(1999) 02 KAR CK 0029

In the Karnataka High Court

Case No : Criminal Revision Petition No. 69 of 1998

S.R. Kiran APPELLANT

Vs

Central Bureau of Investigation, Bangalore Branch RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Antiquities and Art Treasures Act, 1972 — Section 14 (3), 25 (2), 26 (2)
Criminal Procedure Code, 1973 (CrPC) — Section 200, 313, 397, 401

Citation : (1999) 1 ALD(Cri) 865 : (1999) CriLJ 3079 : (2000) 2 KarLJ 163 : (1999) 4 RCR(Criminal) 174

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri Ravi B. Naik, for the Appellant; Sri K. Taranath Shetty, Central Government Standing Counsel, for the Respondent

Judgement

1. P.W. 6-Raghotham, the Deputy Superintendent of Police, CBI on being authorised by the Secretary to the Government of India, Ministry of Human Resources and Culture Department authorising him to file the complaint, lodged the complaint against this petitioner u/s 26(2) of the Antiquities and Art Treasures Act, 1972 (for short ''the Act'') read with Section 200 of the Cr. P.C. for the offence punishable u/s 14(3) read with Section 25(2) of the Act, on the allegation that when the CBI Officer searched the house bearing No. 3000 situated in Prince Street, Yadavagiri, Mysore on 13-12-1985 and 14-12-1985 the petitioner was found in possession of bronze vigraha of Lord Chandrashekara, vigraha of Goddess Parvathi, idol of Warrior on horse, a wooden horoscope chart, paintings of Sri Ramapattabhisheka, paintings of Lord Balakrishna, 698 circular ganjeefa cards and 428 ganjeefa square cards which were declared as antiquities under the Act and the petitioner failed to get them registered as required u/s 14(3) of the Act and therefore charge-sheet was filed against him on the file of the I Additional CJM, Mysore, for an offence punishable u/s 14(3) read with Section 25(2) of the Act. The petitioner has denied the charges and claimed to be tried. To establish its case, the prosecution examined P.Ws. 1 to 9 and got

marked Exs. P. 1 to P. 8 and M.Os. 1 to 10. The learned CJM after assessing the evidence has come to the conclusion that the petitioner has committed the offence punishable u/s 25(2) of the Act and imposed a sentence of fine of Rs. 2,000/-, in default to undergo S.I. for 1 month. M.Os. 1 to 10 were ordered to be confiscated. Being aggrieved by that order, the appeal preferred by the petitioner in Cri. A. No. 31 of 1997 came to be dismissed by the learned III Additional Sessions Judge, Mysore, by his judgment dated 31-10-1997. The petitioner has questioned the legality and correctness of the order and judgment passed by both the Courts in this revision petition filed under Sections 397 and 401 of the Cr. P.C.

2. Heard the learned Counsel for the petitioner and the learned Government Advocate for the respondent.

3. The fact that P.W. 1-Srikumara was a Superintendent of Police, CBI, searched the house of the petitioner bearing No. 3000, Prince Street, Yadavagiri, on 13-12-1985 and also 14-12-1985 and seized several articles said to be antiquities under Exs. P. 1 and P. 2 is not disputed seriously. The seizure of the articles mentioned at Exs. P. 1 and P. 2 is spoken to by P.W. 2-Ramakrishna and P.W. 3-Jayarama Rao and P.W. 4-Jagadish. On the other hand, the petitioner has admitted that M.Os. 1 to 10 were seized from his house under Ex. P. 1 when he was examined by the Court u/s 313 of the Cr. P.C. The evidence of P.W. 5-Shivashankar the registering authority discloses that he was working as such in the Archaeological Department, Palace Office, Mysore, during the relevant period and he has also stated that M.Os. 1 to 10 have not been registered at the said office as required u/s 14 of the Act.

4. The learned Counsel for the petitioner seriously disputed the fact that these are antiquities as defined under the Act. Section 2 of the Act reads as follows:

"Definitions.--(1) In this Act, unless the context otherwise requires,

(a) Antiquity includes.--

(I) (i) any coin, sculpture, painting, epigraph or other work of art or craftsmanship;

(ii) any article, object or thing detached from a building or cave;

(iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages;

(iv) any article, object or thing of historical interest;

(v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act,

which has been in existence for not less than one hundred years; and

(II) any manuscript, record or other document which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than seventy-five years;

(b) "Art treasure" means any human work of art, not being an antiquity, declared by the Central Government by notification in the Official Gazette, to be an art treasure for the purposes of this Act having regard to its artistic or aesthetic value";

