

(2002) 04 AHC CK 0183

In the Allahabad High Court

Case No : Criminal Misc. Application No's. 247 and 2892 of 2001

Trilok Nath Mittal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 12-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Customs Act, 1962 — Section 108, 135(1)

Citation : (2003) CriLJ 184 : (2002) 82 ECC 70 : (2003) 154 ELT 374

Hon'ble Judges : B.K. Rathi, J

Bench : Single Bench

Advocate : Shashank Shekhar and Akshay Anand, for the Appellant; Sanjay Kumar Singh, A.G.A. and S.N. Srivastava, S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioners in both these petitions are accused in Criminal Case No. 1597 of 2000 for offences under Sections 132, 135(1)(a) and 135(1)(b), 136 of the Customs Act 1962. They have made request for quashing of the said complaint. Therefore, both these petitions are being disposed of by this common judgment.

2. The facts of the case in brief are as follows :-

The officers of Directorate and Revenue Intelligence, New Delhi acting on the basis of intelligence information that two trucks containing ball bearings of foreign origin have been unloaded in the premises of M/s. Doob Exims, Mawana Road, Meerut and the same had been cleared from LCD., Meerut by making false declaration regarding quantity, value and the country of origin, raided the said premises in village Saini, Meerut at 5.00 p.m. on 18-7-2000. They found that one person was trying to flee from the spot by scaling the boundary wall of the premises. He was over powered and taken in to custody, who is petitioner, Pawan Kumar Gupta in Criminal Misc. Application No. 2892 of 2001. The search of the premises resulted in the recovery of ball bearings and roller bearing worth Rs. 3.60 crores approximately. The articles were seized u/s 110 of the Customs Act.

The voluntary statement of Pawan Kumar Gupta, who was arrested at the spot, was recorded u/s 108 of the Customs Act. The name of the other accused including petitioner, Trilok Nath Mittal came to the light from his statement. Their statements u/s 108 of the Customs Act were also recorded and thereafter, he complaint was filed against five accused out of which the present petitions have been filed by the two accused.

3. I have heard Sri Akshay Anand, learned Senior Advocate, assisted by Sri Shashank Shekhar, learned Counsel for the petitioners and Sri Sanjay Kumar Singh, learned Counsel for the opposite party and the learned A.G.A.

4. It has been argued on behalf of the petitioners that there is no allegation regarding getting of clearance of the ball bearings from the I.C.D., Meerut against the petitioners, that they have not signed any documents for the clearance of the consignment nor has submitted any declaration; that they have not imported the goods; that they have not paid any custom duty. On the other hand, the petitioners are business men of Delhi and they were to dispose of the above consignment which was imported by Sri Ashwani Kumar Jain co-accused on commission basis and they had no knowledge regarding the short payment of custom duty by importer. Sri Ashwani Kumar Jain; that according to agreement with Sri Ashwani Kumar Jain they were entitled to Rs. 3/- per pc. as commission only; that the entire investment was made by the importer, Ashwani Kumar Jain. The present petitioners did not to get any profit from the import of the above consignment or by payment of less excise duty.

5. It is further alleged that the items never came to the possession of the petitioners, that the petitioners were made to understand that proper custom duty has been paid and the items have been declared by I.C.D., Meerut; that the petitioners were only commission agents for the sale of the goods imported and stocked in the godown and therefore, they were not required to examine whether proper import duty has been paid that the petitioners were kept in illegal custody for two days and the statements were got recorded by dictation under duress, threat and mental torture and giving physical beating; that the petitioner, Trilok Nath Mittal retracted the statement at the earliest opportunity.

6. Trilok Nath Mittal was arrested on 26-7-2000 and was kept in illegal custody for two days; that he was produced before the duty Magistrate and he immediately retracted the confession statement by application, An-nexure No. 1 to the rejoinder affidavit; that he was produced before the Magistrate on the next day; that he again retracted the confession, by application Annexure No. 2 to the rejoinder affidavit.

