (2005) 3 KLT 788

Hon'ble Judges : R. Bhaskaran, J;K.R. Udayabhanu, J

Bench : Division Bench

Advocate : V.P.K. Panicker, for the Appellant; John Varghese, S.C.G.S.C., for the Respondent

Judgement

R. Bhaskaran, J.—The plaintiff is the appellant in the appeal. The suit was for return of the articles seized from the residence of the plaintiff on 24.7.1984 or the value of the same estimated at Rs. 3,50,000/- and compensation of Rs. 1,50,000/- for illegal detention and other . mental agony caused on account of the action of the respondents as stated in paragraph 24 of the plaint. The plaintiff paid a court fee of Rs. 50,000/- in the Trial Court but the appeal was filed as an indigent person. The Trial Court granted a decree for Rs. 38,783.05 which was the admitted amount due to the plaintiff with 12% interest from the date of suit till realisation.

2. The averments in the plaint are as follows. The plaintiff came to India on 31.5.1984 after ten years of employment abroad. He brought back some goods used by him. The Customs Preventive Intelligence Unit conducted search of his residence on 24.7.1984 and seized the items shown in the plaint schedule. Notice to show cause as to why those articles should not be seized was given to the plaintiff and he replied. The objection was overruled on 25.3.1985. On 9.4.1986, the Collector of Customs allowed the appeal of the plaintiff and ordered return of goods (items 3 to 15 without any payment and items 1 and 2

on payment of Rs. 4,000/-). The plaintiff was given 60 days from 9.4.1986 to redeem the goods. On 12.5.1986, the plaintiff filed requisition for return. No action was taken on the requisition. The plaintiff was threatened with consequences like fresh search and seizure. The plaintiff visited the office of defendants 2 and 3 on 13.5.1986, 14.5.1986, 15.5.1986 and 16.5.1986. But he was not informed of the state of affairs of the goods confiscated. On 24.7.1986, the plaintiff filed O.P. No. 3813 of 1986 before this Court. It was dismissed and plaintiff filed W.A. No. 440 of 1986 which was allowed to be withdrawn without prejudice to his right to move otherwise before the appropriate authority. In paragraph 24 of the plaint, the plaintiff has stated that the search and seizure were not done bonafide. For items 3 to 15, duty was paid at the time when residence was shifted and the records were shown to the Officers when they seized the goods. But they refused to yield to the request for return of goods. Their action was illmotivated. The plaintiff and members of the family were detained in the office of the 2nd defendant and they were physically tortured. They were detained from 7 p.m. on 24.7.1984 till 3.30 a.m. on 25.7.1984. Even after the order of the Collector of Customs to release the goods the plaintiff was asked to appear before the defendants and he was threatened of dire consequences if he pursued his attempt to get back the articles. Even after the plaintiff filed his requisition for return of goods the defendants with mala fide motive cooked up records to show that the same was sold. The sale was without notice to the plaintiff and notice was mandatory under the Customs Act. The plaintiff is entitled to the costs for moving the High Court for reliefs twice. The unauthorised search and seizure has affected the reputation of the plaintiff. He has been branded as a smuggler. The malicious intention is clear from the sale of the goods even after direction by the Collector to return the goods.

3. In the written statement, the seizure of goods was admitted. The market value of the goods was assessed at Rs. 58,080/- and the ex-duty value was fixed at Rs. 23,232/- The statement of the plaintiff and his wife were recorded on 25.8.1984. Show cause notice was issued on 16.1.1985. Reply was filed on 28.1.1985. Personal hearing was conducted on 4.3.1985. The order was passed on 25.3.1985 by the 2nd defendant. The appellate order was received on 23.4.1986. According to the defendants the goods were kept in the Intelligence Unit since they were involved in one of the long pending cases. They were sold between 3.5.1986 and 1.7.1986. The physical detention and torture of plaintiff and members of his family were denied. The contention that defendants cooked up records to show sale of goods was denied. The goods were sold for Rs. 42,783.05. In the reply, no objection was filed for the value of the goods shown in the notice at Rs. 58,080/-. The averments regarding damage to reputation of plaintiff is only imaginary. The defendants 2 and 3 had agreed to return sale proceeds after deducting Rs. 4,000/-. The plaintiff has no cause of action to file the suit.

