(1988) 09 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 311/88

Satramdas Mehta APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226, 300A
Criminal Procedure Code, 1973 (CrPC) — Section 102, 438, 451, 452, 457
Customs Act, 1962 — Section 100, 100(1), 100(1A), 100(1B), 100(3)
Income Tax Act, 1961 — Section 32(3)

Citation : (1989) 39 ELT 6

Hon'ble Judges : S.M. Jain, J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : Soli J. Sorabjee, M.M Singhvi and V.D. Calla, for the Appellant; J.P. Joshi, A.A.G. and B.R. Arora, for the Respondent

Final Decision : Allowed

Judgement

Kanta Bhatnagar, J.—In this petition under Article 226 of the Constitution of India, petitioners have invoked the extraordinary jurisdiction of this Court for quashing the Orders Annexures 0 and P dated January 1,1988 by which Indian Cur rency Notes amounting to Rs. 72,26,090/ were seized by respondent No. 3, the Assistant Collector of Central Excise & Customs Division, Udaipur under Sub-section (1) of Section 110 of the Customs Act, 1962 (hereinafter to be referred as ''the Act'') on the ground that the amount was sale proceeds of smuggled gold.

2. In short, the events disclosed in the writ petition are as under :-

That, petitioner No. 1 Satramdas is a silver trader carrying on that business inherited from his forefathers in the market of Udaipur for the last twenty years and is engaged In the forward trading business in silver. Petitioner No. 1 had taken 9.5 lakhs from his brother Manohar Lai on December 19,1987 and an amount of Rs. 1,30,000/ from his mother Ish wari Bai and grandmother Devi Bai each on December 14,1987. He got Rs. 4,00,000/ lakhs by sale of silver belonging to himself and his mother and grandmother. He had earned a sum of about Rs. 56,00,000/ lakhs as profit from business during the year 1987 88. Petitioner No. 1 anticipating rise in silver price and hoping to make further gains, decided to further engage in forward trading of silver on a large scale basis. He, therefore, entrusted the amount so collected by him to petitioner No. 2 Ghanshyam, working with him in the business and asked him, to go to Ahmedabad. Petitioner No. 1 also proceeded for Ahmedabad. Petitioner No. 2 proceeded for Ahmedabad on December 19, 1987 In Truck No. GRU 3396 carying Soap Stone Powder for delivery to some party in Gujarat. When the truck reached Kherwada, it was stopped by the police for routine check. The police not being satisfied by the explanation given by the petitioner No. 2 seized the cur rency notes worth Rs. 72,26,090/ u/s 102 of the Code of Criminal Procedure and arrested him. When petitioner No. 2 was taken before the Magistrate, he stated that the money belonged to petitioner No. 1. On the information of the Police, Income Tax authorities went to Kherwada and recorded the statement of petitioner No. 2. The Cus toms Authority also recorded the statement of petitioner No. 2. Petitioner No. 2 was released on bail by the Magistrate (Judicial) Kherwada on December 21,1987. Respon dent No. 3 issued summons purported u/s 108 of the Act requiring petitioner No. 2 to remain present before him on December 30,1987 at 10.00 a.m. to give evidence on matters concerning the inquiry pertaining to seizure of Indian Currency Notes seized by the police on December 19,1987. The Income Tax Officer, ''B'' Ward, Udaipur passed an order u/s 32(3) of the Income Tax Act, 1961 prohibiting the removal of the amount seized by the police. On the application u/s 438 of the Code of Criminal Procedure, the petitioners and two brothers of the petitioner No. 1 were granted anticipatory bail by the Sessions Judge, Udaipur. On January 1,1988, respondent No. 3 passed an order u/s 110(1) of the Act purported to seize the Indian Currency Notes seized by the police earlier on December 19/20,1987. On January 2,1988, the Assistant Collector of Central Excise and Customs, Udaipur, filed an application u/s 135 of the Act read with Sections 110 and 121 thereof stating therein that the currency notes valued at Rs. 72,26,090/ and seized by the police were found upon inquiry by the applicant to be sale proceeds of smuggled gold and were liable to confication u/s 121 and therefore a seizure order had been passed and the police-officer, Kherwada were directed to hand over the said amount to the Customs Authorities but the police authorities having not done so. the learned Magistrate should direct the police authorities to do so. The Chief Judicial Magistrate (Economic Offences) Rajasthan, Jaipur, directed S.H.O. Kherwada not to hand over the amount seized by him to any person as the enquiry in respect of the said amount was pending under the Cus toms Act as well as under the Gold Control Act. On December 22, 1987, application u/s 451 of the Code of Criminal Procedure was moved by the petitioner No. 2, praying there in that the currency notes seized by the police may be released from police custody and be handed over to him. The ill-treatment of the police and Customs authorities during the course of interrogation was also complained of on January 4, 1988. Respondent No. 3 also moved an application u/s 452 and