7. It has been further argued on behalf of Sri Trilok Nath Mittal that he himself is importer of ball-bearings and imported certain consignments: that after, his statement in follow up action 84084 pieces of ball-bearings were seized by the officers of D.R.I., New Delhi from the godown of the petitioner, Trilok Nath Mittal; that the petitioner submitted all relevant documents evidencing proper import of

ball bearings and payment of custom duty. The fact thereafter verified by D.R.I., from Bombay Port and later on all pieces were released in favour of Trilok Nath Mittal, petitioner vide letter dated 25-9-2001, Annexure No. 3.

8. It has further been argued that the offences under Sections 132 and 136 of the Customs Act not alleged against the petitioner only offences under Sections 135(1)(a) and 135(1)(b) are alleged to have been committed by the petitioners. The bare reading of the above sections shows that no such offence is made out against the petitioners even assuming the entire allegations, made by the opposite parties against the petitioners as true; that therefore, the proceedings against them are liable to be quashed.

9. As against this, Sri S. K. Singh, learned Counsel for the opposite parties has argued that the petition is not covered u/s 482, Cr. P.C. and the proceedings cannot be quashed at initial stage. The second argument of the learned Counsel is that the statements of the petitioners were recorded u/s 108 of the Customs Act and the said statements are admissible in evidence, which prima facie show the guilt of the petitioners.

10. Regarding first argument, the learned Counsel for the opposite parties has referred to the decision of Apex Court in State of Bihar v. Rajendra Agrawalla. 1996 (33) All Cri C 204. It was observed in this case that "That the High Court exceeded its jurisdiction by trying to appreciate the evidence and coming to a conclusion that no offence is made out. On examining the material on record and the impugned judgment of the High Court we are of the considered opinion that the High Court was wholly unjustified in invoking its inherent power u/s 482 of the Code of Criminal Procedure to quash the cognizance taken inasmuch as the allegation in the FIR and material referred to in the charge-sheet do make out an offence u/s 414 of the Indian Penal Code, so far as the respondent is concerned."

11. The other case referred to is State of Kerala v. O.C. Kuttan - 1999 (38) All Cri C 503. In this case, the FIR for offences under Sections 366A, 372 and 376/34, IPC was quashed by the High Court on the ground that the lady was more than 16 years of age at the time of offence and she was willing partner and also made comments on the character of the lady. It was observed in this case that the High Court has erred in embarking upon enquiry by shifting of evidence and arriving at conclusion with respect to age of lady on date of the alleged sexual intercourse.

12. The next case referred to is R.P. Kapoor v. State of Punjab - AIR 1960 S.C. 366. In this case, it was held that "inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do not prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused or the allegations are so absurd and inherently

improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

13. In these decisions the Apex Court has laid down that the shifting, weighing, examining and appreciating of the evidence is not permissible u/s 482, Cr. P.C. However, in a case where the allegations of the prosecution taken on the fact of it, it does not make out any offence against an accused, the proceedings can be quashed u/s 482, Cr. P.C.

14. On the second point, the learned Counsel has referred to the decision of this Court in *Rohit Agarwal v. State of U. P.* -1991 (28) All. Cri. C. 581 In this case, it was held that statement recorded under Sections 107 and 108 of the Customs Act are admissible in evidence.

15. The other case referred to is the decision of Apex Court in *Raj Kumar Agarwal v. Union of India* 1990 (27) All. Cri C. 443. It was held that officers of D.R.I, are not the police officers and statement recorded by them is not hit by provisions of S. 25 of the Indian Evidence Act and can be read in evidence.

16. The last case referred to is *Romesh Chandra Mehta Vs. State of West Bengal*, . It was observed in this case the customs officer acting under Customs Act, 1962 is not a police officer.

17. There is no quarrel with the principle laid down in these cases and it is settled law that the statements recorded u/s 108 of the Customs Act are admissible in evidence and are not inadmissible by virtue of S. 25 of Indian Evidence Act. However, on this point it is also necessary to refer to the decision in AIR 1979 705 (SC) . In this case, the confession recorded under the Customs Act was immediately retracted. The Apex Court has held that it is extremely unsafe to regard the confession as having been made voluntarily and therefore, trustworthy. Circumstances show that the confession has been obtained in manner which would bring it within the ambit of S. 24 of the Evidence Act.