4. After trial, the Trial Court found that the goods were sold before the expiry of the period fixed for redemption and release of goods and therefore the sale was

illegal. It was also found that since there was no allegation of ill-will or malice, it could only be a mistake committed bonafide by the Officials and that the defendants are entitled to the statutory protection u/s 155 of the Customs Act. It was also held that no objection was raised with regard to the valuation of the goods in the reply to show cause notice and the claim of Rs. 3,50,000/- as value of goods cannot be accepted.

5. In this appeal, it is contended that the Trial Court disposed of the case without advertent to pleadings or evidence in the case. It is also contended that this was not a case where the benefit of Section 155 of the Customs Act was available to the defendants.

6. The points for consideration are (1) whether the Trial Court was right in holding that the defendants are entitled to the benefit of Section 155 of the Customs Act, and (2) whether the plaintiff is entitled to get any compensation, and if so, what is the amount for which he is entitled to get.

Point No. 1

7. When the suit was for realisation of Rs. 5,00,000/- as compensation the Trial Court has granted a decree only for the admitted amount of Rs. 38,783.05 with interest at 12% from the date of suit till realisation. No amount of compensation was granted as the Trial Court held that the defendants are entitled to the benefit of Section 155 of the Customs Act. This was for the reason that there was no allegation of any malice or illmotive alleged in the plaint and the Officers responsible were not personally impleaded in the suit. It is true that there is no allegation that the entire search and seizure was on account of any previous animosity for the Officers towards the plaintiff. But the plaintiff has clearly alleged as to how he was ill-treated and how his requests for return of goods were turned down. In fact, there is only a vague denial of these allegations and with respect to the evidence adduced, the plaintiff's evidence stands uncontroverted, Dw. 1 who was examined on behalf of the defendants had only knowledge from the records as he took charge only after the incident and he also admitted that he has no personal knowledge of the seizure of the goods or its disposal. The Trial Court has found that the sale of the goods before the period of two months after the order of the Collector of Customs and in spite of the request of the plaintiff was invalid. But according to the Trial Court those were official acts against which no suit will lie for compensation.

8. Ext.A1 is the order of the Collector of Customs dated 9.4.1986 for return of goods. For items 1 and 2, a fine of Rs. 4,000/- was to be collected. With regard to items 3 to 15, the contention of the plaintiff was accepted. Ext. A2 is the copy of the counter-affidavit filed by the 2nd defendant in the Writ Appeal against O.P. No. 3813 of 1986 wherein he admitted that request was made by the plaintiff for redeeming goods on 12.5.1986. Assistant Collector also endorsed on the request to release the goods. But it is stated that by mistake it was omitted to be communicated to the Superintendent in charge of Customs Preventive

Intelligence Unit and consequently the goods were sold between 3.5.1986 to 27.5.1986. It is to be noted in this connection that in the order of the Collector of Customs dated 9.4.1986 two months time was granted to redeem the goods and all the goods were sold within that period. When the plaintiff has given evidence to the effect that he has been approaching respondents 2 and 3 for return of goods and he even approached the High Court for necessary reliefs, it is too much to believe that the goods were not released by mere omission to communicate the order of release even by the 2nd respondent. Ext.A4 is the lawyer notice sent to the defendants on behalf of the plaintiff. In that notice, it is specifically stated that in spite of a request on 12.5.1986 to the Assistant Collector to release the goods he was avoiding the release on one pretext or other. He was compelled to file O.P. No. 3813 of 1986 before this Court. It was dismissed on a misapprehension that the challenge was to the seizure itself. In Writ Appeal, a counter-affidavit was filed admitting the mistake. It is also stated in that notice that the plaintiff was repeatedly asked to come to the office of both defendants 2 and 3. He was even threatened with fresh search and seizure and prosecution. In Ext.A5 reply, the defendants have again repeated the story of mistake by the officials for not returning the goods. Exts.B1 and B2 are the show cause notice and reply to the show cause notice prior to seizure of goods.

