

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.659 of 2012

In

Miscellaneous Jurisdiction Case No.5609 of 2011

Shiv Shankar, s/o late Heera Lal, Village-Rampur Khurd, P.O.- Kishundarpur, District, Jaunpur, (U.P) presently posted as Assistant Commissioner of Customs, Land Customs Station, Jogbani, District, Araria (Bihar)

... Opposite Party ... Appellant/s

Versus

1. Birendra Kumar Singh, S/o Babu Lal Singh, resident of village, Ahraura, P.S. Ahraura, District, Mirzapur (U.P.)Petitioner /Respondent
2. The Union of India through Commissioner of Customs, Central Revenue Building B.C. Patel Path, Patna namely Sri Ajay Dixit, S/o, not known
3. The Deputy Commissioner Customs (9) Custom Head quarters, C.R. Building, Patna Bihar, namely, Sri Manish Kumar Jha, S/o not known
4. The Superintendent Customs (P) Division Farbisganj, Distt- Kishanganj, Bihar Mr. Rajesh Kumar, S/o not known
5. The Inspector Customs (Preventive) Cum Seizing officer, Circle Kishanganj, Distt. Kishanganj, Bihar namely, Sri Amarnath, s/o not known

Opposite parties-Respondent II set

Appearance :

For the Appellant/s : Mr. Sumit Kumar Singh
Mr. Abhipran Sinah, Advocates
For the Respondent/s : Mr. Prabhat Ranjan
Mr. Chandan Kumar, Advocates

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 12-02-2018

Heard parties.

This appeal has been preferred assailing the order dated 06.09.2012 by which a learned Single Judge of this Court has held the appellant guilty of contempt and punished him with simple imprisonment of three months for his deliberate and willful non-



compliance of the order dated 14.11.2011 by which C.W.J.C. No.12197 of 2011 filed by the petitioner and another, i.e., one of the sole respondent of this case, namely, Birendra Kumar Singh, was quashed and the impugned seizure and detention dated 02.06.2011 of the betel nuts and the truck on which it was loaded was quashed and set aside. The authorities were directed to release the truck and the betel nuts loaded thereupon.

The admitted facts are that the truck in question having registration No.UP-63 H-0025 and 15,960 kgs. of betel nuts, contained in 266 bags was loaded on the truck in question and was seized on 30.05.2011 from Kishanganj '0' Mile by the Kishanganj Custom Office alleging the betel nuts to be of third country origin.

The said seizure was challenged by the sole opposite party being transporter along with Sri Sai Trading Company, Patna who was the owner of the said consignment of betel nuts and in that proceeding, the aforesaid order was passed. The allegation in the contempt proceeding was that, though the order was passed on 14.11.2011, the appellant being the Assistant Commissioner, Forbisganj issued show cause notice on 18.11.2011 under Section 124 of the Customs Act, 1962 (hereinafter referred to as 'the Act') for initiation of confiscation proceeding in spite of the fact that the



seizure itself was quashed by the learned Single Judge by the aforesaid order dated 14.11.2011.

It is to be noted that it was also a case of the sole respondent in the contempt proceeding that on 19.11.2011 (Annexure 2), an application was filed before the Assistant Commissioner for immediate compliance of the direction of the court. However, on the previous date itself, the order dated 18.11.2011 was passed. It is urged that even then the appellant did not recall his earlier order in view of the direction of this Court and, thus, it has to be understood that action was in willful defiance of the courts direction.

The learned Single Judge has held him guilty on that count. A show cause affidavit was filed on behalf of the department stating that the Divisional Officer had passed the order dated 18.11.2011 as he has no information about the aforesaid order passed by this Court though it was also claimed before the learned Single Judge that a notice was inadvertently issued under Section 124 of the Act. However, in C.W.J.C. No. 22316 of 2011, the department has taken a stand that though the seizure was quashed by this Court vide order dated 14.11.2011 but investigation continued and notice dated 18.11.2011 was only with respect to investigation under Section 124 of the Act by Forebesganj Divisional Office and hence



it was rightly issued and there was no question of any violation of the order of the Court. It is claimed by the respondent no.1 that the order dated 14.11.2011 was communicated to the head office on 15.11.2011 itself.

The matter does not end here itself. The order of the learned Single Judge was assailed before the Division Bench of this Court by filing L.P.A. No.131 of 2012 and the order of the learned Single Judge was stayed vide order dated 25.04.2012 (Annexure 4 series). Not only that, eventually the appeal was allowed vide order dated 06.03.2014 which stands appended with supplementary affidavit. However, it was also observed by the Division Bench that, since the initiation of adjudication proceeding is subject matter of challenge by the petitioner in C.W.J.C. No.22316 of 2011 and in the said proceeding, the learned Single Judge of this Court has stayed the further proceeding of the adjudication process, the order would be subject to the result of the aforesaid writ petition and shall take effect after the stay operating in the said petition is vacated. The modification application filed by the appellant-Union of India was also dismissed in M.J.C. No.1159 of 2014 vide Annexure 7. So the net result is that the order of the learned Single Judge stands quashed, however, effect of show cause notice stands stayed till a decision is taken in the aforesaid writ petition.



Now it has to be seen as to whether the appellant can be held guilty in the contempt proceeding or not.

