
(2016) 09 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 31160 of 2016

Syed Jaffer Ali Han Abedi

APPELLANT

Vs

Principal Commissioner of Customs

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Customs Act, 1962 — Section 107

Citation : (2017) 1 ALTCrI 409

Hon'ble Judges : Sri. V. Ramasubramanian and Smt. Anis, JJ.

Bench : Division Bench

Advocate : Mr. Mir Masood Khan, Advocate, for the Petitioner; Mr. M.V. J.K. Kumar SC for CEC-SER Tax, for the Respondents

Final Decision : Disposed Off

Judgement

Sri. V. Ramasubramanian, J.—On 25.10.2013, the Officers of Customs (Air Intelligence Unit) at the Rajiv Gandhi International Airport, Hyderabad intercepted the petitioner at the exit gate, after he passed through the green channel with one hand baggage. On the ground that in the disembarkation slip, he left column No.6 as blank, without declaring the total value of the goods imported by him, the petitioner was allegedly questioned in the presence of independent witnesses. Thereafter, his statement is said to have been recorded from him on the same day, namely, 25.10.2013.

2. On the basis of the said statement, two independent proceedings were initiated, one for adjudication and another prosecuting before the Criminal Court. A show-cause notice dated 28.01.2014 was issued, which culminated in an order in original dated 31.07.2014. By the said order in original, the gold bar weighing about 1 Kg. and 1778 Carats of yellow sapphire stones, seized from the petitioner, were directed to be confiscated in terms of Section 111(1) of the Customs Act, 1962 (for short "the Act"). For the purpose of easy appreciation, the operative portion of the order in original dated 31.07.2014 is extracted as

follows:

"(i) The Gold Bar weighing at 1 Kg. valued at Rs.31,30,000/- and 1778 Carats of Yellow sapphire Stones valued at Rs.4,48,060/- totally valued at Rs.35,78,600/- (Rupees thirty five lakhs seventy eight thousand and six hundred only) seized on 25.10.2013, are hereby confiscated in terms of 111(1) of the Customs Act, 1962; the pant, underwear, brown adhesive tape and transparent polythene big pouch which are used to conceal the gold and yellow sapphire stones seized on 25.10.2013 are hereby confiscated in terms of Section 119 of the Customs Act, 1962. However, I give the option to the passenger to redeem these goods, within thirty days of receipt of this order, on payment of a fine of Rs.8,00,000/- (Rupees Eight lakhs only) under the provisions of Section 125(1) of the Customs Act, 1962. The appropriate duty shall also be paid in terms of sub-section (2) of Section 125 of the Customs Act, 1962.

(ii) I impose a Penalty of Rs.3,00,000/- (Rupees Three lakhs only) under Section 112(a) of the Customs Act, 1962.

(iii) I impose a Penalty of Rs.15,00,000/- (Rupees Fifteen lakhs only) under Section 114AA of the Customs Act, 1962."

3. We do not know whether the said order has been taken on appeal by the petitioner or not. Apart from the proceedings for adjudication, the Assistant Commissioner also launched prosecution by filing a complaint on the file of the Special Judge for Economic Offences, Hyderabad in C.C.No.44 of 2016, praying for imposition of suitable punishment upon the petitioner in accordance with the provisions of Sections 132, 135(1)(a) & (b) of the Act. It appears that the petitioner appeared before the Special Judge, he was released on bail and he is contesting the criminal case. It also appears that a petition for quashing the said complaint has been filed on the file of this Court under Section 482 of the Code of Criminal Procedure, 1973 and it is yet to be numbered.

4. In the meantime, the petitioner has come up with the present writ petition seeking the issuance of Writ of Mandamus, to declare the action of the respondents in extracting a statement from him on 25.10.2013 under force, coercion, threat and influence and to refrain the respondent from making use of the said statement in any proceeding.

5. We have heard Mr. Mir Masood Khan, learned counsel for the petitioner. Mr. M.V.J.K.Kumar, learned Standing Counsel takes notice for the respondents.

6. At the outset, we should point out that what is sought by way of writ of mandamus is to refrain the respondents from acting on the basis of a statement allegedly recorded from the petitioner on 25.10.2013 by officers conferred with the power under the Act. It is fundamental that a writ of mandamus will lie only to enforce the performance of a statutory or a public duty and not to refrain an officer from performing his statutory duties on the ground that it was not performed in the manner prescribed by law. Therefore, we are doubtful about the

very maintainability of the writ petition.

