
(1994) 12 PAT CK 0005

In the Patna High Court

Case No : Cr. Writ Jurisdiction Case No. 410 of 1994

Prem Chandra Choudhary

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:

Citation : (1994) 12 PAT CK 0005

Judgement

Dharmpal Sinha, J.—In this writ application the petitioner has sought relief for issuance of an appropriate writ or direction to the respondents who are officers of the Customs Department to return a jeep bearing registration No. BPFII of which the petitioner claims to be owner (vide copy of the registration certificate, Annexure-1 to the writ application).

2. The relevant facts of the case lie in a very narrow compass: The vehicle was seized on 9-9-1993 by the Inspector of Customs (Preventive) (respondent No.4) on India-Nepal Border at a place near Muzaffarpur in pursuance of the provision of Section 110(1) of the Customs Act, 1962 (for short, "the Act") when it was found loaded with some computer parts, which, according to the custom officials (respondents), were foreign goods made in Malaysia and Japan and were being smuggled on the jeep. The driver of the jeep along with its two occupants were arrested.

3. According to the case of the petitioner, the driver, namely, Chandeshwar Mahto, had gone to Muzaffarpur for some repair works of the vehicle and registration certificate and other relevant papers were in the jeep when the same was seized by the respondents. The petitioner, according to his case, did not receive any notice from the respondents for a pretty long time informing him on the grounds on which the vehicle was seized and was proposed to be confiscated under the provisions of the Act. The contention of the learned Counsel for the petitioner was that since no notice, as contemplated by the provision of Section 124 of the Act, was issued and served on the petitioner who is the owner of the jeep within six months the jeep has to be released to the petitioner in view of the

provision of Sub-section (2) of Section 110 of the Act, and that though the petitioner also sent an application (a copy of which is Annexure 2) on 26-3-1994 to respondent No. 1 (the Collector of the Customs) praying for release of the vehicle, but there was no response, despite a reminder (a copy of which is Annexure 2(1) of the writ application)

4. A counter-affidavit and also a supplementary affidavit sworn by respondent No. 3 were filed. The stand of (lie respondents is that the vehicle was seized when it was smuggling computer parts manufactured in Malaysia and Japan and that a confiscation proceeding in terms of Section 124 of the Act had been started, and a notice (copy of which is Annexure-A) as contemplated u/s 124 of the Act had also been served on the driver of the jeep who was in possession of the vehicle at the time of seizure. According to die learned Counsel for die respondents the law does not necessarily require service of notice as contemplated by Section 124 of the Act on the owner of the vehicle also and service of notice on driver from whose possession the vehicle in question was seized is sufficient in law for confiscating the vehicle in question.

5. learned Counsel for the petitioner has contended that since the concerned respondent had seized die owner book of the vehicle along with the vehicle and they could ascertain easily therefrom as to who was the owner, notice on the owner also was necessary in terms of Section 124 of the Act. He elaborated his contention in this regard by submitting that since the petitioner as the owner of the vehicle was the person who was going to be affected by confiscation of the vehicle, natural justice also required issue of notice to him. It was further contended that unless opportunity is given to the owner, he is deprived of the option which he could exercise in terms of the provision of Sub-section (2) of Section 115 of the Act. According to his contention, the driver might not be interested in protecting the vehicle and even without the knowledge of the owner the might have used the vehicle in smuggling of foreign goods, and so the owner of the vehicle whose name and address became known by the certificate of registration that was seized along with the vehicle, too must have been given notice.

6. In reply, learned Counsel for the respondents submitted that as the provisions of Section 124 stands, notice could be given either to "owner of the goods or such persons" and "such person" will include driver of the vehicle. She further contended that the petitioner cannot be held entitled to return of the vehicle under Sub-section (2) of Section 110 of the Act because that provision contemplates "return of the goods to the persons from whose possession they were seized". Since the petitioner is not the person from whose possession the vehicle was seized he, according to her contention, cannot have legal right to take back the vehicle. Relying on the decisions 1982 ELT 72 , Hemani Bahadur Theppa v. Union of India and 1988 ELT 448 , Lal Gianmal Ji v. Union of India and Ors. she contended that the confiscation proceeding can continue u/s 124 of the Act and that provision is independent of the provision of Section 110 of the Act.

