(1993) 03 RAJ CK 0051

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1825 of 1981

Moti Lal — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 162, 164
Gold (Control) Act, 1968 — Section 55, 63, 66, 70, 71

Citation : (1994) 73 ELT 530 : (1993) WLN 123

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Advocate : M.L. Garg, for the Appellant; P.P. Choudhary and S.S. Lal, for the Respondent

Final Decision : Allowed

Judgement

B.R. Arora, J.—The petitioner, who is a resident of Merta and is a registered gold-smith, was detained by the Police Constable, G.R.P., at the Railway Station, Jodhpur. On search in the presence of the Preventive Officer of the Central Customs and Excise, Jodhpur, gold ornaments weighing 241.00 grams were found in a box which was being carried by him. The gold ornaments were seized in the presence of the petitioner and search memo EX.1 was prepared. The statement of the petitioner was, also, recorded u/s 70 of the Gold (Control) Act, 1968 (for short, ''the Act''). In the statement recorded u/s 70 of the Act, the petitioner disclosed that he is a registered/certified gold-smith and he reached Jodhpur on 28-11-1972 at 12.00 noon and went to the shop of Bhanwar Lal Sunar and gave one necklace, two Punchies, one Rakhdi and one ear-ring for setting stones in them. Bhanwar Lal Sunar returned the ornaments to him after setting the stones therein. He further disclosed that though he keeps the register but he has not made any entry with regard to these ornaments in this register. He further stated that earlier he gave some gold to Ram Swaroop gold-smith for manufacturing the bangles and got these bangles on 29-11-1972, at 11.10 a.m. and he was going to Merta after getting these ornaments prepared. After

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recording the statement of the petitioner and seizure of the ornaments, the petitioner was allowed to go to Merta. The gold ornaments were seized by the Customs Officer u/s 66 of the Act for violation of the provisions of Sections 80 and 55 of the Act. On 6-12-1972, the petitioner moved an application before the Assistant Collector, Customs and Central Excise, Jodhpur, that at the time of seizure, the petitioner narrated the true story to the customs and excise officials and, also, stated that .the petitioner had the proper entries with respect to these ornaments in the prescribed register which is checked and certified by the Inspector, Central Excise and Customs and he never stated that he has no entry of the seized ornaments in his register, A notice was issued to the petitioner u/s 63 of the; Act and he filed a representation/reply to the not keon 25-3-1973, before the Assistant Collector, Central Excise and Customs, Jodhpur. The Assistant Collector toy his order dated 16-3-1974, after consideration of the relevant material on record, passed the order Annexure 3 ordering for the confiscation of the gold ornaments under Section. 71 of the Act. He further imposed a penalty ,of Rs, ,1000/- u/s 74 of the Act. Dissatisfied with the order dated 15-3-1974,. the. petitioner preferred an appeal before the Central Excise Collectorate, Jaipur. The appeal filed by the appellant was dismissed by the Central Excise Collectorate, Jaipur, by its order dated 11-7-1978 (Annexure 4). Aggrieved with the order rejecting the appeal, passed by the Central Excise Collectorate, Jaipur, the petitioner preferred a revision petition before the Government of India, which was also dismissed by the Central Government vide its order dated 29-5-1981. The petitioner in this writ petition has, therefore, challenged the orders Annexure 3, Annexure 4 and Annexure 5 and has prayed for quashing and setting aside these orders and for restoring the gold ornaments recovered from him.

2. It is contended by the learned counsel for the petitioner that the statement of the petitioner was recorded on 29-11-1972 by the respondent in the presence of the police personnels and, therefore, the statement dated 29-11-1972 cannot be read against the petitioner. His further submission is that the entries with respect to these seized ornaments exist in the Register GR .13 maintained by him and the gold ornaments, which were seized from the petitioner, belongs to; Smt. Premratanki Bai, Dr. Deo Dutt and Bhanwar Lal Diwakar as he received these ornaments from them for manufacturing afresh. Lastly it is contended by the learned counsel for the petitioner that as these ornaments do not belong to him and belong to Smt. Premratanki Bai, Dr. Deo Dutt and Bhanwar Lal Diwakar, therefore, they are not liable to be confiscated. Learned counsel for the respondents, on the other hand, has supported the orders passed by the respondents.

