(1962) 09 P&H CK 0005

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 225-D of 1957

T.P. Ansari APPELLANT

Vs

The Union of India and another RESPONDENT

Date of Decision : 06-09-1962

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1898 (CrPC) — Section 177
Foreign Exchange Regulation Act, 1973 — Section 8(2)
Official Secrets Act, 1923 — Section 13(4)

Citation : (1962) 09 P&H CK 0005

Hon'ble Judges : P.C. Pandit, J;Bedi, J

Bench : Division Bench

Advocate : H.L. Anand, for the Appellant; Jindra Lal With F.C. and Ram Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Bedi, J.—The facts giving rise to this petition under Article 226 of the Constitution briefly are as under:

2. On the 13th April 1957 at 9.10 a.m., Medeleine Paulette Soirat and Mr. Russell Francis Webb who were bound for Paris and Geneva respectively via Karachi by Indian Airlines Corporation Aircraft VT-CEB from Safdarjung Airport, New Delhi, were requested by the Customs-Officer at the airport to declare in the Baggage Declaration Forms, supplied to them for that purpose, all the articles specified therein and others, which they intended to export as their bona fide baggage. They were in particular asked whether they had in their possession any goods which were subject to Export Trade Control and Foreign Exchange Restrictions and were dutiable. The above-mentioned passengers filled in their forms and returned the same to the above officer after duly signing them. Madeleine Paulette Soirat declared only Rs. 100/- in Indian currency, 200 American Dollars and 100 Swiss Francs, while Russel Francis Webb declared Rs. 100/- in Indian

currency, 200 American Dollars and 3,000 French Francs. On examination of their baggages, however, a large quantity of items which were not declared by them and which should have been declared were discovered and consequently a search of their persons was also carried out.

3. On search of the person of Madeleine Soirat Rs. 69,100/- in Indian currency, U.S. Dollars 6,070, Canadian Dollars 50, U. S. Dollars 500 in Travellers'' cheque in the name of persons other than the passenger, and a bank draft issued by the Bank of America, San Francisco. California in the name of Kalan Khushal (duly discharged) were found concealed in a striped cloth belt with multiple cells worn by her around her waist under her garments, in addition to Rs. 3,422/- in Indian currency round in a purse laying in a small basket carried in her hand. These items had also not been declared in her Baggage Declaration form and were not covered by any permit required u/s 8(2) of the Foreign Exchange Regulations Act. On search of the person of Mr. Webb Rs. 1,33,503/- in Indian currency, U.S. Dollars 1,510 and Canadian Dollars 2, were also found concealed in a tapestry cloth belt with multiple cells pressed by another white elastic belt worn by him around(sic) his waist under his clothes. These items bad also net been declared in his Baggage Declaration form and were not covered by any permit required u/s 8(2) of the Foreign-Exchange Regulations Act.

4. On interrogation Madeleine Soirat stated that the currency mentioned above was part of the sale proceeds of gold which she and her co-traveller Mr. Webb had brought into India from (sic) on 1st April 1957. She also stated that the currency, had been given to her by one Asrani(sic) of Swiss India Trading Co. Bombay the present Petitioner) for being delivered in Switzerland to one Henrila Presur(sic) as the Petitioner worked as an agent for the latter for the disposal of gold brought from places outside India into India. Similarly, on interrogation. Mr. Webb stated that the currency mentioned above, recovered from his possession, was part of the sale proceeds of gold which he and his co-traveller Madeleine Paulette Soirat had brought into India from a place outside India on 1st April 1957. He further stated that Madeleine Soirat had delivered the aforesaid gold to the Petitioner and subsequently she obtained the aforesaid currency from him inside the Aforesaid belt. He also stated that the belt had been used for smuggling gold delivered to the Petitioner, at the time of his arrival in India on 4th April 1957. The currencies and coins me (sic) above which were not declared by these passengers in their Baggage Declaration forms were liable to confiscation u/s 167(37) (d) of the Sea Customs Act. Those articles were accordingly seized u/s 178 of the sea Customs Act. The currencies recovered in pursuance of the personal search of these two passengers were in excess of Rs. 270/- which were admitted to be exported out of India in contravention of the prohibition imposed u/s 8(2) of the Foreign Exchange Regulations Act without the requisite permit, and were, therefore, liable to confiscation u/s 167(8) of the Sea Customs Act read with Sections 23-A and 23-B of the Foreign Exchange Regulations Act, and Notification No. F. E. R. A.-105/51-R.B., dated the 27th February, 1951 as amended.