9. PW.I is the plaintiff himself. He has spoken to the effect that himself and family were unnecessarily retained in the Office of the Customs between 7 p.m. to 3 a.m., ill-treated and compelled to give statement admitting the guilt of smuggling. Finally, when the goods were ordered to be released and he went to collect the goods, he was threatened and he was told that they will not be returned even if they have to go upto Supreme Court. He went there on 13th, 14th, 15th and 16th of May. But instead of giving the goods, he was threatened with fresh raid and seizure of articles. He also stated that no notice of disposal was given to him before the articles were sold in public. Section 150 of the Customs Act makes it mandatory for issue of notice to the owner of the goods which are not confiscated. It cannot be assumed that failure to issue notice before sale was also by mistake. PW.I has stated that the local people have branded him as a smuggler in the light of search and seizure by the Customs Officials. He also stated that the defendants have created documents to show sale, but actual sale was not conducted. The evidence of PW.I was supported by the evidence of PW.2, the wife of the plaintiff. She has also stated about the treatment by defendants 2 and 3 after search and seizure of the goods. PWs.3 and 4 were examined to show that after the search and seizure, the plaintiff and family were viewed by the local people as smugglers. As already noticed, there is no contra evidence adduced by the defendants. The only evidence of DW. 1 is of no use as he was not in the scene when the search was made or enquiry was conducted. Therefore the allegation and evidence in the case on the side of the plaintiff are virtually not rebutted.

10. Section 155 of the Customs Act will come to the help of the defendants only if the acts are done in good faith in pursuance of the provisions of the Act and

Rules. As per Section 2(22) of the General Clauses Act, a thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not. The acts of the defendants in not returning the goods after the order of the Collector of Customs and purported sale of the same even before the period fixed for return of the goods, non-issue of notice to the owner before sale as mandated by the statute persuade this Court to hold that the sale was not done in good faith. When there is overwhelming evidence to show that the plaintiff has been going on requesting for return of the goods and the absence of any evidence to controvert the evidence adduced by the plaintiff, it will lead to the only conclusion that the defendants are not entitled to the benefit of Section 155 of the Customs Act. It cannot be said that the act of sale of the goods without complying with the statutory requirements was made honestly.

11. It may be true that defendants 2 and 3 are not impleaded personally. Therefore, they may not be personally liable. But the 1st defendant cannot absolve itself from the liability to make good the loss sustained by the plaintiff for the acts of its Officers. A similar case had arisen in *State of Gujarat v. Memon Mahomed* AIR 1967 SC 1885). In that case, certain vehicles were seized as involved in a Sea Customs Offence. The Appellate Tribunal found that these vehicles were not liable to be seized. In the meanwhile the vehicles which became in a damaged condition were sold under order of Magistrate by the Police as unclaimed property. On the above facts, the Supreme Court held as follows:

"The order of Customs officer was not final as subject to an appeal and if the Appellate Authority found that there was no good ground for the exercise of that power, the property could no longer be retained and had under the Act to be returned to the owner. That being the position and the property being liable to be returned there was not only a statutory obligation to return but until the order of confiscation became final an implied obligation to preserve the property intact and for that purpose to take such care of it as a reasonable person in like circumstances is expected to take. Just as a finder of property has to return it when its owner is found and demands it, so the State Government was bound to return the said vehicles once it was found that the seizure and confiscation were not sustainable. There being thus a legal obligation to preserve the property intact and also the obligation to take reasonable care of it so as to enable the Government to return it in the same condition in which it was seized, the position of the State Government until the order became final would be that of a bailee. If that is the correct position once the Revenue Tribunal set aside the order of the Customs officer and the Government became liable to return the goods the owner had the right either to demand the property seized or its value, if, in the meantime the State Government had precluded itself from returning the property either by its own act or that of its agents or servants. This was precisely the cause of action on which the respondent's suit was grounded. The fact that an order for its disposal was passed by a Magistrate would not in any way interfere with or wipe away the right of the owner to demand the return of the property on the obligation of the Government to return it. The order of disposal in any event

was obtained on a false representation that the property was an unclaimed property. Even if the Government cannot be said to be in the position of a bailee, it was in any case bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by any act of its agents and servants. In these circumstances, it is difficult to appreciate how the contention that the State Government is not liable for any tortious act of the servants can possibly arise."

12. Again in *B. K. Patil v. State of Mysore*, 1977 CriLJ 1141, the Supreme Court held that when any property while in the custody of the Court is stolen, lost or destroyed and there is no prima facie defence made out that the State or its Officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. In *Saheli, A Women's Resources center, Through Ms Nalini Bhanot and Others Vs. Commissioner of Police Delhi Police Headquarters and Others*, the Supreme Court has held that the State is liable for the tortious act committed by its officers. In the light of the above decisions of the Supreme Court, the view expressed by the Trial Court that since the Officers are not impleaded personally and no malice is alleged in the plaint the 1st respondent cannot be made liable for the value of the goods seized is not correct.

