

- IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-10920-2021

Date of Decision: 24.03.2021

Chander Parkash and another

.....Petitioners

Vs.

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Gaurav Khera, Advocate, for the petitioners.
Mr. Surender Singh, A.A.G., Haryana.

AMOL RATTAN SINGH, J.

Case heard via video conferencing.

This petition has been filed by the petitioners invoking jurisdiction of this court under the provisions of Section 482 of the Cr.P.C. thereby seeking quashing of the order passed by the learned Sessions Judge, Rohtak, on 17.12.2020, dismissing the revision filed before that court by the petitioners herein.

[In fact in the petition, though in paragraph 1 the petitioners have sought quashing of the order of the learned Chief Judicial Magistrate also (against which the revision before the learned Sessions Judge was filed), seemingly due to a typographical/clerical error, both, in the summary prayer at the beginning of the petition, as also in the prayer clause at the end of it, only the order passed by the learned Sessions Judge on 17.12.2020 has been impugned.

Further, in the summary prayer clause, it has been stated that the order passed by the learned Sessions Judge was one by which the application of the petitioners for release of the gold was dismissed, whereas actually a perusal of that order (copy Annexure P-3), shows that it was in fact the

revision filed by the petitioners against the order of the learned Chief Judicial Magistrate, Rohtak, dated 19.04.2019, allowing the application of the respondent herein, that was challenged, which revision (filed by the petitioners) was dismissed, vide the said impugned order dated 17.12.2020].

2. Be that as it may, the background of the matter, as culled out from the impugned orders of the learned Chief Judicial Magistrate and the learned Sessions Judge, as also from the application filed by the respondent Assistant Commissioner Central Excise Division, Rohtak, before the learned CJM, are that the said application was filed on 27.06.2016, stating therein that a complaint was filed against the present petitioners in the year 1979 under the provisions of Section 85 of the Gold (Control) Act, 1968, as also Section 135 (b) of the Customs Act, 1962, alleging therein that on 02.03.1973 petitioner no. 1 was apprehended carrying 02 gold biscuits, 1 cut piece of gold biscuit, 7 pieces of primary gold and 3 pieces of gold bangles, with the gold in all weighing 332.8 grams, and thereby was alleged to have committed offences under the said provisions.

3. Upon that complaint filed, eventually, vide a judgment dated 06.02.1980 (copy Annexure P-4 with the present petition), the CJM, Rohtak, found both the petitioners guilty of the commission of the aforesaid offences and sentenced them to rigorous imprisonment for a period of one year each and to pay a fine of Rs. 1,000/- each (on account of each offence) though with the sentences in respect of each offence ordered to run concurrently.

4. The petitioners having appealed against that judgment and order, that appeal was allowed qua petitioner no. 2 Laxmi Narain (now deceased) giving him the benefit of doubt; and with the sentence of petitioner no. 1, Chander Parkash, reduced to six months rigorous imprisonment on each

count, with the fine imposed upon him and the default imprisonment in case of non-payment thereof, maintained.

[Petitioner no. 2, Laxmi Narain is now represented through his legal representative, he having died even at the time that the application was filed before the learned CJM, Rohtak, on 27.06.2016].

The gold was also held to have been rightly confiscated by the complainant Department with the order confiscating the gold upheld, vide the judgment of the learned appellate court dated 18.08.1980 (copy Annexure P-5).

5. Admittedly (even as per learned counsel for the petitioners), no revision or any other proceedings against that judgment and order were filed by even petitioner no. 1, and consequently, the gold remained in the custody of the respondent department since then.

6. In the aforesaid background, an application dated 27.06.2016 was filed by the respondent Assistant Commissioner Central Excise Division, Rohtak, before the learned CJM, Rohtak, (copy Annexure P-1), giving therein a short background of the matter and further stating that the accused had not come forward for release of the gold “nor have they refused to claim of the said recovered item” and that therefore no useful purpose would be served to keep the items in Government custody and that the applicant-department may be allowed to disposed it of by way of public auction.

7. On that application, the learned CJM, Rohtak, vide the impugned order dated 19.04.2019, observed that in the judgment and order of the learned Sessions Judge, Rohtak (dated 18.08.1980), it had been specifically noticed that both the accused had denied the case of the

prosecution and had contended that they were not concerned with the gold recovered, further having contended (in 1979-80) that it was supplied to them by one Ram Chander.

Hence, in the order presently impugned, the CJM, Rohtak, has held that since they had taken a stand at that stage that they had no concern with the gold, there was no doubt remaining that the claim on the gold from them was baseless.

8. It was next noticed in the said order that Ram Chander had also suffered a statement during the trial in 1979-80, that he had no concern with the gold recovered from petitioner no. 1 and therefore again, the claim of the petitioners herein could not be accepted. Consequently, the application of the Central Excise Department seeking that the gold be allowed to be sold by way of public auction, was allowed.

