

(1978) 11 CAL CK 0023
In the Calcutta High Court
Case No : Matter No. 979 of 1976

Shia Kumar Dalmia and Others

APPELLANT

Vs

Assistant Collector of Customs for Preventive (1) etc. and
Others

RESPONDENT

Date of Decision : 08-11-1978

Acts Referred:

Constitution of India, 1950 — Article 19(1), 31(1)
Customs Act, 1962 — Section 105
Gold (Control) Act, 1968 — Section 58, 58(2)

Citation : (1983) 12 ELT 774

Hon'ble Judges : Salil Kr. Roy Chowdhury, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Salil Kr. Roy Chowdhury, J.—This is a writ petition for quashing or setting aside an order of seizure and also for quashing or setting aside the authorisation u/s 58(2) of the Gold Control Act, 1968 and appropriate writ and directions in respect thereto.

2. The facts of this case are identical save and except that it relates to the subsequent stage of actual seizure of goods from the possession and custody of the petitioners from their premises at No. 1, Balaram Dey St. Calcutta from their respective rooms. The previous writ petition which I have just now disposed of by a judgment and order relates to the authorisation for search and seizure of the premises of the petitioners. The present writ petition relates to the seizure of the goods also under the Gold Control Act, 1968. This application in addition to challenging the search and seizure the petitioners have challenged the authorisation issued u/s 58 of the Gold Control Act, 1968, which could not be challenged in the previous writ petition as the petitioners were not aware of the same. As all the facts and law are practically covered by the previous judgment and order I am not dealing with the same once again in this matter. The matter was argued by Mr. A.K. Dhandhanias, on behalf of the petitioners, and it was

agreed by both the parties that the facts are identical as it relates to the same authorisation. Search and seizure in addition that there was also authorisation under the Gold Control Act, 1968 which is sought to be agitated in this application. The present writ petition was filed on the 9th November, 1976 and Rule was issued. Subsequently, it appears that by an order dated the 19th May, 1977 the petitioners amended the petition by adding a further ground being ground No. 13 in paragraph 64 to the petition that the said authorisation for search and seizure violated the fundamental rights of the petitioners guaranteed under Articles 19(1) and 31(1) of the Constitution of India, as it deprived the petitioners of their rights to property illegally and authority of law. Mr. Dhandhanja tried to impress upon the Court by drawing my attention to various allegations made by the petitioners relating to the actual search and seizure at the premises of the petitioners and submitted that the Respondents have acted illegally and high handed manner and seized the articles without any authority of law. It appears to me that the petitioners after making the first writ petition which I have just now disposed of and obtained a Rule Nisi by this Court tried very best through its Advocate and Solicitor to prevent the search and seizure although in fact no injunction was issued restraining the Respondents from searching or seizing the articles under the Customs Act and Gold Control Act.

3. I have carefully considered the letter of D.N. Bhattacharyay, the then Solicitor, acting on behalf the petitioners dated 10th September, and 11th of September, 1976 and also the letter dated the 8th September, 1976, by the petitioners to the respondent No. 2 S.P. Choudhury. It appears that the petitioners were under the impression that by moving a writ petition challenging the authorisation for search and seizure by the previous applications they could prevent the search and seizure of the article according to law without obtaining any interim injunction restraining the respondents from acting under the law and discharged their duties. But it appears that the said attempt of the petitioners utterly failed and goods were seized by the respondents according to law giving the petitioner and their representatives every opportunity as is required at this stage.

4. It is quite clear on the context of the petitioners who seems to have full knowledge about the search of their premises and it also appears that they concealed their arrival in Calcutta from Rajasthan as in the petition they stated to have arrived on the 1st of September, 1976 whereas in the statement made before the authorities it was stated that they arrived at the end of the first week of September, 1976. It is also quite clear that the first writ petition was moved on the 3rd September, 1976 and as such, the petitioners must have been in Calcutta prior to 3rd September, 1976. They made the first attempt to prevent the search and seizure if possible by moving the first writ application and obtaining rule. But as no injunction was issued against the respondents, they were justified in proceeding with the matter and executing the search and seizure under the Customs Act and the Gold Control Act.

5. Thereafter, it appears that between 25th August, 1976, till the search and

seizure was completed by the respondents according to law, the petitioners at every stage tried to obstruct and prevent the respondents from carrying out their duties and obligations under the Customs Act and the Gold Control Act. It also transpires by subsequent event that the Respondents were justified in executing the said authorisation for search and seizure u/s 105 of the Customs Act, 1962, and Section 58 of the Gold Control Act as various goods have been seized in respect of which investigation should proceed according to law. The petitioners also threatened the respondents with criminal contempt after making the first writ petition and obtaining the rule therein only to delay or prevent the execution of the search and seizure if possible. The petitioners seem to have made reckless allegations in the petition against the respondents which have been specifically denied and in my considered view there is no substance in such allegations of the petitioners which have been made solely to prejudice the minds of the Court if possible. I am satisfied that the respondents have acted strictly according to law and there is no substance or merit in the contentions of the petitioners, various decisions have been cited by Mr. A.K. Dhandhanania, appearing for the petitioners which I have dealt with the previous writ petition as to the legality of the acts of the respondents under the Customs Act and the Gold Control Act but the whole question will depend on the facts of each particular case. Here as I have already observed that the relevant file of the respondents was produced before me and I am satisfied that there were sufficient relevant materials for the issue of the said authorisation under the Customs Act and the Gold Control Act. The materials were enough for a reasonable man to act as the respondents have acted in the circumstances of this case. In fact, the seizure list shows that the authorisation was justified and the respondents have acted according to law which the petitioners repeatedly tried to prevent by taking proceedings before this Court being the two successive writ petitions at different stages. The said writ petition appears to be an abuse of the process of this Court and there is no material on which the acts . of the Respondents could be challenged under the law. The petitioners would have ample opportunity to prove before the appropriate authorities under the Customs Act and the Gold Control Act that their possession of the seized goods and the documents are not in contravention of the provisions of the Customs Act and the Gold Control Act. Further the Court has no jurisdiction to sit on appeal on the acts and decisions of the respondents when there were materials before the respondents for issue of the said authorisation under the Customs Act and the Gold Control Act as the adequacy and sufficiency of the materials cannot be enquired into by the Court. Further the investigation as to the nature of the goods seized and the right of possession of the petitioners are entirely within the jurisdiction of the statutory authorities under the Customs Act and the Gold Control Act. Therefore, the Writ petition must be dismissed and the rule to be discharged and all the interim orders to be vacated.