(1982) 04 CAL CK 0041

In the Calcutta High Court

Case No : Criminal Revision No. 1039 of 1981

Officer-in-Charge, Customs, Berhampur Preventive Unit APPELLANT

Vs

Minati Biswas and Others RESPONDENT

Date of Decision : 06-04-1982

Acts Referred:

Bengal Criminal Law Amendment Act, 1930 — Section 4(1)
Criminal Procedure Code, 1973 (CrPC) — Section 401, 451, 455, 457, 482
Customs Act, 1962 — Section 104, 105, 107, 110, 110(1)

Citation : 86 CWN 853 : (1984) 2 ECC 219 : (1983) 12 ELT 798

Hon'ble Judges : N.C. Mukherjee, J;N.C. Chaudhuri, J

Bench : Division Bench

Advocate : S.M. Sonyal, for the Appellant;P.K. Roy, for the Respondent

Judgement

N.C. Chaudhuri, J.—In this petition u/s 401 read with Section 482 Cr. P.C. the order dated 6-3-81 passed by the Judicial Magistrate, Berhampore, District Murshidabad in NGR 679/79-TR 489/79 is called in question. By the said order opposite party No. 1 Minati Biswas was convicted of an offence u/s 4(1) of the Bengal Criminal Law Amendment Act and sentenced to pay a fine of Rs. 250/- in default to suffer simple imprisonment for 25 days. Simultaneously the articles seized, that is to say, 369 pieces of compact cassettes made in Japan were confiscated to the State, inspite of a petition dated 13-3-80 filed by the petitioner Officer-in-Charge, Customs Berhampore Preventive Unit, Berhampore, Murshidabad filed before the learned Magistrate. On 13-5-79 the police searched the house of O.P. No. 1, seized the articles mentioned above and forwarded the opposite party No. 1 to the learned Magistrate under arrest giving rise to the case noted above. In the petition aforesaid filed before the learned Magistrate the petitioner alleged that the seized goods were of foreign origin and liable to action under the provisions of the Customs Act, 1962 and prayed for necessary orders to enable the petitioner to receive the aforesaid cassettes for initiating action under the Customs Act, 1962. Although the petition was filed on 13-3-80 the learned Magistrate did not pass any order thereon till 6-3-81 impugned herein. While rejecting the prayer of the petitioner the learned Magistrate held that he did not find any reason to allow the prayer of the Customs Department at the late stage when the accused herself pleaded guilty.

2. Mr Surathi Mohan Sanyal, the learned advocate on behalf of the petitioner argues that in the case of Shewpujanrai Indrasanrai Ltd. Vs. The Collector of Customs and Others, it has been held that so far as confiscation of goods under the Customs Act is concerned it is a proceeding in rem and the Act was enacted to ensure revenue to the Central Government. He draws our attention to Section 5 of the Code of Criminal Procedure, 1973 laying down "Nothing contained in this Code shall in the absence of a specific provision to the contrary, affect any special or local law for the time being in force or any special jurisdiction or power conferred, or any Special form of procedure prescribed, by any other law for the time being in force". Mr Sanyal contends that the provisions of the Criminal Procedure Code are subject to special and local laws and the Customs Act. 1962 is a special Act which confers special powers on the Customs Officer to confiscate goods and also prescribes a special form of procedure therefore. So the learned Magistrate, Mr Sanyal submits, should have allowed the petition of the petitioner and delivered cassettes to the petitioner for initiating confiscation proceedings under the said Act. He draws our attention specially to Sections 104, 105, 107, 110, 111 and 122 of the Customs Act to strengthen his arguments that the Customs Act prescribes a special form for initiation of confiscation proceedings and for search and seizure of goods liable to be levied duty under the Customs Act. The contention of Mr Sanyal appears to be well founded. In fact it has been held in the case of Pukhraj Pannalal Shah and Others Vs. K.K. Ganguly and Another, "In our view the Act of 1962 is such an enactment which has provided its own procedure for investigating into offences committed under the Act." Similar views have been expressed in the case of Assistant Collector of Customs, Madras v. Misrimal and Anr. reported in AIR 1977 Mad 1551.

3. The two cases cited above no doubt relate to investigation under the Customs Act and not with respect of confiscation, but we have no hesitation to say that Section 5 of the Cr. P.C. quoted above clearly indicates that the provisions of the Customs Act relating to confiscation will prevail over the provisions of the Cr. P. C. We have already referred to provision of Sections 104, 105, 107, 110, and other sections of the Customs Act. We like to remind ourselves of the provisions contained in the proviso to Section 110(1) of the Customs Act which lays down "provided that where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with or otherwise deal with the goods except with the previous permission of such officer". Reference to the provision of Section 151 Customs Act laying down that certain officers are required to assist the officers of Customs in the execution of the Act will also be appropriate ; amongst the officers required to assist. State Government Officers are also mentioned in the said section. From a consideration of the above provisions we have no doubt that learned Magistrate should have directed delivery of the seized cassettes to the petitioner. Mere

delivery of the cassettes to the petitioner will not mean immediate confiscation. It will be the duty of the petitioner to start confiscation proceedings under the Customs Act in the manner prescribed by the said Act.

4. From the order of the learned Magistrate it appears that the learned Magistrate was of opinion that the prayer of the petitioner was delayed. Such views in our opinion was wrong. We have already indicated that the petition was filed by the petitioner quite a long time before the learned Magistrate passed orders for confiscation of the cassettes to the State. The learned Magistrate should have borne in mind the provisions of Section 451 Cr. P.C. which contemplates order of custody and disposal of property pending trial in certain cases. The petitioner filed his petition on 13-5-80. If the learned Magistrate felt that he was unable to make any order u/s 451 Cr. P.C. because the property seized was not produced before him, even then after recording the order of conviction he could have passed orders u/s 457 of the Cr. P.C. In any event there was no reason to reject the petition on the ground of delay. The learned Magistrate should also have borne in mind that a court should be slow to order confiscation of any article. Confiscation is ordered when that is statutorily permitted as for example under the provisions of the Essential Commodities Act or the Arms Act, 1955. In some cases as contemplated in Section 455 Cr. P.C. destruction of some matter may be ordered. Confiscation may be ordered only in exceptional cases for reasons of social safety or security. When the Customs Act, 1962 embodied elaborate provisions regarding confiscation, and when the said provisions are independent of the provisions of Cr. P.C. and are protected by the provisions of Section 5 of the Code, it was the duty of the learned Magistrate to deliver the cassettes seized in this case to the petitioner. We hold that the order impugned before us in so far as the same confiscated the cassettes to the State was wrong and is liable to be set aside. The petition therefore succeeds.

5. The Rule is made absolute on contest and the order impugned so far as it confiscate the cassettes to the State is set aside. The seized cassettes are directed to be delivered to the petitioner on proper receipt subject to the condition that the petitioner will start appropriate proceedings in respect of the said cassettes as prescribed under the Customs Act, 1962.

Rule made absolute. Impugned order set aside.