9. It has also been noticed in the said impugned order that the gold was deposited in a locker of the Punjab National Bank, Jhajjar Road, Rohtak, at the initial stage itself, with the applicant department (respondent herein) duly paying rent for the locker and therefore it had been contended by the department that there was a financial loss on that account also.

10. Thereafter, in the order disposing of the revision filed against the order of the CJM, the learned Sessions Judge after noticing the background of the case and the reasoning for the application of the respondent department having been allowed (by the CJM), further also noticed that in the last paragraph of the judgment dated 18.08.1980, it was also held that the gold was rightly confiscated by the department with that order (of confiscation) also upheld.

Consequently, the revision filed by the present petitioners was dismissed, on the ground that even the said order had attained finality and hence the revision petition had no merit in it.

11. Before this court today, learned counsel for the State having pointed out that even before the learned trial court, in the years 1979-80, the petitioners had taken a stand that the gold did not belong to them, learned counsel for the petitioners submitted that then it must be held that if the gold did not belong to them, the petitioners have been wrongly convicted and therefore the gold needs to be returned to them.

[It is to be noticed here that learned State counsel has appeared without notice of motion formally having been issued, on account of an advance copy of the petition having been given to him by the office of the Advocate General, Haryana].

12. Learned counsel for the petitioners further submitted that the Gold (Control) Act, 1968, having since been repealed in the year 1990, the gold in any case should be returned to the petitioners.

13. Having considered both the arguments of learned counsel, I find myself unable to agree with them because as regards his first argument, that the conviction itself would be erroneous if the gold did not belong to them, obviously the judgments of the learned trial court and appellate court passed in the year 1980 not having ever been subject matter of any further proceedings, with the conviction of petitioner no. 1 therefore having attained finality, now in these proceedings by which effectively the petitioners seek the return of the gold confiscated, they obviously cannot now at this stage turn around and say that the conviction was erroneous.

Further, with the order of the department directing confiscation of the gold also having become final vide the judgment dated 18.08.1990, they also cannot seek, more than 35 years later, that the gold should be returned to them.

14. As regards the Gold (Control) Act, 1968, having been repealed in the year 1990, no saving clause/substantive provision has been pointed out from the Repealing Act by which any gold confiscated during the validity of the said Act (between 1968 and 1990) should be returned to the person from whom it was seized/recovered.

15. In fact, the said enactment is seen to be a very short Act (which has also been reproduced in an order of the Customs Excise and Gold Tribunal, Delhi, 1991 (56) ELT 374 Tri Del.), and is reproduced hereinbelow:-

“The following Act of Parliament received the assent of the President on the 6th June, 1990, and is hereby published for general information : -

*THE GOLD (CONTROL) REPEAL ACT,
1990 No. 18 OF 1990 [6th June, 1990] An Act to repeal
the Gold (Control) Act, 1968.*

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows: -

*1. This Act may be called the Gold
(Control) Repeal Act, 1990.*

*2. The Gold (Control) Act, 1968 is hereby
repealed.”*

16. Though learned counsel for the petitioners in fact has not cited any judgment whatsoever on the issue, it is seen that a judgment of the Supreme Court in **Sushila N. Rungta (deceased) through LRs vs. The Tax Recovery Officer** (Civil Appeal No. 10824 of 2018, decided on 30.10.2018)

considers the effect of the said repealing Act, though in the context of an old appeal pending before that court since 1972.

17. In that case, after an order dated 03.01.1970 was passed by the Collector of Central Excise, essentially imposing a penalty of Rs. 25,000/- on the appellant therein, thereafter, exercising *suo motu* powers under the Defence of India Rules, a show cause notice dated 01.06.1971 was issued (by the concerned Central Excise Authority), by which certain items of gold were sought to be confiscated, which notice was challenged in a writ petition before the Delhi High Court, which was dismissed on 29.09.1972.

Against that order an appeal was filed before the Supreme Court, with proceedings pursuant to the said notice having been stayed by the Apex Court on 09.08.1973, during the pendency of the appeal.

18. The turn of the appeal eventually came up for hearing before their Lordships in the year 2018, with the Gold (Control) Repeal Act, 1990, having obviously come into effect well before that.

In the said judgments the objects and reasons for enacting the Repealing Act were gone into by the Supreme Court, with the following observations thereafter made:-

“6) Having heard learned counsel for both sides, we are of the view that the statement of objects and reasons makes it clear that over 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act has been introduced have failed. Following the advice of experts, who have examined issues related to the Act, the objects and reasons goes on further to state that this Act has proved to be a regressive measure which has caused considerable dissatisfaction in the minds of the public and hardship and harassment to

artisans and small self-employed goldsmiths.

