(1992) 10 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No''s. 14055/92 and 14056/92

S. Kishore Kumar and Another APPELLANT

Vs

The Assistant Collector of Customs and Others RESPONDENT

Date of Decision : 13-10-1992

Acts Referred:

Citation : (1993) 41 ECC 42

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Srinivasan, J.—These two writ petitions are for issue of mandamus directing the respondents to return 625 gold coins and a receipt showing

payment of customs duty by one Mr. Silance Xavier and also the duty-paid baggage receipt etc. One of the writ petitions is filed by S. Kishore

Kumar. According to him, one Mr. Ghouse brought 625 Nos. gold coins weighing 4986 gms and paid customs duty of Rs. 1,09,692 vide baggage

receipt No. 11261 dated 22.8.1992. It is stated that Mr. Ghouse handed over the coins to the petitioner, who sold 550 Nos. thereof and the

balance of 75 Nos. were remaining unsold. According to him, he handed over the said 75 Nos. to one Mr. Omprakash for safe custody. It is not

in dispute that there was a seizure of the said gold coins from the premises of the said Omprakash. It is for the return of the said 75 Nos. coins Mr.

Kishore Kumar has filed writ petition No. 14055 of 1992. The other writ petition No. 14056 of 1992 has been filed by Silance Xavier. According

to him he brought into this country 625 Nos. of gold coins weighing 5 Kilograms and that he got clearance of the Gold Coins on payment of customs duty of Rs. 1,10,000/- in foreign exchange under receipt A. No. 008623 dated 7.9.1992. It is his case that he handed over the said coins

to Kishore Kumar, the petitioner in the other writ petition for safe custody who, in turn, gave it to Mr. Omprakash for safe custody. These coins

were also seized from the premises of Omprakash. Thus the claim made by the two petitioners is that the coins seized from the premises of

Omprakash were lawfully brought into this country and the duty had been paid therefore and that they do not belong to Omprakash. According to

them, 625 Nos. of gold coins belong to the petitioner in W.P. No. 14056 of 1992 and 75 Nos. gold coins belong to Mr. Ghouse on whose behalf

the W.P. No. 14055 of 1992 is filed by Mr. Kishore Kumar to whom they were entrusted by Mr. Ghouse.

2. It is seen that the writ petitions were filed in this Court on 14.9.1992. On the previous day, namely 13.9.1992, the counsel for Kishore Kumar

and Silance Xavier sent a telegram to the Assistant Collector of Central Excise and Superintendent, Central Excise, Customs Division, Cuddalore,

calling upon them to return the gold coins within two days from the receipt of the telegram. The telegram does not mention that it is sent by the

advocate on behalf of Mr. Ghouse. It merely mentions the name of Kishore Kumar and Silance Xavier.

3. The authorities did not have sufficient time to make an investigation as to whether the claim made by the petitioners is true or not. It should be

found as a fact whether the gold coins which were brought into this country by Silance Xavier and Ghouse are the same as those seized from the

premises of Omprakash. It is a matter which is to be investigated by the authorities and a factual finding has to be arrived before any return of gold

coins is ordered by the authorities.

4. The authorities were not given sufficient time to make the investigation, by the petitioners. They have straightaway rushed to this Court after

issuing a telegram on 13.9.1992 without even waiting for reply. It is now contended that in the counter-affidavit the facts are not denied. There is

no substance in this contention. The authorities did not have time to ascertain the facts and they have merely stated that it is for the petitioners to

prove their claim that the gold coins which were seized from the premises of Omprakash were forming part of the gold coins which were brought into this country by Mr. Ghouse and Mr. Silance Xavier.

5. In the circumstances, the prayers of the petitioners cannot be granted, as the requirements of law for issue of Mandamus are not satisfied. There

are two requirements for the issue of Mandamus. One, there should be a demand by the person concerned and two, there should be a failure of

duty on the part of the official concerned. In this case, the demand is made on 13.9.1992 and the writ petitions are filed on 14.9.1992. It cannot

be said that the officials have failed to do their duty as they did not have enough time to consider the claim of the petitioners and decide questions

of facts which arose for consideration.

6. In the circumstances, the writ petitions are dismissed. The respondents are directed to conclude their investigations and pass appropriate orders

within six weeks from this date. If they find that the claims of the petitioners are made out, they shall direct the return of the gold coins, seized by

them from the premises of Omprakash. If the petitioners, are aggrieved by any orders which are passed by the authorities, it is open to the

petitioners to take appropriate proceedings challenging the said orders.

7. The Writ Petitions are dismissed. No costs.