So even if no notice as contemplated by Section 124 of (be Act is issued within six months, confiscation proceeding may still continue and it cannot legally be questioned.

7. Besides the aforesaid cases, decisions Assistant Collector of Customs Vs. Charan Das Malhotra, , and the decision of the Kerala High Court in O.P. No. 2108 of 1971 were also cited, the learned Counsel for the petitioner relied upon the decision of the Kerala High Court and said that notice to the owner is also necessary.

8. An important point which arises for consideration in this case is whether in the facts and circumstances of the case notice to the owner, i.e. the petitioner was necessary to be served; secondly whether the petitioner is entitled to the relief of a direction to the respondents to return the vehicle to the petitioner even if it be held that no notice was served on him.

9. In order to appreciate the contentions, noticed above and to decide the point, it seems necessary to quote the relevant provisions of the Customs Act to which our attention was drawn by the learned Counsel for the parties.

10. Sub-section (2) of Section 110 of the Act reads as follows:

Where any goods are seized under Sub-section (1) and no notice in respect thereof is given under Clause (a) of Section 124 within six months of the seizure of the goods shall be returned to the person from whose possession they were seized:

Provided that the aforesaid period of six months may, on sufficient cause being shown, be extended by the Collector of Customs for a period not exceeding six months.

Sub-section (2) of Section 115 of the Act reads as follows :

Any conveyance or animal used as a means of transport in the smuggling of any goods or in the carriage of any smuggled goods shall be liable to confiscation, unless the owner of the conveyance or animal proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance or animal:

Provided that where any such conveyance is used for the carriage of goods or passengers for hire, the owner of any conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine not exceeding to market price of the goods which are sought to be smuggled or the smuggled goods as the case may be.

Section 124 of the Act reads as follows:

No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person-

(a) is given a notice in writing informing him of the grounds on which it is

proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter:

Provided that the notice referred to in Clause (a) and the representation is referred to in Clause (b) may, at the request of the person concerned be oral.

11. Not it will appear from the provisions of Section 124 that no confiscation could be made of any goods which includes vehicle, unless the owner of the goods or such person is given notice in terms of Sub-sections (a), (b) and (c). It will further appear that it contemplates notice either to "the owner of the goods" or "to such person". As the wordings of the section stand, notice may be given to the owner of the goods or such person which includes person from whose possession goods (which of course includes vehicle) has been seized. The conjunction used in the section is "or" and not "and", and ordinarily it will imply that notice on any one of the two-the owner or the concerned person, would satisfy the legal condition for proceeding to pass appropriate order with regard to confiscation.

12. But a crucial question, which falls for consideration, is whether the owner even if his identity has been known and whose property is sought to be confiscated, can be deprived of opportunity to say whatever he has to say in the matter. Of course, if there is way to ascertain the identity of the person, who is the owner there could be no question of issuing notice. But when Sub-section (2) of Section 115 of the Act contemplates that the owner of the conveyance was used without his knowledge or connivance, and when the proviso to that Sub-section (2) gives option to the owner of the conveyance to pay fine in lieu of the price, not exceeding market price, of the goods sought to be smuggled, it appears to me that the owner, unless he is given notice in terms of Section 124, will be deprived of taking the benefit of the provision of Sub-section (2) of Section 115 of the Act.

13. From the decision of the Kerala High Court in O.P. No. 2108 of 1971 it appears that while interpreting the provision of Section 79 of the Gold (Control) Act, 1968, which were *pari materia* with the provisions of Section 110(2) and Section 124 of the Act, the Court held that notice to the owner is necessary. There seems to be little difference in the relevant provisions of Section 110(2) read with Section 124 of the Act quoted above and Section 79 of Gold (Control) Act, 1968 which reads as follows:

79. No order of adjudication or confiscation or penalty shall be made unless the owner of the gold, conveyance or animal or other person concerned is given a notice in writing-

(i) informing him of the grounds on which it is proposed to confiscate such good,

conveyance or animal or to impose a penalty; and

(ii) giving him a reasonable opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the confiscation or imposition of penalty mentioned therein and if he so desires of being heard in the matter:

Provided that the notice and the representation referred to in this section may, at the request of the owner or other person concerned, be oral :

Provided further that where no such notice is given within a period of six months from the date of the seizure of the gold, conveyance or animal or such further period as the Collector of Central Excise or of customs may allow, such gold, conveyance or animal shall be returned after the expiry of that period to the person from whose possession it was seized.

