

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 14th December, 2009
% *Judgment Delivered on: 17th December, 2009*

+ **CRL.R.P.471/2003**

HARDEV SINGH DHILLON Petitioner
Through: Mr.Deepak Gandhi & Mr.Amit
Kumar, Advocates.

Versus

DEPARTMENT OF REVENUE INTELLIGENCE
..... Respondent
Through: Mr.Satish Aggarwala and
Ms.Hrishika Pandit, Advts.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. On 9.10.1991, pursuant to a specific intelligence the officers of the Directorate of Revenue Intelligence (hereinafter referred to as 'DRI') intercepted a Premier Padmini Car bearing no.HR-01A-3442 at the bye-pass road, Karnal. Petitioner i.e. Hardev Singh Dhillon was in occupation of the car. The car was rummaged in the presence of two independent witnesses. Three blue coloured vensalies from the cavity of the car were recovered. They contained 360 foreign marked gold biscuits weighing 41990 gms

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valued at Rs.1,80,55,700/-; the gold was found to be of .999 of 24 carat purity.

2. Panchnama dated 9.10.1991 Ex.PW-1/E was drawn. The panchas were Ram Kumar and Faqir Chand; case property was sealed, pasted with paper slips bearing signatures of the panchas, the investigating officer and the accused; thereafter in their presence sealed with DRI seal no.9.

3. On 10.10.1991, the sealed contraband was taken to the office of Additional Director, DRI; the seals were broken in the presence of the panchas Bakhtawar Singh and Vinod Kumar; the packet containing the contraband i.e. 360 gold biscuits was displayed on television. The above mentioned material was again repacked/ put back in the same packet, packed and sealed with the seal of DRI no.9 with the paper slips bearing signatures of the panchas and the investigating officer S.K.Sharma. This panchnama is Ex.PW-1/N.

4. On 21.10.1991, an application was made before the learned MM by the DRI under Section 110 (1) (1B) of the Customs Act, 1962 (hereinafter referred to as 'the Act') for the disposal of the case property as also for certifying the correctness of the panchnama dated 9.10.1991; orders on this application was passed on 13.2.1992. While disposing of this application in the order dated 13.2.1992, it had been noted by the Trial Judge that box contained three black vensalies, adhesive tapes, one cloth piece

sealed at places and two paper slips beneath the seals. It is pointed out by the learned counsel for the DRI that two paper slips referred to the paper slips which had been used in the sealing process on 9.10.1991. This position is not disputed by the learned counsel for the petitioner.

5. Vide judgment dated 1.5.2001, the petitioner had been convicted under Section 135 (1) (b) of the Act. He had been sentenced to undergo RI for three years as also to pay a fine of Rs.1 lakh, in default of payment of fine to undergo SI for six months.

6. In appeal before the Additional Sessions Judge vide judgment dated 13.6.2003, appeal had been dismissed. The conviction had been maintained. No modification was made in the sentence either. It had been noted by the learned Additional Sessions Judge that the minimum prescribed period of imprisonment for such an offence where the value of gold was more than Rs.1 lakh is a minimum sentence of three years and in the absence of any special and adequate reasons the minimum sentence cannot be reduced. Appeal had accordingly been dismissed.

7. Before this court the present revision petition has been filed impugning both the judgments of the two fact finding courts below.

8. At the first instance arguments have been addressed on the tampering of the case property. It is submitted that admittedly a panchnama dated 9.10.1991 had been drawn up by S.K.Sharma Ex.PW-1/E which was witnessed by Ram Kumar and Faqir Chand; this panchnama had evidenced the recovery of the contraband i.e. the case property recovered from the petitioner. Thereafter i.e. on 10.10.1991 this entire case property had been re-opened for a media exposure and a second panchnama Ex.PW-1/N dated 10.10.1991 witnessed by Bakhawar Singh and Vinod Kumar and then been drawn up by the investigating officer S.K.Sharma.