From the records of the M.J.C. No.5609 of 2011, it does not appear that any personal notice was issued upon the appellant in prescribed Form as required under Rules 6, 7 and 9 of Chapter 28 of the Rules of the Patna High Court framed with respect to the Contempt of Courts Act, 1971. For better appreciation, the aforesaid rules are extracted as under:

“6. Every petition for initiating a contempt proceeding shall be posted before a Bench of the Court for preliminary hearing and for orders as to issue of notices, except petitions in respect of civil contempt which relates to orders or directions passed by a Judge of this Court which shall be listed for preliminary hearing and orders as to issue of notice before a Judge of this Court. Upon such preliminary hearing the Court if satisfied that no prima facie case has been made out for issue of notice, may dismiss the petition, and if not so satisfied, direct that notice of the petition be issued to the contemner.

7. (i) The notice to the person charged shall be issued in **Form 1**. When action is instituted on a petition, a copy of the petition along with annexures and affidavits shall be served upon the person charged.

(ii) The person charged may file his reply show cause duly supported by an affidavit or affidavits.

(iii) The person charged shall, unless otherwise ordered, appear in person before the Court as directed



on the date fixed for hearing of the proceeding, and shall continue to remain present during the hearing till the proceeding is finally disposed of by the order of the Court.

9. The Court may in appropriate cases before initiating proceeding for contempt against the contemner, issue notices to such contemner directing him to show cause as to why a proceeding for contempt be not initiated against him. In such cases, it shall not be necessary for the alleged contemner to be present in Court and question of initiating a proceeding for contempt shall be considered on the basis of the show cause filed.”

From perusal of the aforesaid, it appears that upon preliminary hearing of the contempt matter, if the court is satisfied that no *prima facie* case has been made out for issuance of notice, the court concerned may dismiss the petition, and if not so satisfied, then direct that notice of the petition be issued to the contemner.

From entire order-sheet of the contempt proceeding, it does not appear anywhere that Rule 6 has been complied or any notice upon the contemnor was issued.

That apart, a notice has to be issued upon the person charged in **Form 1** and when action is instituted on a petition, a copy of the petition along with annexures and affidavits shall be served upon



the person charged so that he could also file his reply duly supported by an affidavit or affidavits. The person charged thereafter shall, unless otherwise ordered, appear in person before the court as directed on the date fixed for hearing of the proceeding, and shall continue to remain present during the hearing till the proceeding is finally disposed of by the order of the Court. No such direction also appears to have been given or order to that count appears to have been passed by learned Single Judge. Rule 9 envisages that the court may in appropriate cases, before initiating proceeding for contempt against the contemner, issue notices to such contemner directing him to show cause as to why a proceeding for contempt be not initiated against him. In our view, this step was also not taken as notice of contempt petition was given to the department by the petitioner and on that notice, the department counsel had appeared and filed show cause affidavit but no personal notice was issued upon the petitioner. However, this direction has to be held to be mandatory because the contemnor was protected under the provisions of Rules 6 and 7. The Court may in appropriate cases, even before initiating proceeding for contempt against the contemner, issue notices to such contemner directing him to show cause as to why a proceeding for contempt be not initiated against him.



Thus, it can be safely construed that the mandatory provisions of Rules under the Patna High Court Rules could not be followed in the contempt proceeding.

In that context learned counsel for the appellant has placed reliance upon a decision of the Apex Court rendered in **Sahdeo Alias Sahdeo Singh Versus State of Uttar Pradesh and Others with analogous matter [(2010) 3 Supreme Court Cases 705]**. The Apex Court has held that non-compliance of mandatory provision of statutory rules is a fatal blow and on that ground itself the conviction can be reversed.

The aforesaid is one aspect of the matter. The second aspect of the matter would be as to whether on the charges levelled and in view of the stand taken, the appellant was liable to be convicted in the contempt proceeding. The stand was taken by the department that the order was passed inadvertently by the appellant as the order dated 14.11.2011 passed by the learned Single Judge could not be communicated though it was communicated to the headquarters on 15.11.2011 itself. Thus, it was inadvertent mistake by him. The contempt petitioner's – respondent's case is that he had filed a petition along with the order of the High Court on 19.11.2011. This in a manner substantiate the case of the appellant the order was actually communicated to him on 19.11.2011.



Now the question would be as to whether thereafter he could have recalled this order or not. Orally a stand in this regard has been taken that after passing the order dated 18.11.2011, he immediately sent the file to the competent authority for the purpose of continuance of the confiscation proceeding and since the file was sent to the concerned headquarters and was not available with him, he could not have passed any order to that extent. Learned Single Judge could have proceeded to continue with the contempt proceeding in this regard against the competent authority in the headquarters as department was aware of the order dated 14.11.2011 on 15.11.2011 itself. However, we refrain ourselves to express our views on this issue as that has not been adjudicated by learned Single Judge but at the same time, it is well settled that if any action has been taken by mistake or inadvertently by the concerned officer then in that case a contempt proceeding would not continue. A reference is made in this regard to again to the aforesaid decision of the Apex Court rendered in **Sahdeo Alias Sahdeo Singh (supra)** holding that non-compliance of the court's order by mistake, inadvertence or by misunderstanding of meaning and purport of order, unless it is intentional, no charge of contempt can be brought home in such cases.



Apart from above, it is also writ large from the records that aforesaid order of learned Single Judge passed in the concerned writ petition was not only stayed vide Annexure 4 but finally has been set aside by appellate court vide Annexure 6.

Thus, in our view, this appeal has to succeed and it has to be held in the facts and circumstances of the case that the appellant could not have been convicted for committing contempt of court.

Accordingly, the order of convicting him under the Contempt of Courts Act is set aside. As a consequence thereof, the order of sentence is also quashed and set aside.

In the result, this appeal stands allowed.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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