Point No. 2

13. As a corollary to the findings on point No. 1, in the light of the decisions of the Supreme Court relied on in the previous paragraphs, it is to be held that the plaintiff is entitled to get compensation. Having found that the defendants are liable to pay compensation, the question arises as to what is the amount for which the plaintiff is entitled to. The valuation made in the plaint for each item of the plaint schedule properties is exorbitant and has no relation to actual value even from a layman's point of view. The Customs Authorities themselves valued these items at Rs. 58,080/-. The plaintiff did not object to it in the reply to the show cause notice. The fact that they fetched only Rs. 42,783.05 at the public sale, in spite of order of return and without notice to the plaintiff will not enable the Department to restrict the claim of the plaintiff for that amount only. They were solely responsible for their failure to return the goods and for sale of the goods against the provisions of the Act and Rules. Therefore, we find that the plaintiff is entitled to get the entire amount of Rs. 58,080/-. The amount of fine imposed on items 1 and 2 of Rs. 4,000/- has to be deducted from this. Therefore, the net amount on this count will come to Rs. 54,080/-.

14. The plaintiff has also claimed Rs. 1,50,000/- for unnecessary harassment by keeping the entire family in the Office of defendants 2 and 3 from the evening till 3 a.m. and also making him to come to their office for many days unnecessarily. He has also got a case that he lost his reputation as he was branded as a smuggler especially when the articles were not returned to him. The learned counsel for the respondents contended that at least with respect to items 1 and 2, the seizure was justified as the Collector of Customs has found that the

plaintiff was liable to pay a fine of Rs. 4,000/-. It is true that the order of the Collector has become final as the plaintiff did not take it in further appeal or revision. But we cannot omit to note the mistake in the reasoning in Ext.A1. Items 1 and 2 became notified items only on 20.7.1984. They were seized on 24.7.1984. It was enough if the plaintiff had given a declaration within one week of the notification as required u/s 11 of the Act. The Collector held that since on the date of seizure they were notified items there was nothing wrong in the seizure. This may not be fully correct as the plaintiff brought these items to India in May, 1984. With regard to items 3 to 15 there was no such liability and they were directed to be released unconditionally. Therefore, it cannot be said that the plaintiff has not been put to any harassment especially when none of the Officers who were involved in the incident were examined to contradict the evidence given by PWs.1 and 2. As a matter of fact, there was no specific denial even of the various averments in the plaint when the defendants filed the written statement. Therefore, we find that the plaintiff is entitled to get compensation for the harassment and loss of reputation.

15. The more difficult aspect is to find out the quantum of damages. What is the method of quantifying the damages for harassment and loss of reputation. No decided case was brought to our notice providing guidelines in this respect. PWs.3 and 4 were examined to support the case of loss of reputation of the plaintiff as he was looked upon by the people of the locality as a smuggler. PWs.1 and 2 gave evidence of harassment. Their evidence stands uncontroverted. The plaintiff had to contest the case before the Assistant Collector, file an appeal before the Collector of Customs and approach the High Court twice. Himself and family were made to sit in the Office till 3 a.m. after the goods were seized. He was made to come to the Office of defendants 2 and 3 on several days. He was threatened with fresh raids and seizure. He was thus made to spend a lot of money besides, being deprived of the goods brought by him when came back from foreign country. He must have undergone mental agony and suffered monetary loss. Taking into account all these, we are of opinion that an amount of Rs. 20,000/- should be awarded to him in the above heads though he has claimed Rs. 1,50,000/- on this account apart from return of the value of the goods seized from him.

We therefore allow the appeal in part and grant a decree for Rs. 74,080/- in the place of Rs. 38,783.05 decreed by the Trial Court. He will also be entitled to 12% interest on the above amount from the date of suit till the date of decree and thereafter at 6% till realisation. He will also be entitled to proportionate costs in both the Courts. The registry shall forward a copy of the decree to the Collector of the District concerned for recovery of court fee as provided under Order 33 Rule 14 of the Code of Civil Procedure.