9. It is submitted that the second panchnama drawn on 10.10.1991 had destroyed the sanctity of the sealing process of 9.10.1991 and the application which had been preferred by the DRI seeking orders under Section 110 (1) (1B) of the Act before the MM nowhere disclosed that there was a subsequent panchnama drawn up on 10.10.1991; it had only made a prayer for the authentication of the first panchnama dated 9.10.1991; orders passed by Additional Sessions Judge dated 19.2.1992 had authenticated the panchnama dated 9.10.1991; there was no mention of the proceedings of 10.10.1991; prejudice has been suffered by the petitioner.

10. Learned counsel for the petitioner has placed reliance upon a judgment of this court in Amarjit Singh & Anr. Vs. State (Delhi Admn.) 1995 CRI.L.J. 1623 to support his submission that where in

similar circumstances the case property had been displayed before a television crew the court had held that the case of the prosecution had been thrown overboard by such ill-advised acts of the police officials and the petitioner in that case had been held entitled to an acquittal. It is submitted that on the same analogy the petitioner is also entitled to an acquittal as the possibility of tampering of the case property cannot be excluded.

11. On the first blush this argument appeared to be impressive but on the perusal of the evidence on record it appears otherwise. It is not in dispute that on 9.10.1991 the seal of the DRI was used and the paper slips had been affixed on the case property which had been sealed. On 10.10.1991, the second panchnama Ex.PW-1/N clearly records that the paper slips had been removed in the presence of two subsequent Panchas i.e. Bakhtawar Singh and Vinod Kumar and after the display of the case property before the media, the contraband was again re-sealed, pasted with paper slips duly signed by the Panchas and the investigating officer and sealed with the DRI seal No.9. The case property when opened in the court of learned M.M. on 19.2.1992 states that two paper slips had also been found in the case property which had been opened; these two paper slips referred to the paper slips which had been pasted on the case property on 9.10.1991; this has also not been disputed by the learned counsel for the petitioner. In these circumstances, the tampering of the case property is fully

excluded. On a specific query put to the counsel for the petitioner as to what prejudice he has suffered he has no answer. At this stage it has been conceded by the learned counsel for the petitioner that he is not pressing this argument.

12. Even otherwise, the judgment relied upon by the learned counsel for the petitioner would have no application to the facts of the instant case. In that case a Bench of this court while advising the police officials to be careful in the sealing of contraband in serious offences such as offences under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 and their consequences and repercussions on the fate of an accused had acquitted the petitioner giving him benefit of doubt for non-compliance of the mandatory provisions of Section 50 of the said Act.

13. The arguments now pressed before this court are two-fold. Firstly, the sanction which had been accorded by the Department was not a valid sanction as the proceedings of the panchnama dated 10.10.1991 had not been placed before the Sanctioning Authority. This was a serious lacuna and being a material fact which had been suppressed from the Sanctioning Authority, the resultant sanction is invalid and thus vitiates the entire proceedings.

14. Counsel for the petitioner has relied upon judgments reported as Harjeet Singh vs. State 1998 IV AD (Delhi) 737, Y.S.

Bawa & Ors. vs. Srinivas Jain 1985 (2) Crimes 596 as also Mohd. Iqbal Ahmed vs. State of Andhra Pradesh AIR 1979 SC 677, to support this argument. In the first judgment relied upon by the counsel for the petitioner the sanction was held to be granted in a mechanical manner as it was on a cyclostyled performa and the solemn and sacrosanct duty of application of mind had not been adhered to. This was under the provisions of the Prevention of Food Adulteration Act, 1954. The second judgment and the proposition of law enunciated and relied upon therein is not disputed; it is an undisputed proposition that there is no estoppel against the plea of sanction which can be raised at any stage. The third judgment relied upon by the learned counsel for the petitioner is also not a disputed proposition as a valid sanction has to be proved by the Sanctioning Authority and the facts constituting the offence have to be placed before the Sanctioning Authority before the same can be granted.

