

(2005) 09 DEL CK 0075

In the Delhi High Court

Case No : Criminal M.C. No. 1769 of 2005 and Criminal M.A. No's. 1039 and 4569 of 2005

Vinod Kumar Gupta

APPELLANT

Vs

Commissioner of Customs

RESPONDENT

Date of Decision : 01-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167(1), 167(2), 482

Evidence Act, 1872 — Section 114

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 23, 29, 36(1)

Citation : (2005) 09 DEL CK 0075

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

Advocate : A.T.N. Rangaramanujan and S.C. Chawla, for the Appellant; Sunil Sharma, Special Public Prosecutor, for the Respondent

Judgement

S.K. Agarwal, J.—By this petition u/s 482, Code of Criminal Procedure, 1973 (for short, "the Code"), petitioner has challenged orders dated 13.3.2005 and 15.3.2005 passed by the Duty Magistrate and Additional Sessions Judge respectively, remanding the petitioner to judicial custody, in the case under Sections 20, 23 and 29 of the Narcotic Drugs and Psychotropic Substances Act (for short, "the Act"), on the application filed by Customs Department.

2. Prosecution case in brief is as follows: In November, 2004 a consignment declaring to be samples of book covers was exported to Seychelles by one V.K. Pillay. The authorities in Seychelles on suspicion checked the consignment and it was found containing 6.78 kg. of Hashish. The contraband was seized and information was sent to the Customs Department in India through Interpol. Investigations revealed that the said consignment was sent by the petitioner, Managing Director of M/s. V.K. International Pvt. Ltd., in the name of M/s. M.R. Overseas. Petitioner was summoned and his statement was recorded. In his statement, petitioner admitted that the said consignment of Hashish was sent by

him. Some other incriminating material was also found against the petitioner, on the basis of which he was arrested on 13.3.2003, under the above-noted sections, by the Air Cargo (Export), Customs Department, New Delhi and was produced before the Duty Magistrate, Patiala House, New Delhi. The investigating officer moved an application before the Court, stating above facts and pleading that the investigation in the case is at the initial stage, the matter is required to be investigated overseas and prayed that the accused be sent to judicial custody. The Duty Magistrate heard the case and remanded the accused to judicial custody for two days, directing him to be produced before the concerned Court. On 15.3.2005, petitioner was produced before the Court of Additional Sessions Judge (Special Judge), Delhi. The Investigating Officer moved fresh application for further judicial remand pleading above facts, and again submitted that investigations abroad are in progress and prayed for judicial remand of the accused petitioner for 14 days. Learned Court "considered" the matter and remanded petitioner to judicial custody till 29.3.2005. On similar applications, subsequently accused was remanded to judicial custody from time to time. These orders are under challenge, inter alia, on the grounds that copy of the entries in the case diaries were not forwarded to the Court by the Investigating Officer, when the impugned orders were passed, which is in violation of law, Therefore, petitioner is entitled to be released. The Commissioner of Customs (respondent) has filed the reply, stating that after arrest petitioner was produced before the Duty Magistrate on 13.3.2005 and before the Special Judge on 15.3.2005. The case file consisting of documents received from Seychelles, documents recovered from possession of the accused and also statement(s) of the accused and other witnesses were produced before the Courts whenever application for judicial remand of the petitioner was moved. The learned Court(s) after hearing arguments and perusing the case file, remanded the accused to judicial custody.

3. I have heard learned senior Counsel for the petitioner and learned Special Prosecutor for the respondent.

4. Learned Counsel for the petitioner referring to Section 36A(1)(b) of the Act, argued that whenever a person/accused of or suspected of the commission of an offence under this Act, is forwarded to a Magistrate u/s 167(2) of the Code, such Magistrate is empowered to authorize detention of such person, in such custody, as he thinks fit, for a period not exceeding fifteen days. Learned Counsel then referring to Proviso (a) to Section 167(2) argued that judicial custody remand could be granted only after recording "satisfaction" that adequate grounds exist for doing so. This satisfaction could not be reached in the absence of the copy of the entries in the case diary, required to be forwarded to the Court u/s 167(1). I learned Counsel argued that there is nothing to show in the orders that copies of case diaries were available before the Court, which shows that said orders were passed mechanically. Learned Counsel argued that from use of the expressions "Heard" and "Considered" in the orders, it cannot be presumed that the diaries were produced or perused by the Court, while authorising judicial custody remand. Learned Counsel lastly argued that validity of the statutory functions

must be judged by the reasons mentioned in the order and it cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In support of his submissions, reliance is placed on the observations made in *Shrawan Waman Nade and Ors. v. The State of Maharashtra*, 1994 CrLJ 780; *Rajiv Kesavan Vs. Union of India (UOI) and Another*, ; *Mahmudkhan v. King Emperor*, 1945 NLJ 122 and decision of Madras High Court in *Elumalai Vs. State of Tamil Nadu and Others*, ; and *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*,