14. In my considered opinion in the instant case when the registration certificate (owner book) was also seized as the petitioner has asserted, which fact had not been controverted in the counter-affidavit, and if the respondents intended to confiscate the vehicle, it was obligatory on their part to issue notice to the owner also, so that he might show that the conveyance was being used at the time when it was seized, without his knowledge or conveyance, for the purpose of smuggling foreign goods or he could exercise his option in terms of proviso to Section 115(2) of the Act.

15. It is an admitted fact that the notice was not served on the petitioner, the owner of the vehicle. It, however, appears from the stand taken by the respondents in the counter-affidavit that the notice had been served on the driver, Chandradeo Mahto. A copy of the notice (Annexure-A) had been attached with the supplementary affidavit and a perusal of content shows that it is in accordance with the terms of Section 124 of the Act. To be sure in the counter-affidavit it is not specifically mentioned as to when (i.e. on what date) the notice was served on the driver. Because of this omission, learned Counsel for the petitioner contended that since specific mention of the time or date of service of notice has not been mentioned in the counter-affidavit, nor has service report been brought on the record it cannot be held that the notice was served on the driver only because a bald statement has been made in the counter-affidavit. In my opinion, however, since the driver is not a petitioner, and he has not denied the service of notice, assertion made in the counter-affidavit about service of notice on the driver whose name appears in (he notice has to be accepted, and the petitioner is not competent to say whether or not any notice had been served on any other person including the driver.

16. Next point for consideration in this case now is as to whether the petitioner-owner of the vehicle is entitled to return of the vehicle even if notice to him was not given, though, in my opinion, it ought to have been given as has been held above. On this point it is obvious from Sub-section (2) of Section 110 of the Act that it is only the person from whose possession the vehicle was seized, i.e. the

driver in the instant case, who could be entitled to return of the vehicle if there would have been default in serving the notice on him within six months. The petitioner obviously is not the person from whose possession the jeep was seized, learned Counsel for the respondents appears to be right in contending that the petitioner has no legal right to return of the vehicle in terms of Sub-section (2) of Section 110 of the Act on which the petitioner Counsel has strongly relied. Since the petitioner seems to have already filed representation (Annexure-2) before the respondents, now he may be held to have waived the requirement, of service of notice on him.

17. Now as regards the two decisions *Shah Chaganlal Gianmalji Vs. Union of India and others*, , may mention here that after going through these decisions, I find that the ratio of those cases can hardly have any application to the facts of this case. In those cases it was held that Section 110 of the Act relating to seizure and Section 124 of the Act relating to proceeding of confiscation are independent and failure to give notice within six months will not invalidate confiscation proceeding. Similarly decision of the Supreme Court reported in *Assistant Collector of Customs Vs. Charan Das Malhotra*, centered around the question as to what nature of power, whether administrative or quasi-judicial is exercised, by the Collector of customs when he gives extension of the period for giving notice beyond six months in terms of the proviso to Sub-section (2) of Section 110 of the Act. Extension of the period beyond six months under that proviso can be done "only on sufficient cause" being shown to the Collector of Customs, and it was held that extension could be given only after issue of notice to the concerned parties. I do not think that ratio of the aforementioned three cases has any application to the facts of the instant case.

18. In the light of observations made and reasons given above I am of the opinion that the petitioner cannot get relief of return of the jeep in question which has been sought for by him in this writ application. Since the jeep seems to have been seized quite a long time back, on 9-9-1993, and since it was contended during the course of hearing that condition of the jeep which is lying uncared for has been deteriorating, the respondents are directed to conclude the confiscation proceeding as early as possible, and in any case within four months from the date of receipt/production of a copy of this order, and while passing order relating to confiscation they may consider various representations which the petitioner seems to have filed although belatedly before them even without receiving any notice contemplated by Section 124(a) of the Act. This writ petition is, accordingly, disposed of with the aforesaid direction.

A.N. Chaturvedi, J.

19. I agree.