5. As the statements made by Madeleine P. Soirat and Mr. Webb disclosed that the Petitioner, T.P. Asrani, acted in pursuance of a conspiracy to smuggle gold into India from places outside India, and currency and foreign exchange from India to places outside India, and was therefore a person concerned within the meaning of Section 167(8) of the Sea Customs Act in the attempt to export out of India the above-mentioned currencies. He was thus liable to personal penalty under the aforesaid section The Petitioner was, therefore, served with the impugned notice by the Collector of Central Excise, Delhi (Respondent No. 2) to show cause before him in New Delhi within ten days why personal penalty should not be imposed upon him u/s 167(8) of the Sea Customs Act, vide notice dated 30th April 1957 (copy Annexure ''A'' to the petition). The Petitioner was also informed that all evidence, documentary or otherwise, in his possession should be produced in support of his explanation within the period specified in the notice otherwise the case against him will be decided ex parte. He was also asked through this notice whether he desired to be heard in person or through his legal representative in his defence by the said authority. The Petitioner however, did not comply with the notice issued by Respondent No. 2, but filed the present writ petition in this Court which was admitted by Passey and Gurnam Singh JJ. on 10th May 1957. This writ petition came up for hearing before Mehar Singh J. on the 11th March 1958. The, Petitioner raised the following three points before the learned Single Judge:-

(a) that he is not a person concerned within the meaning of Section 167(8) of the Sea Customs Act in an attempt to export out of India the currencies to which the order refers.

(b) that Respondent No. 2 had no jurisdiction to issue the impugned order as he is not an authority constituted under the Sea Customs Act to take any proceedings under that Act, and

(c) that, assuming that Respondent No. 2 has the power to pass an order as the impugned order under the Sea Customs Act, the order is still null and void as having been issued against and served upon the Petitioner who is a resident outside the territorial jurisdiction of Respondent No. 2

The learned Single Judge after briefly discussing the above mentioned points felt that the same were of considerable importance as the decision upon them one way or the other was likely to have serious repercussions in regard to the customs matter in so far as airports are concerned and so he referred the case to a larger Bench. Accordingly, this writ petition has been placed before us for disposal.

6. The writ petition was argued by the counsel for the parties at considerable length. The Petitioner''s counsel at the very Outset stated that the points at (a) and (b) were fully answered, the first by the Full Bench judgment of this Court report as Union of of India and Ors. v.Jagdish Singh ILR (1962) P&H 369, and the second by the Supreme Court judgment reported as The Chief Inspector of Mines

and Another Vs. Lala Karam Chand Thapar etc., . We have therefore, only to give our judgment on point (c), viz, that assuming that Respondent No. 2 has the power to pass an order as the impugned order under the Sea Customs Act, the order is still null and void as having been issued against and served upon the Petitioner, who is a resident outside the territorial Jurisdiction of Respondent No. 2". The learned Counsel for the Petitioner led us through the various sections of the Sea Customs Act and the rules made thereunder and submitted that undoubtedly by virtue of notification No. 10-A.36-47, dated the 28th February 1947, Safdarjang aerodrome at Delhi, was declared to be a customs aerodrome and further the Collector of Central Excise, Delhi, and the Superintendent of Central Excise, Delhi, respectively were notified to be the Chief Customs Officer and the Customs Collector at the said aerodrome, but their jurisdiction was ,circumscribed by the wording of this notification and it extended only to Safdarjang aerodrome, and did not extend to Bombay. To elucidate his point he submitted that if the statements of the two foreigners are to be believed, then the money alleged to have been given by the Petitioner to them was probably handed at Bombay, and the handing over of the money to them at Bombay Was no offence. If, however, he is deemed to be the person concerned in view not the judgment quoted above, still Respondent No. 2 could not issue to him the impugned order as he lived and carried on business at Bombay which was beyond the territorial jurisdiction of the former. The leaned counsel for the Petitioner, however, frankly conceded that the proposition put forward by him was not borne out by any section of the Act, but could only be implied. His contention was that if such a jurisdiction extended beyond the aerodrome of Safdarjung, it would have been made very clear in the Act or by notification. As mentioned above, he admitted that there was no specific section in his favour or against in the Act in question on the point at issue, but he quoted Section 20 of the CPC which gives the forum for Ringing civil suits against the Defendants and according to this section, suits are to be instituted where the Defendants voluntarily reside or carry on business or personally work for gain. By this analogy the Petitioner''s counsel submitted that the proceedings against the Petitioner should have been initiated at Bombay where he resides and works for gain. He also drew our attention to Section 177 of the Code of Criminal Procedure which lays down that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed, and submitted that as no offence of attempt had been committed by the Petitioner at Delhi, Respondent No. 2 had he jurisdiction to issue the impugned show-cause notice. Similarly he drew our attention to Section 13(4) of the Indian Official Secrets Act, 1923, which lays down that for the pus poses of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which the same actually was committed or at any place in India in which the offender may be found He also made a reference to Section 64 of the Indian income tax Act, 1922 by virtue of which an Assessee is to be assessed where he carries on business, profession or vocation, and if the business, profession or vocation is carried on in more places than one, by the income tax Officer of the area in which the principal place of his business, profession or vocation is situate. In all other cases, an Assessee shall be assessed by the income tax Officer of the area in which he resides. In the absence therefore of any specific provision in the Act, the principle above mentioned should have been followed.