15. Counsel for the petitioner has also placed reliance upon a judgment of this court in State of Tamil Nadu vs. M.M.Rajendran (1998) 9 SCC 268 to support this submission. In this case, the relevant material which included the statements recorded before the investigating officer had not been placed before the Sanctioning Authority; sanction had stood vitiated on this account.

16. Reliance has also been placed upon Mansukhlal Vithaldas Chauhan vs. State of Gujrat (1997) 7 SCC 622. In this case

sanction was held to be invalid as on the date of issue of sanction the relevant file was in the Chief Minister's office and it was clear that the sanction was issued when the file was not available with the Secretary and the Under Secretary, it was in obedience to the mandamus issued by the High Court. In these circumstances, sanction was held to be void ab initio.

17. Under Section 137 of the Act there is a mandate that no court shall take cognizance of any offence under Section 132/133, Section 134 or Section 135 or Section 135 A of the Act except with the previous sanction of the Commissioner of Customs. The sanction in this case has been proved in the version of PW-1 and is Ex.PW-1/B. This is dated 6.12.1991. This sanction runs into six pages and has been signed by Mahesh Kumar, the Collector of Customs. The factual details have been enumerated in para 1 to 10. Thereafter after due application of mind and after a perusal of the factual position as detailed therein the sanction had been accorded.

18. The purpose of sanction for prosecution is to prevent malicious and unnecessary prosecutions leading to harassment; it is a condition precedent for the launch of a prosecution. What the prosecution has to prove is that the sanction has been accorded with respect to the facts constituting the offence. Narration of facts on the face of it is desirable but not always essential; if there is no such narration the prosecution must in the course of trial by

extraneous evidence prove that those facts were before Sanctioning Authority who applied its mind to them before the grant of sanction; an opportunity of hearing is not necessary to be given before the grant of sanction. It is purely an administrative act. See Assistant Commissioner, Assessment-II, Bangalore vs. Velliappa Textiles Ltd. 2003 (157) ELT 369 (SC).

19. The aforestated principles and guidelines as drawn up by the Courts for the grant of sanction clearly show Ex.PW-1/B i.e. sanction had been accorded after a due application of mind; the entire factual narration had been detailed in the said order. The drawing up of panchnama dated 10.10.1991 which was the display of the case property through the T.V. Media to the public at large was not a necessary fact which had to be put up before the sanctioning authority. It did not in any manner relate to the gist of the offence for which the petitioner was being charged; the gist of the offence being the recovery of 360 gold biscuits from the car of the petitioner; its subsequent recovery and seizure as described and detailed in the panchnama dated 9.10.1991 was what was relevant and was duly put up before the sanctioning authority. The sanction suffers from no infirmity.

20. Learned counsel for the petitioner has drawn the attention of this court to para 31 and para 37 of the impugned judgment of ACMM dated 1.5.2001.

Para 31 inter alia reads as follows:

"31. It is correct that Ld.M.M. Sh.A.K.Garg has not verified the punchnama of 10.10.91. He has only verified the punchnama of 9.10.91. In my view there is no harm in it because the case property was recovered vide punchnama dated 9.10.91. On 10.10.91 it has been reopened and resealed after displaying it to the T.V. Camera Team. The things are crystal clear if we carefully go through both the punchnma's. It is also correct that colour of vansalies found to be changed from blue to black and vansalies and other adhesive tape have been destroyed without permission of the court. Certainly there is no explanation as to how the colour of vansalies have been changed and as to why the vansalies and adhesive tapes were destroyed without permission of this Court during the pendency of this case. I do not approve this act of the complainant department, but because of it accused can be acquitted, in my view it is not possible. Accused is being prosecuted for having in his possession 360 gold biscuits of foreign make and not for possession of vansalies or the adhesive tape. It is the definite case of the complainant that 360 gold biscuits were recovered from the accused which were kept in specially created cavity in the car which was in the possession of accused. There is specific certificate by a Judicial Officer that the property i.e. gold biscuits are of the same quantity and description as given in the punchnama. In these circumstances there is no reason to disbelieve the certificate of Ld.M.M. that the case property is the same which has been recovered from the accused. The accused is being prosecuted for the recovery of the gold biscuits which is so heavy amounting to 41.990 gms in weight which cannot be planted. In these peculiar circumstances of the case no benefit can be given to accused because of the change of the colour of vansalies or of their destruction by the complainant without permission of the court."