18. There is another decision of the Tribunal, though it does not carry much weight, but is necessary to refer to it. The decision in the case of 1989 (41) ELT 162 . In this case, the Tribunal has held that confession is not important if retracted immediately.

19. In this background I consider whether the allegations made by the prosecution prima facie disclose the commission of any offence against the petitioners. I have already mentioned the facts of the case. The petitioners are being implicated solely on the basis of their statements recorded u/s 108 of the Customs Act and therefore, it is necessary to refer to their statements as

mentioned in the complaint. In Para 3(b) of the complaint, the statement of Pawan Kumar Gupta has been mentioned and it is alleged that he stated that "he admitted the aforesaid recovery, seized and other incriminating facts and his concern with the seized bearings. He named Trilok Nath Mittal 1, Balbir Singh Sethi and A.K. Jain, accused Nos. 4, 1 and 2 respectively to be also concerned with the seized goods. He inter alia stated that smuggling was planned amongst himself and A.K. Jain and T.N. Mittal, according to the plan, the smuggled goods (ball bearings) were to be cleared from I.C.D. from where the goods imported by A.K. Jain were being cleared, the responsibility of getting the consignment cleared from I.C.D., Meerut would be of A.K. Jain, T.N. Mittal also told him that both of them would not be required to invest any money, as he had struck a deal with A.K. Jain who would be investing the entire amount and after the goods had reached the godowns of Meerut Exim of A.K. Jain, T.N. Mittal 1 was to supply it in the market as early as possible and after receipt of payment T.N. Mittal was to deduct Rs. 3/- as commission on each bearing and give the payment to A. K. Jain, he was offered a commission of Rs. 1.50 per bearing by T.N. Mittal, which was accepted by him; it was decided between him and T.N. Mittal that negotiations with the buyers regarding the rate and delivery would be done by T.N. Mittal and his job would be to sort and pack the bearings and issue challans in the name of bogus firms and get the smuggled bearings despatched from Ghaziabad to buyers whose containers of bearings were cleared from ICD, Meerut on 17-7-2000 and reached the factory of M/s. Dooab Exim in the night and that intimation regarding the arrival of the said goods was given to him by A.K. Jain, who was going abroad and he had also informed him that he (A.K. Jain) had told his partner Balbir Singh Sethi to get the goods cleared from customs; in the evening of 17-7-2000, he was informed by T.N. Mittal that he had received confirmation from A.K. Jain on phone that the goods would reach M/s. Dooab Exim in the night of 17-7-2000 from ICD, Meerut and T.N. Mittal and told him to inquire from Balbir Singh Sethi, whether the goods had arrived or not and accordingly, he called Balbir Singh Sethi on his mobile number 98370-43375 from his mobile number 98111-47304 and enquired whether the goods had reached the factory or not. And who informed him that as per the instructions of A.K. Jain, he had got the goods cleared from Meerut Customs and the goods had been sent to M/s. Dooab Exim, Balbir Singh Sethi also told him that A.K. Jain had already left a message at the factory regarding his arrival; he reached M/s. Dooab Exim at 2.30 p.m. on 18-7-2000 along with his labour in the vehicle and started the work of sorting and tallying the bearings, on the basis of list prepared by him in his own handwriting containing the actual details of the goods as informed to him by T.N. Mittal, he had not even finished the work of tallying of the bearings in one of the rooms, when a worker informed him that the DRI officers were standing at the gate, he tried to run away by scaling the boundary wall but was intercepted by the DRI Officials, Balbir Singh Sethi used to mis-declare the value, brand and quantity of the imported goods and get the goods cleared from customs by evading customs duty; the seized goods had been got cleared from ICD, Meerut by Balbir Singh Sethi and Shri Sethi used to get money

for doing this and in the past also, the goods which were cleared from ICD, Meerut by paying less duty or no duty at all, were got cleared by Balbir Singh Sethi."