457 of the Code of Criminal Procedure in the Court of Judicial Magistrate Kherwada and prayed that the amount may be handed over to him. Both the applications are pending.

3. In the writ petition, the details of the Bank Accounts of the brother, mother and grandmother of petitioner No. 1, the income by sale of silver belonging to the family and the profits in the year 1987-88 along with the Bank Certificates for the withdrawal of the money by the brother, mother and grandmother of petitioner No. 1 have also been given. The assessment for the taxable income for the year 1987-88,1988-89 being Rs. 50,00,000/ and the liability of petitioner No. 1 under the Income Tax Act for the said years being Rs. 26,03,250/ have also been stated. It has also been stated that the Income Tax Authorities and the Customs Authorities had recorded the statement of petitioner No. 2 under duress and coercion and had not supplied the copies of the statements of the petitioners to them. The Orders Annexures 0 and P purported to be pased u/s 110 of the Act have been chal lenged on a number of grounds. It has been stated that the amount was in possession of the police and therefore, could not have been seized by the proper officer u/s 110 of the Act. That, the order was without jurisdiction and there was no material for respondents to have a reasonable belief that the amount was sale proceeds of smuggled goods. That, the ingredients of Section 121 of the Act for confiscation of sale proceeds of smuggled goods not being there, the amount was not liable to confiscation under that Section. That, despite there being proper accounting of the money seized, respondent No. 3 without any investigation or application of mind has passed the impugned Orders simply because the currency notes in question had been seized by the police. That, the impugned Orders are unconstitutional and violative of Articles 14, 19(1)(g) and 300A of the Constitution of India and are liable to be set aside. The petitioners have prayed for quashing of Annexures 0 and P and for an order or direction prohibiting respondents, their servants and agents from proceeding further in pursuance of the impugned orders dated January 1, 1988. It has also been prayed that the respondents No. 2 and 3 be restrained from acting under the provisions of the Act in respect of currency notes retained by the police and lying with the S.H.O., Kherwada.

4. In the written reply filed on behalf of respondent Nos. 1 to 3, it has been stated that the Assistant Collector Customs, Udaipur had reason to believe that the currency worth Rs. 72,26,090/ were the sale proceeds of contraband/ smuggled gold and were li able to confiscation u/s 121 of the Act and as such the amount was rightly seized u/s 110 of the Act. That, the impugned Orders of seizure have been passed strictly in accordance with the provisions of the Customs Act. The issuance of the notice u/s 108 of the Act for recording of the statements of the witnesses has been admitted but the allegation about coercion and duress in recording the statement has been denied. That, it was after due application of mind and material being available that the impugned orders were passed. That, the currency notes were being carried clandestinely in Truck No. GRU 3396 by petitioner No. 2 and the amount was recovered concealed under

soap stone bags. That, the impugned orders were neither unconstitutional nor violative of any article of the Con stitution. The writ petition has been prayed to be dismissed on the ground of alternative remedy being available to the petitioners.

5. In rejoinder, the allegation of the currency notes being taken clandestinely and being found concealed under the soap stone bags has been denied. It has been reiterated that the currency notes in question are well accounted for and the Respondents have failed to disclose any material in their reply to support their case that there was reasonable belief or cogent material to form an opinion that the amount was sale proceeds of smuggled gold.