3. I have considered the submissions made by the learned counsel for the parties.

4. The first point which requires consideration in the present case is whether the statement of the petitioner recorded on 29-11-1972 by the Customs Officials can be read against him and on the basis of this statement whether the gold

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ornaments can be seized or a penalty can be imposed upon the petitioner? Section 70 of the Act authorises the concerned officer to record .in writing the statement of a person where at the time of arrest or seizure under the Act or the detection, any contravention of the provisions of this Act or the Rules or the order was made, if such person makes his statement to the officer making such arrest, seizure or detection. Section 63 of the Act authorises the Gold Control Officer of a gazetted rank to summon any person whose attendance he considers necessary either to give evidence or to produce any document or other thing in any enquiry which such officer is making in connection of any contravention of any of the provisions of this Act. The statement made by a person u/s 70 of the Act to the Officer making the arrest or the seizure or the statement made u/s 63 of the Act before the Gold Control Officer, are not the confessions recorded by a Magistrate u/s 164 Cr. PC. as they are not subjected to the safeguards under which confessions are recorded by the Magistrate. These statements are, therefore, to be scrutinized to find-out whether the statements have been made under any threat or promise from someone in authority. The Officer under the Gold (Control) Act is not the Police Officer and, therefore, the statement made before him is not hit by Section 162 of the Code of Criminal Procedure. The statement, if it is voluntary and true and fits in the facts and circumstances of the case, can be acted upon.

5. Now, in these circumstances we have to see whether the statement of the petitioner recorded on 29-11-1972, can be read against him or not? The contention of the learned counsel for the petitioner is that the statement was recorded in the presence of the police officials and, therefore, it cannot be acted upon. This argument, raised by the learned counsel for the petitioner, is devoid of any force. The Panchnama (Annexure 1) was, of course, prepared in the presence of the police officials but so far as the statement of the petitioner is concerned, that was not recorded in the presence of the police officials but was recorded by the Customs Officers only and, therefore, the statement can be read against the petitioner. But the question is : whether the statement of the petitioner was the result of the inducement, threat or promise and whether it has been voluntarily and truthfully made? There is no evidence on record to show that any inducement, threat or promise was made to the petitioner in making the statement before the Customs Authorities on 29-11-1972. But the question is whether the statement is true and trustworthy? If we carefully examine the statement of the petitioner and compare it with the rest of the evidence and in the light of the surrounding circumstances and the probabilities in the case then the statement made by the petitioner on 29-11-1972 shows that it does not fit in with the rest of the evidence and the surrounding circumstances because undoubtedly there is an entry of these ornaments in GR 13 register maintained by the petitioner and this register was checked by the Inspector of the Customs and Excise Department on 23-11-1972, and after inspecting the register No. GR 13 on 23-11-1972, the Inspector, Central Excise and Customs, Nagaur, gave the following remarks :-

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"Visited the premises, found the balance in order, which is under process."

The respondents, while passing the orders Annexure 3, Annexure 4 and Annexure 5, did not believe the register on the ground that the gold in question remained in processing for a considerable period and further the entries in the register are by the same pen and the ink and, therefore, the entries do not appear to be truly made. When on the one hand the Inspector, who inspected the shop of the petitioner, saw the record of the case, the balance of the gold with the petitioner and found the gold in order and made the remark that the balance of the gold under process is in order, then the appellate authority should have given reasons why the inspection report of the inspector was not acceptable to it. When the entries with respect to the ornaments do find place in GR 13 register and the ornaments do not belong to the petitioner and belong to Smt. Premratanki Bai, Dr. Deo Dutt and Bhanwar Lal Diwakar which could not have been confiscated. The entries with respect to these articles of gold do find place in the register GR13 at serial numbers 37,38,39 and 42, maintained by the petitioner. Merely because some delay has taken place in the process or manufacture of these ornaments, that itself is no ground for disbelieving these entries. Moreover, these ornaments belong to the aforesaid three persons and as per Section 71 of the Act, these are not liable to be confiscated. The penalty could not have been imposed because the petitioner has not contravened any of the provisions of the Act as the due entries have already been made in the register. One thing more I would like to mention here that GR 13 register, maintained by the petitioner, was seized by the respondents but in spite of several opportunities given to the respondents, that register has not been produced and it has been stated by the learned counsel for the respondents that the register is not traceable. The respondents have not believed the register maintained by the petitioner on flimsy grounds and have not produced the register for the perusal of the Court and, therefore, an adverse inference deserves to be drawn against them as the entries do find place in the register maintained by the petitioner and no provision of the Act has been contravened and, therefore, the penalty imposed by the respondents u/s 74 of the Act against the petitioner for the contravention of the provisions of Section 55 of the Act, which requires the petitioner to make the entries in the register, also, deserves to be quashed and set aside.

6. In the result, the writ petition, filed by the petitioner, is allowed. The orders Annexure 3, Annexure 4 and Annexure 5, passed by the respondents, are set aside and the confiscation of the gold ornaments made by the respondents is declared wholly illegal and the petitioner is entitled for the return of these gold ornaments.

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