7. On the question of maintainability, very strong reliance is placed by the learned counsel for the petitioner, on a judgment of the Division Bench of this Court in *N.S.R. Krishna Prasad and etc. v. Directorate of Enforcement Loknayak Bhawan Khan Market, New Delhi and others*, 1992 Cri.L.J. 1888.

8. We have carefully perused the said judgment of the Division Bench of this Court. In that case, a statement allegedly recorded from the petitioner therein was assailed on the ground that before extracting such a statement, a warning that was mandatorily to be issued was not issued. After perusing the records and the counteraffidavit filed by the respondents, the Court concluded that no such warning was given to the petitioner. Therefore, the Court held in *N.S.R. Krishna Prasad's* case that the writ was maintainable.

9. In the facts and circumstances of the present case, the said decision has no application for two reasons. The first is that on the basis of the said statement, a show-cause notice was issued and the show-cause notice resulted in an order of adjudication passed on 31.07.2014, under Section 122 of the Act. Apart from the same, the prosecution has been launched in C.C.No.44 of 2016 on the file of the Special Judge for Economic Offences and a few witnesses cited on the side of the prosecution have also been examined, before framing the charges. In the affidavit in support of the writ petition, it is not whispered anywhere as to when, how and whether the petitioner retracted from the statement recorded on 25.10.2013 or not. Therefore, the petitioner cannot take umbrage under the decision in *N.S.R. Krishna Prasad's* case.

10. The learned counsel for the petitioner raises three issues, for seeking the reliefs stated supra. The first is that the statement dated 25.10.2013 was recorded while he was in custody. Therefore, it is not admissible in evidence. But the said point is something that the petitioner should take only before the criminal court which is dealing with C.C.No.44 of 2016.

11. The second point raised by the petitioner is that the power of the officer of customs to examine any person under Section 107 of the Act, is available only during the course of any enquiry in connection with the smuggling of any goods. In this case, the enquiry commenced only with the issue of a show-cause notice dated 28.01.2014. Since the statement was recorded on 25.10.2013, it is contended that the statement was beyond the jurisdiction conferred under Section 107 of the Act.

12. But unfortunately for the petitioner, an officer of customs, is conferred with several powers such as searches, seizure and arrest under Chapter XIII of the Act. A detailed procedure is prescribed therein. It is not as though, that the power to take a statement, is available only under Section 107 of the Act. As a matter of fact, the power available under Section 107 of the Act not necessarily is confined only to the persons who are accused of committing any crime under the Act. It extends even to persons who have knowledge in connection with the

commission of the offence. Section 107(b) entitles an officer of customs to examine any person acquainted with the facts and circumstances of the case. Therefore, Section 107 of the Act cannot be construed as a provision curtailing the power of the officer to take a statement, before initiation of the adjudication proceedings. In fact, the issuance of a show-cause notice dated 28.01.2014, is for the purpose of adjudication. But the statement recorded is used even for the purpose of launching the criminal complaint. If the interpretation sought to be given to Section 107 of the Act by the learned counsel is accepted, no criminal prosecution can be launched on the basis of the said statement unless an enquiry is initiated even for adjudication.

13. In support of the contention that no statement can be recorded without initiation of any enquiry, in view of the provisions of Section 107 of the Act, the learned counsel for the petitioner relied upon the decision of a Division Bench of Gujarat High Court in *Union of India v. Abdulkadar Abdulgani Hasmani*, 1991(55) ELT 497 (Guj.). Our particular attention is drawn to paragraph 22 of the said decision. We have carefully gone through the said decision. The said decision arose out of a batch of criminal appeals. The contention that such a statement was not admissible in evidence was taken before the criminal court and the decision of the criminal court in favour of the accused was taken on appeal to the High Court. Therefore, the High Court was right in considering whether the trial Court was right or wrong in dealing with such a statement. The Division Bench of the Gujarat High Court was not dealing with a writ petition as in the present case. Therefore, we do not accept the second contention of the learned counsel for the petitioner.

14. The third and last contention of the learned counsel for the petitioner is that the statement was typed and recorded in the desktop of the officer at the airport and that the petitioner who was a poor driver did not even know what was typed before he was made to sign it. But as we have pointed out elsewhere, this is a matter of evidence and the petitioner should only take it up before the concerned criminal court. Hence, we find no merits in the writ petition.

15. Accordingly, the Writ Petition is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.