6. On August 11, 1988 an application has been filed by the learned counsel for the petitioners to the effect that after the purported seizure on January 1,1988 notice u/s 124 of the Act has not been issued. In support of the application affidavit of Dr. Jhaman Mehta, brother of petitioner No. 1 and relative of petitioner No. 2 has been filed. It has been stated therein that notice u/s 124 of the Act*has not been given nor time for the same has been extended and therefore u/s 110(2) of the Act, the Customs Authorities are obliged to return the currency notes to the person from whose possession they were seized and the continued seizure being without jurisdiction and authority of law is violative of Article 300A of the Constitution of India. That, it is incumbent upon the Customs authorities to withdraw the orders of seizure and return the currency notes to the petitioners.

7. In this writ petition we are not concerned with the action taken by the police, nor with the proceedings initiated by the Income Tax authorities. Here we are called upon to examine the legality of the continued seizure of the currency notes by the Customs Authorities. Mr. Soli Sorabjee, learned counsel for the petitioner, has urged in the forefront that the seizure of the currency notes by the Customs Authorities was effected on January 1,1988 but thereafter no show cause notice as required by Section 124 of the Act was is sued by the Customs Authorities. The period of six months envisaged by Section 110(2) of the Act has expired and no extension has been granted by the Collector of Customs in terms of the proviso to this Sub-section. The entire seizure, urged the learned conusel, has been rendered invalid for non-compliance of the provisions of Section 124(a) of the Act.

8. After hearing the learned counsel for the parties we find substance in the con tention urged by Mr. Sorabjee. We asked Mr. J.P. Joshi, learned Additional Advocate General whether any notice as required by Section 124 (a) of the Act was issued by the Customs Authorities after the seizure of the currency notes effected by the Order dated January 1,1988. Mr. Joshi quite fairly and frankly admitted that neither any notice to show cause as required by Section 124(a) of the Act was issued nor the period of six months prescribed by the proviso of Sub-section (2) of Section 110 of the Act was extended by the Collector of Customs.

9. The provisions regarding seizure of goods, documents and things are contained in Section 110 of the Act which read as under :-

Section 100. Seizure of goods, documents and things. (1) If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:

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.

(1-A) The Central Government may, having regard to the perishable or haz ardous nature of any goods, depreciation in the value of the goods with the pas sage of time, constraints of storage space for the goods or any other relevant consideration, by notification in the Official Gazette, specify the goods or class of goods which shall, as soon as may be after its seizure under Sub-section (1), be disposed of by the proper officer in such manner as the Central Government may, from time to time, determine after following the procedure hereinafter specified.

(1 -B) Where any goods, being goods specified under Sub-section (1 A), have been seized by a proper officer under Sub-section (1), he shall prepare an inven tory of such goods containing such details relating to their description, quality, quantity, mark numbers, country of origin and other particulars as the proper of ficer may consider relevant to the identity of the goods in any proceeding under this Act and shall make an application to a Magistrate for the purpose of-

(a) certifying the correctness of the inventory so prepared, or

(b) taking in the presence of the Magistrate, photographs of such goods, and certifying such photographs as true, or

(c) allowing to draw representative samples of such goods, in the presence of the Magistrate, and certifying the correctness of any list of samples so drawn.

(1-C) Where an application is made under Sub-section (1-B), the Magistrate shall, as soon as may be, allow the application.

(2) 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, 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.

(3) The proper officer may seize any documents or things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act.

(4) The person from whose custody any documents are seized under Sub-section (3) shall be entitled to make copies thereof or take extracts therefrom in the presence of an officer of customs.

Section 124 of the Act reads as under :-

Section 124. Issue of show-cause notice before confiscation of goods, etc. 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 in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned, be oral.

10. Admittedly, neither the show cause notice, as required by Section 124(a) of the Act has been issued in the case, nor the period of six months extended as per the proviso to Section 110(2) of the Act. The obvious consequences of the non compliance of the provisions of Section 124(a) of the Act, as contemplated by Section 110(2) of the Act are that the goods seized shall be returned to the person from whose possession they were seized.

11. The currency notes are at present in the costody of the police and not with the Customs Authorities and the proceedings relating to the applications filed Under Sections 451, 452 and 457 of the Code of Criminal Procedure are still pending disposal before the Judicial Magistrate, Kherwada.

12. Consequently, the writ petition is allowed and the Order Annexures 0 and P dated January 1, 1988 passed by respondent No. 3 are declared ineffective and are ac cordingly quashed. No order as to costs.