20. The statement given by T.N. Mittal is mentioned in Para 3(n) which is as follows :

"that Ashwani Kumar Jain visited him in his office at Kashmere Gate, Delhi and told him and Pawan that he wanted to import bearing mainly from Du- bai for sale, he would do this business frequently by evading customs duty by way of misdeclaration of quantity, value, description, country of origin, etc., he would get the goods cleared from customs through ICD, Meerut store at his and Balbir Singh Sethi's godowns at Meerut, Pawan and he (T. N. Mit-tal) would dispose of the goods in Indian markets, he proposed a commission of Rs. 3/- per bearing to him and Pawan, the consignment of bearings worth 3.6 crores seized by DRI on 18/19-7-2000 from the godown of Dooab Exim., Meerut was imported by Ashwani Kumar Jain, Balbir Singh Sethi had cleared the said consignment from ICD, Meerut, Sethi had informed him after the consignment reached the said godown, he in turn informed Pawan and he (Pawan) immediately reached that factory, he and Pawan were to sell the seized bearing in the markets through agents; after sales they (Pawan and T.N. Mittal) were to get Rs. 3/- per bearing which was to be shared equally by them as commission, the remaining amount received from sales was to be collected by Ashwani from them as per his knowledge, Ashwani Kumar Jain had already imported some consignments in the same manner; the earlier consignments were not offered for sale by Ashwani Kumar Jain to him; he was aware that buying and selling of this type of goods was an offence and begs to be pardoned; the two godown sealed by DRI at Delhi were arranged by Pawan; the ball bearings imported by him and cleared from Mumbai Customs were kept there."

21. It is contended by learned Counsel for the petitioners that the allegations regarding the search and recovery and the statements recorded u/s 108 of the Customs Act, even if are taken on its face value, no offence is made out against any of the petitioners.

22. It is further contended that according to the complaint itself no offence under Ss, 132 and 136 of the Customs Act is alleged against the petitioners. The offence alleged against them is under Sections 135(1)(a) and 135(1)(b) of the Customs Act, which are as follows :

"135 Evasion of duty or prohibitions

(1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the

time being in force with respect to such goods, or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reasons to believe are liable to confiscation u/s 111. He shall be punishable....."

23. It has been contended that the above petitioners have absolutely nothing to do with the import of the goods; that according to the own allegations of the prosecution and the statement of the accused they have not participated in the clearance of the goods nor invested any amount in the import of the goods, that they were concerned with the sale of the goods as commission agents for which they were to get Rs. 3/- per pc. as commission; that therefore, they were not going to gain anything by payment of less import duty; that the goods never came into their possession; that therefore, no offence under the said provision is made out against the petitioners; that the accused persons have not made any fraudulent evasion or attempt at the evasion of the duty chargeable on the import goods seized in this case; that statement recorded u/s 108 of the Customs Act is also of no help; that, therefore, Clause (1)(a) of Section 135 does not apply to the petitioners; that the petitioners never acquired possession of the goods. Therefore, the offence under Clause (1)(b) is also not made out against the petitioners.

24. Considering the above provisions and the allegations made against Sri. T.N. Mittal, and his statement u/s 108 of the Customs Act it is clear that the goods never came to his possession. He was not importer of the goods and was not concerned in the fraudulent evasion or attempt at evasion of the duty chargeable. Therefore, without shifting, appreciating and weighing of evidence it appears that the allegations made by the prosecution do not even prima facie make out a case for commission of offence under Sections 135(1)(a) and 135(1)(b) of the Customs Act against Trilok Nath Mittal. Therefore, the proceedings against Trilok Nath Mittal are liable to be quashed.

25. As against the accused, Pawan Kumar Gupta is concerned, his case is little different as he was arrested while he was making attempt to flee after scaling the boundary wall at the time of the raid. At this stage, therefore, the argument of the learned Counsel for the opposite parties as regard Pawan Kumar Gupta has to be accepted. He may be held to be the possession of the goods. This is a matter of evidence as to whether he shall be deemed to be in possession of the goods or not and if it is so the proceedings against him cannot be quashed in this petition by examining the evidence.

26. In the result, the proceedings of above case as against the petitioner, Trilok Nath Mittal are quashed. However, the Petition No. 2892 of 2001 of Pawan Kumar Gupta is rejected. Order accordingly.