(1962) 03 GAU CK 0001

In the Gauhati High Court

Prayagdas Tushnial — APPELLANT

Vs

Collector of Central Excise and Land Customs — RESPONDENT

Date of Decision : 06-03-1962

Acts Referred:

Penal Code, 1860 (IPC) — Section 226, 311

Citation : AIR 1962 Guw 108 : (1962) CriLJ 174

Hon'ble Judges : G. Mehrotra, C.J;S.K. Dutta, J

Bench : Division Bench

Judgement

G. Mehrotra, C.J.—The facts leading up to the present petition are that on receipt of information to the effect that huge quantities of betelnuts has been illicitly imported into India front Pakistan, the Preventive Officer of Silchar Divisional and Circle Office conducted a search at the godown situate at the eastern side of the Manager''s Bungalow of the petitioner Prayagdas Tushnial''s Chandypore Tea Estate on the 3rd April 1960. The search warrant was issued by the District Magistrate, Cachar to ''bait effect. On search the officer recovered 28,006 lbs, (net weight) of Tatti betelnuts and ill old gunny bags. The Manager of the Chandipur Tea Estate was thereafter interrogated and he said that the betelniuts in question belonged to his brother Shri Prayag Das Tushnial. Sri Prayag Das Tushnial was then interrogated and he ad-mitted that the betelnuts belonged to him. His case is that he purchased huge quantity of betelnuts from different local markets during the period from 26th October 1959 to 31st December 1959 and that he converted a portion thereof into ''tatti'' form alter dehusking.

A copy of his account book was taken by the Customs Officers. In that account book he has mentioned twenty-seven persons from whom he had on different dates purchased betelnuts. Thereafter the officer conducted certain inquiries and he tried to contact some of the persons mentioned in the account book of the petitioner and he came to the conclusion after recording the evidence of some of those people as well as of others that the petitioner has been importing betelnuts from Pakistan. After the preliminary inquiry was held by the officer concerned, the Collector of Central Excise and Land Customs found reasonable grounds for proceeding against the petitioner for the confiscation of the goods al)d for imposing the penalty as provided u/s 167 (8) of the Sea Customs Act. A notice was issued to the petitioner to show cause as to why the goods recovered from the Tea Estate should not be confiscated and penalty imposed on him for the offence of smuggling illicit goods front Pakistan. The petitioner filed about thirty-three affidavits before the Collector of Customs of the persons who admitted that they had sold befelnuts to the petitioner- The Collector of Land Customs after giving reasonable opportunity to the petitioner to state his case discarded the affidavits filed by the petitioner and relying upon the statement recorded by the inquiring officer before the issue, of notice to the petitioner to show cause on the 16th Juno 1960, held that the goods were pt illicit origin, they have been imported into India from Pakistan without the proper licence and thus they were liable to be confiscated.

The goods were taken by the petitioner on deposit of a security of Rs. 40,947-40 N.P. That amount was confiscated. Further ''the Collector of Land Customs found that the petitioner was guilty of aiding, instigating and entering into conspiracy for the illegal importation of the seized detents into India from Pakistan. On that finding he imposed a personal penalty of Rs. 25,000/- on ''the petitioner. It is this order of the Collector of Land Customs which has been challenged by means of the present petition under Article 226 of the Constitution. The petitioner has prayed for a writ of certiorari quashing the atoresaid order.

2. The main contention raised by the petitioner is that the principles of natural justice have been violated in the present case and thus the order of the Collector of Land Customs is liable to be set aside. It cannot be doubted that the Collector of Land Customs when making an inquiry after giving a show cause notice to the petitioner about the confiscation and imposition of penalty against a person from whose possession certain goods have been seized, has to act judicially and the order passed by him is not an administrative order. The order thus is amenable to a writ of certiorari by this Court.

3. The above proposition of the petitioner cannot be doubted now. It has been settled by their Lordships of the Supreme Court in various decisions that the Collector in adjudicating acts in his quasi-judicial capacity and not in his administrative Capacity, in the case of F.N. Roy Vs. Collector of Customs, Calcutta, and Leo Roy Frey Vs. The Superintendent, District Jail, Amritsar and Another, it has been held that in the matter of confiscation and penalty under the Sea Customs Act the Collector acts judicially. Even the terms of Section 182 of the Sea Customs Act warrant that inference. After the show cause noticed has been given to the person from whose possession goods have been seized, the Collector has to adjudicate. The concept of adjudication necessarily implies determination based on the principles of natural justice. One of the principles of natural justice is that a person cannot be convicted on the evidence taken behind his presence.

In the present case it is not doubted that the Collector of Land Customs has relied upon some statements alleged to have been made by some witnesses before the inquiring officer. According to the Collector of Land Customs the statement of witnesses could he relied upon as they were made before independent persons. If those witnesses were examined in the presence of the petitioner and he had been given an opportunity to cross examine those witnesses, he might have succeeded in convincing the Collector of Customs that their statements cannot he relied upon, It is the Collector of Land Customs who has to form his opinion after giving an opportunity to the petitioner a$ to whether the goods are liable to be confiscated and whether any penalty can be imposed u/s 1(37 (8) of the. Sea Customs Act and the Collector could not form any opinion without the witnesses being examined before him and without giving an opportunity to the petitioner to cross examine those witnesses. It is true that the Collector is not a court when adjudicating about the confiscation of the goods and imposition of the penalty and he is not bound by the rules of evidence. But nonetheless he is to act judicially and the fundamental principles of natural justice and criminal jurisprudence have god to be observed in such an inquiry. It is in the nature of a criminal trial though not an actual trial for an offence. The burden is on the department to show that the goods are liable to be confiscated as they have been smuggled into this country without a proper import-license and further that the petitioner is concerned in the offence of smuggling.