5. Learned Counsel for the respondent argued to the contrary submitting that as per allegations petitioner had sent the consignment of 6.78 kg. of Hashish, declaring it to be sample of book covers, under the name of M/s. M.R. Overseas which was seized in Seychelles. On receipt of information through Interpol investigations were taken up; the accused was arrested on 13.3.2005; and was produced before the Duty Magistrate; and on 15.3.2005, he was again produced before the Court of Special Judge. The investigating officer moved application(s) containing summary of the investigations carried out and the case file was also produced before the Court. Learned Counsel argued that detailed orders are not required to be passed at this stage of remand; and in support of his submissions reliance was placed on the Supreme Court decision in *Kanti Bhadra Shah and Anr. v. The State of West Bengal*, 1 (2000) CCR 72 (SC) : 2000 [1] JCC 100 (SC).

6. The right to liberty is a precious one, and no person can be deprived of this right and detained in jail without following the procedure established by law. The investigating officer can ask for remand u/s 167 of the Code only when there are grounds for believing that the accusation or information is well founded and it appears that the investigations cannot be completed within the period of 24 hours. It is obligatory that the accused should be physically produced before the Court at the time when the investigating officer applies for remand and the grounds on which the remand is sought should also be put up before the Court, in the presence of the accused, so that if the accused wants to controvert those grounds, he could do so. When the question arises whether the accused was produced before the Court or not, Explanation 2 to Section 167 provides that same fact can be proved by his signature on the order authorising detention. In this case it is not in dispute that petitioner was produced before the Court on both the dates when the impugned orders were passed; it is also not in dispute that applications were made, containing summary of allegations and reasons why his judicial remand was required. The requirement of sending the case diary along with the remand request is also of the mandatory character. The case of the prosecution is that copies of the case diaries maintained by the investigating officer were produced at the time of remand and the same were perused when the impugned orders were passed. On the other hand, the case of the petitioner is that case diaries were never produced and there is nothing in the application or the order to show that copy of the case diaries were produced before the Court and in the absence of the same, the impugned orders are not sustainable.

7. The questions which arise for consideration are whether it is mandatory for the investigating agency to mention in the remand application that the case diaries are being produced and whether it is necessary for the Court to record in the remand order that the case diaries have been perused? In order to find an answer, it would be useful to recall the impugned orders, which read as under:

"13.3.2005

Sh. Sunil Sharma, SPP, Customs.

The accused in PC.

Inspector Sunil Kumar. Heard. The accused is remanded to J/C till 15.3.2005.

Be produced before Court.

15.3.2005

Present: Accused in J/C with Inspector Sunil Kumar, Investigating Officer and Sh. Sunil Sharma, SPP. Considered. Accused remanded to JC till 29.3.2005."

8. Perusal of the order dated 13.3.2005 would reveal that Duty Magistrate "Heard" the parties and then remanded the accused to two days judicial custody, directing him to be produced before the concerned Court. There is nothing in order to indicate that the hearing was without copies of the case diaries. The accused did not move any application stating that the copy of case diaries were not produced on that day or on the next date. On 15.3.2005, learned Special Judge again "Considered" the prayer and remanded the accused to judicial custody. The Black's Law Dictionary (Sixth Edition) defines the word "Considered" to mean, deemed; determined; adjudged; reasonably regarded; and the expression "Heard" has a similar meaning. Section 114(e) of the Evidence Act provides that all judicial and official acts are presumed to have been rightly and regularly performed. The presumption u/s 114 will come to the aid of the party if the party proves that the judicial or official act has been done or performed. In other words, if the Court or authority, who has the jurisdiction to deal with the matter passes an order, the same cannot be treated as void, unless it is proved otherwise. The question whether case diaries were produced or not, is a question of fact and not a case of supplying additional ground, to support an order. The respondent has filed an affidavit stating that learned Courts, after hearing the arguments and perusing entire case file, remanded the accused to judicial custody. The affidavit is by the public servant in discharge of his duties and there is no cogent reason to disbelieve the same.

9. It is settled law that the Court is not expected to pass detailed order while authorising judicial remand of the accused, as held by the Supreme Court in Kanti Bhadra Shah's case. It is not necessary to refer to in detail the facts of the cases cited by learned Counsel for the petitioner. Each case depends on its own facts. The ratio of these decisions is not applicable to the facts at hand. There is no illegality or impropriety in the impugned orders to warrant interference.

10. For the foregoing reasons, I find no merit in the petition and the same is accordingly dismissed. Trial Court record be sent back.