Para 37 inter alia reads as follows:

"37. Before parting with the matter, I consider it important to mention that in this case according to the complainant 360 gold biscuits of 10 tolas each were recovered from the possession of accused concealed in three blue colour vansalies on 9.10.91. Entire case property has been sealed with the DRI Seal No.9. On 10.10.91 case property was opened in presence of T.V. Camera Team for displaying it and it was resealed thereafter. Case property was again opened before Ld.M.M. Sh.A.K.Garg in the proceedings conducted on an application moved U/s. 110 (1) (b) of the Customs Act. Ld.M.M. found black colour vansalies. There is no explanation as to how these vansalies have been changed

from blue colour to black colour. It appears that it happened at the time of displaying it before the T.V. camera team on 10.10.91. The vansalies and adhesive tapes etc has been destroyed by the complainant without permission of the Court. In my view these are the serious mistakes committed on behalf of complainant I consider it proper to send a copy of this judgment to commissioner Customs DRI to hold an enquiry as to why this has happened, particularly in such a serious case in which gold about 3600 tolas have been recovered."

21. It is argued that the Trial Judge himself was in a quandary and was uncertain as to whether in the given circumstances the conviction of the petitioner could be sustained or not. It was in these circumstances that he had directed the Commissioner of Customs to hold an enquiry as to how and in what circumstances the case property had been allowed to be covered on a T.V. footage especially when it was a serious case in which recovery of 360 gold biscuits was involved. It is submitted that this enquiry was yet pending. The judgment could not have followed till the enquiry was completed. The valuable rights of the petitioner has been infringed under Article 14 and Article 21 of the Constitution and he has been disentitled to a fair trial. This is the second submission of the learned counsel for the petitioner.

22. Counsel for the petitioner has placed reliance upon judgment reported in Kothari Filaments vs. Commissioner of Cus. (PORT), Kolkata 2009 (233) ELT 289 (SC) as also Pooja Batra vs. Union of India & Ors. 2009 IV AD (SC) 685 to support this argument. First judgment relied upon by the counsel for the petitioner related to adjudication proceedings where the principles

of natural justice had not been adhered to; the grounds on the basis of which he was to be penalized had not been disclosed to him. The second judgment relied upon by the counsel for the petitioner was a writ of habeas corpus relating to the release of a detainee under the COFEPOSA Act; the arguments of the counsel for the petitioner are contained in para 5 of the said judgment; the arguments pressed before this court that pending enquiry a final order cannot be passed do not find mention anywhere in para 5; the said judgment does not in any manner have any application to the factual matrix of this case.

23. There is no merit in this argument either. The enquiry which had been ordered against the officers of the Custom Department related to the proceedings by the investigating officer and his hunger for publicity. This direction given to the Department nowhere related to the gist of the offence i.e. charge for which the petitioner had been charged under Section 135 (1) (b) of the Act. The said charge had been proved by clear, cogent and categorical evidence; the outcome of the enquiry would not and could not in any manner relate to the evasion of custom duty for which the petitioner has been convicted; the outcome of the same i.e. the enquiry would have no bearing on the substance of the offence. This argument has no force.

24. The petitioner has been convicted under Section 135 (1) (b) of the Act and has been sentenced for the minimum sentence i.e.

sentence of three years RI. No arguments has also been pressed before this court that the petitioner for any special and adequate reasons deserves a leniency.

25. Petition is without any merit; it is dismissed.

(INDERMEET KAUR)
JUDGE

17th December, 2009
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