4. It has been laid down by their Lordships of the Supreme Court in the case of Amba Lal v. Union of India AIR 1961 SC 264 that.

A customs officer is not a judicial tribunal and a proceeding before him is mot a prosecution. But the relevant provisions of the Sea Customs Act and the Land Customs Act are penal in character. The appropriate customs authority is empowered to make an inquiry in respect of an offence alleged to have, been committed by a person under ''the said Acts, summon and examine witnesses, decide whether an offence is committed, make an order of confiscation of the goods in respect at which the offence Is committed and impose penalty on the person concerned. To such a situation though the provisions of the Code of Criminal Procedure or the Evidence Act may not apply except in so far as they are statutorily made applicable, the fundamental principles of criminal) jurisprudence and of natural justice unnecessarily apply. If so. the burden of proof is on the customs authorities and they have to bring home the glut to the person alleged to have committed a particular offence under the said Acts by adducing satisfactory evidence

5. It is contended by Mr. Goswami who appears for the Department, that the principles of natural justice vary according to the circumstances of each case and there is no hard and fast definition of the expression ''principles of natural justice''. Unless there is some procedure laid'' down regulating the inquiry under the Act, it cannot be said that the principles of natural justice have been violated. Every case will have to be examined on its own circumstances before it can be

said that there has been violation of the principles of natural justice. If there are certain rules of procedure laid down in the Act itself, the violation of those provisions will entitle this Court to set aside the order on the ground that the rules have not been observed. But the fact, that the Collector has to adjudicate upon the question necessarily imposes a duty on him t0 act judicially and in so done he has to observe certain fundamental principles of natural justice. It cannot be said .that because it is difficult for the Department to prove the fact that these goods have been imported illegally as the border is very wide, the Collector is entitled to confiscate the goods On near suspicion. There musu be some evidence on the record to justify such an inference, and admittedly there is no evidence before, the Collector except the alleged statement of these witnesses recorded by the inquiring officer. The violation of the principles of natural justice lies in accepting those alleged statements as part of the evidence in this ease. It is to our opinion a gross violation of the principles of natural justice to allow certain alleged statements made by witnesses behind the back of the person concerned to prejudice the mind of the inquiring officer without giving an opportunity to the person concerned fo cross examine those witnesses.

6. The notice which is issued is also in terms to show cause why the goods should not be confiscated. The show cause notice itself shows that an opportunity is to be given to the person concerned not only to produce evidence but to cross-examine the witnesses relied upon by the Department. The following observation made by the Collector in his order will also show that me held the petitioner guilty and ordered confiscation of the goods only relying upon the alleged statements of those witnesses:

The direct contradiction of these statements for signing in blanc paper or of the statements having not read to them is not acceptable inasmuch as if the original statements are seen, It would be found that the original statements have been endorsed as having been given voluntarily in presence of independent witnesses.

7. It is not necessary to refer t0 some of the authorities cited at the bar. Mr. Ghose has how-ever, drawn our attention to the case of Union of India (UOI) Vs. T.R. Varma, and Phulbari Tea Estate Vs. Its Workmen, . These are no doubt cases under Article 311 of the Constitution. But the fundamental principle is the same. These cases broadly lay down as to what are the principles of natural justice without of course giving any exhaustive definition of the expression. The same principle has been applied to an inquiry u/s 167 (8) of Mae Sea Customs Act by the Mysore High Court in the case of Nagar Mohan Rao v. Collector of the Central Excise AIR 1961 Mys 203. Bu1 apart from these authorities the broad principle in our opinion is that this Court under Article 226 of it fee Constitution can interfere with am order of a quasi-judicial tiibunal if in making an inquiry it violates certain fundamental principles of natural justice and in our opinion in the present case the Collector of Land Customs violated the principles of natural justice is napkins; the inquiry. The order in our opinion, should ''thus be quashed.

8. Another argument was made by Mr. Ghose which cannot be said to be without

substance. His contention is that admittedly the goods when examined by some Wade organization was found to be of mixed character. Some of them were1 of foreign origin and some of Indian Origin. Under those circumsitanees the confiscation of the entire goods could not be ordered arid if was very difficult to separate the portion which was of illicit origin from the goods of Indian origin. The order of confiscation on that ground also must fail. We need no go rate ''he question as to whether it can be said that there was any evidence to hold that the petitioner was concerned in the smuggling of the goods. As we have held that the entire inquiry is vitiated as the Collector did not observe the principles of natural justice, litigant necessary to go into this question. In the result therefore, I allow this petition and quash ''ho order of the Collector of Central Excise and Land Customs dated the 13th June 1961. The petitioner is entitled to his cost which we assess at Rs. 100/-.

S.K. Dutta, J.

9. I agree.