Therefore, it is argued that there is nothing to indicate that these articles M.Os. 1 to 10 are antiquities. To substantiate that, the prosecution has examined P.W. 7-Nagaraja Rao who was working as Director-General in Archaeological Survey of India, New Delhi, during the year 1984 to 1987. It has come in evidence that he is a M.A. graduate and also obtained Ph.D. in Archaeology and that he has written many books pertaining to Archaeology. Therefore, it is clear that he is an expert in that field. Hence, the CBI had requested him to examine the articles seized by them and to furnish his opinion. It is also disclosed from the evidence of the prosecution that P.W. 8-L.K. Srinivasan was working as Director of Archaeological Survey of India and he had issued a certificate as per Ex. P. 6. At the request of P.W. 8-Srinivasan, P.W. 7 came to Mysore and a committee was constituted consisting of Dr. K.V. Ramesh, Dr. Sundar, Dr. Jayaram Sundaran and P.W. 7-Nagaraja Rao who examined in all 250 articles and they separated 17 articles and out of those 17 Articles 6 articles were antiquities. Therefore, he prepared a list of articles examined by his team and in that list Article Nos. 1 to 3, 15 to 17 are articles of antiquities and M.Os. 6, 7 and 8, 1 to 5, 9 and 10 are some of the items which were examined by the said team and that the team had authorised P.W. 8 to issue the certificate. On the basis of that opinion, Srinivas issued Ex. P. 6. Therefore, it is clear that a team of experts in the Archaeological Department have examined all these articles to arrive at a definite conclusion that among the 250 articles these are antiquities. Under those circumstances, the argument of the learned Counsel that the prosecution has failed to prove that these articles are antiquities cannot be accepted.

5. Besides that, Section 24 of the Act empowers to determine whether or not an article etc. is an antiquity or art treasure, which reads:

"If any question arises whether any article, object or thing or manuscript, record or other document is or is not an antiquity or is or is not an art treasure for the purposes of this Act, it shall be referred to the Director-General, Archaeological Survey of India, or to an officer not below the rank of a Director in the Archaeological Survey of India authorised by the Director-General, Archaeological Survey of India and the decision of the Director-General, Archaeological Survey of India or such officer, as the case may be, on such question shall be final".

In this case as stated above, P.W. 7 who is the Director-General of Archaeological Survey of India and also the team of experts have examined these articles and come to the conclusion that these articles are antiquities, and the opinion furnished by him in this case is final.

6. However, the learned Counsel for the petitioner has drawn my attention to the

cross-examination of P.W. 7 wherein he has stated that to find out as to whether these are more than 100 years old, certain experiments have to be done and such experiments are not done in this case. But he has categorically stated that the seventeen items referred to by him were not required to conduct any chemical test to find out as to whether they were 100 years old. That means to say he was definite in his opinion. Therefore, these are not antiquities as claimed by P.Ws. 7 and 8. This argument is liable to be rejected in view of the fact that there is a presumption available u/s 24 of the Act as indicated above. If the petitioner was certain that these articles were not 100 years old, he ought to have made an application for examining it by some other competent person to determine the age of those articles by conducting any experiment to rebut the evidence and also the presumption. No such step was taken. On the other hand, the petitioner has stated in his statement u/s 313 of Cr. P.C., that these articles were received from his father and he has also not made any attempt to show as to when these articles were manufactured and when he came in possession of the same. Therefore, I have no hesitation to hold that both the Courts have rightly come to the conclusion that these are antiquities being more than 100 years old.

7. The learned Counsel for the petitioner at this stage submitted that the State Government has not issued any notification declaring that these articles are antiquities. Section 14(3) of the Act reads as follows:

"Every person who owns, controls or is in possession of any antiquity specified in the notification issued under sub-section (1) shall register such antiquity before the registering officer".

The contention of the learned Counsel for that petitioner is that these articles were not included in the notification issued under sub-section (1). Therefore, there is no need for the petitioner to register the same in his name. The Government has declared that all articles which are more than 100 years old are antiquities as specified under the Act. It is in-document on the person to register the same as per the notification. The Government will not know as to who is in possession of these articles. Therefore, the Government wanted the person who owns, controls or is in possession of any antiquity specified in the notification to get it registered. "Specified in the notification" means only the articles as defined in the Act and if the articles come within the definition of the Act, the person is liable to file the application for registration and grant of certificate of registration as contemplated u/s 16 by filing necessary application, thereby the Government would come to know as to who is in possession of certain articles which are antiquities. The petitioner has not filed any application notwithstanding the fact that these articles were under his control and are antiquities. Therefore, he has committed the offence.

8. He has further stated in his 313 statement that he came to know from his mother that these articles were got manufactured by his father who died in 1973 at the age of 59 years. Therefore, he claimed that these articles are below 100

years old and not antiquities. Except making this statement he did not try to find out as to when and who had manufactured at the request of his father. Therefore, his statement cannot be given much weight when there is cogent and convincing evidence of P.W. 7 and is coupled with the evidence of P.W. 8 and the certificate. Therefore, it is clear that there is no rebuttal evidence available in this case to hold that the finding of the experts cannot be accepted. For the foregoing reasons, I hold that there is no illegality, irregularity or improper exercise of jurisdiction of the Courts calling for interference by this Court under the revisional powers.

9. From the order, it is also clear that the M.Os. 1 to 10 were ordered to be confiscated. However, from the perusal of the statement of the petitioner it is clear that he was not aware of the fact that these articles were 00 years old and therefore he had not obtained the registration certificate. He also admits that he came in possession of the same from his father. He had not misused the articles for any purpose. The only offence he committed was in not making application for registration as required under the Act. Under the circumstances, I am of the considered view that the petitioner may be given an opportunity to make necessary application to the competent authority for registration under this Act. If such application is made, the authorities concerned are directed to consider favourably the request of the petitioner for return of the antiquities if the petitioner satisfies all the requirements of law.

With this observation, the petition is dismissed.