7. The learned Counsel for the Respondents, however, on the other hand contended that there was no material on the basis of which it could be said that the money was paid by the Petitioner to the two foreigners at Bombay. In any case, he submitted that the Petitioner is found to be concerned through his agents in an attempt to export and send out Indian and foreign currency from Safdarjung airport and, therefore, Respondent No. 2 was competent to issue the impugned show-cause notice. To elucide his point he submitted that for the sake of arguments if it was found that there were ten different persons residing say in Calcutta, Bombay, Madras and so on, who could be found to be concerned persons in making an attempt to export Indian currency, as in this case, through another individual from Delhi airport, would it mean that such proceedings against those ten persons should be started at ten different places. He contended that surely it was not the intention of the legislature, and asserted that the offence in this case, which was an attempt to export money from India to some other foreign country, was made at Safdarjung aerodrome. In other words, the offence of attempt was committed at Safdarjung aerodrome which was clearly within the jurisdiction of Respondent No. 2, and in view of the Full Bench Judgment of our Court cited above the Petitioner would be the person concerned. Under the circumstances even if the Petitioner paid the money to the two foreigners at Bombay, Respondent No. 2 would be competent to issue the show cause notice in question to the Petitioner at Bombay. We agree with the above contention. In any case the Respondents'' counsel argued that there was no proof that the money in question was paid by the Petitioner to them at Bombay, may be it Was paid at Delhi, and if the Petitioner wanted to challenge the jurisdiction of Respondent No. 2 it was for him to appear before the latter and prove that he had no jurisdiction. He then quoted The State of Orissa Vs. Madan Gopal Rungta, , where it has been held that the issuing of writs or directions by the High Court under Article 226 of the Constitution is founded only on its decision that aright of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article. He also quoted Satyanarayan Laxminarayan Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, , where it is laid down that an error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated

arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. He submitted that the case has been argued at great length and the point involved was long drawn. He further cited another Supreme Court decision reported as Veerappa Pillai Vs. Raman and Raman Ltd. and Others, which lays down that such writs as are referred to in Article 226 are obviously intended to enable the High Court to issue them in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, ommission, error, or excess has resulted in manifest injustice. However extensive the jurisdiction may be, it is not so wide or large as to enable the High Court to convert itself into a Court of appeal and examine for itself the correctness of the decisions impugned and decide what is the proper view to be taken or the order to be made. This contention of the Respondents'' counsel is well-founded. In this case the proper course for the Petitioner was to appear before Respondent No. 2 in response to the impugned show cause notice, lead evidence to prove that he had no concern in exporting the above-mentioned currency out of India, or take any other objection, and if even then Respondent No. 2 ordered the imposition of any penalty on him, he could go in appeal against that as provided u/s 188 of the Sea Customs Act. The Petitioner''s counsel, however, submitted that by virtue of Section 189 of the Act he could only file an appeal after depositing the penalty imposed. He quoted Himmatlal Harilal Mehta Vs. The State of Madhya Pradesh and Others, and added that in view of this authority the remedy available to him under the Sea Customs Act was not efficacious. This is, however, prejudging the whole thing. May be if he had appeared before Respondent No. 2 and pleaded his innocence, the latter would not have imposed any penalty on him, but he chose to adopt the convenient method of coming to this Court by means of the present writ petition. This is an extraordinary remedy which is to be used very sparingly and in grave cases only, but the present one is not of that type.

8. For the reasons given above, we see no force in this petition and dismiss the same with costs.

P.C. Pandit, J.

9. I agree.