7) This being the case, we are of the opinion that the repeal simpliciter, in the present case, does not attract the provisions of [Section 6](#) of the General Clauses Act as a contrary intention is very clearly expressed in the statement of objects and reasons to the 1990 repeal Act. In this behalf, it would be apposite to refer to [New India Assurance Co. Ltd. vs. C. Padma and Another](#), (2003) 7 SCC 713 (para 10)

8) This Court noticed that, in a parallel instance of simpliciter repeal, Parliament realized the grave injustice and injury that had been caused to heirs of LRs of victims of accidents if their petitions were rejected only on the ground of limitation. This being the case, this Court found that a different intention had been expressed and, therefore, [Section 6-A](#) of the General Clauses Act would not in that situation apply.”

19. Thereafter, it was held by the Supreme Court that whenever there was an amendment made in the Defence of India Rules and/or a repeal of the said rules had taken place, there was always an inbuilt savings clause, and in fact Section 116 of the Gold (Control) Ordinance No. 6 of 1968 also made it clear that such show cause notices were not saved even if Section 6 of the General Clause Act, 1897, would be held to be applicable.

Holding as above, the appeal in Sushila N. Rungtas' case (*supra*), was allowed, observing that in fact the show cause notice dated 01.06.1971 no longer survived.

20. Even having considered the above, in my opinion, the ratio of the said judgment/order of the Supreme Court would not apply in the present case; firstly, in view of the fact that the proceedings in the show cause notice dated 01.06.1971 as was subject matter of that appeal, had been ordered to be stayed in the year 1973 itself by the Supreme Court, whereas in the present

case, the judgments and orders passed in the context of the offences committed under the provisions of the Gold (Control) Act, 1968 and Section 135 (b) of the Customs Act, 1962, became final with no challenge thereto, in the year 1980 itself.

Further, though it is very obvious, as has been held by the Apex Court, that the object and reason for repealing the Gold (Control) Act was that it had not achieved the desired objectives and had in fact caused hardship and harassment to artisans and small self-employed gold smiths (as stated in the objects and reasons of the Repealing Act) and therefore it was held that the appellant before their Lordships could not be prosecuted any further in terms of the notice dated 01.06.1971, which in fact no longer survived (with the Act itself having been repealed), however, in my opinion that would be because proceedings pursuant to the said notice had been stayed in the year 1973 itself by the Supreme Court.

To repeat, in the present case, nothing actually remained sub-judice after the judgment of the appellate court affirming the conviction of petitioner no. 1 under the provisions of the Gold (Control) Act, 1968, as also the Customs Act, 1962 and upholding the order of confiscation of the gold recovered from him.

If, therefore, this court were to interpret that because of the repeal of the Gold (Control) Act, 1968, all proceedings taken thereunder as had already become final prior to its repealment in 1990, it would amount to directing that all action taken during the 22 years of the operation of that Act, would be null and void and therefore any penalty etc. imposed and all gold recovered during such period would be liable to be returned to the persons from whom it was confiscated. Obviously, that would not seem to be what

was intended by the judgment/order of the Supreme Court in *Sushila N. Rungtas's* case.

Hence, this court would interpret the said judgment/order being one passed in exercise of the jurisdiction of the Supreme Court under Article 142 of the Constitution of India.

21. Therefore, what has already been held hereinabove, to the effect that the petitioners cannot suddenly turn around and say that despite the conviction of petitioner no. 1 having become final and in fact even the order confiscating the gold having become final in the year 1980, the gold now be returned to them simply because the Gold (Control) Act, 1968, was repealed in the year 1990.

In this context, Section 6 of the General Clauses Act, 1897, as had not been held to be applicable to the facts of the case before the Supreme Court in **Sushila N. Rungtas'** case (*supra*), needs to be seen in the context of the present case and consequently, is reproduced hereinbelow:-

“6 Effect of repeal:- Where this Act, or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not--

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed

*against any enactment so repealed; or
(e) affect any investigation, legal proceeding or
remedy in respect of any such right, privilege,
obligation, liability, penalty, forfeiture or
punishment as aforesaid, and any such
investigation, legal proceeding or remedy may be
instituted, continued or enforced, and any such
penalty, forfeiture or punishment may be imposed
as if the repealing Act or Regulation had not been
passed.”*

22. Thus, as per clause (b) of Section 6 of the General Clauses Act, a repeal of a statute would not affect the previous operations of such enactment or even affect anything duly done under its provisions or any consequence suffered thereunder.

Hence, even though it has been held in *Rungtas'* case that Section 6 of the General Clauses Act would not be applicable in the circumstances of that case, (reference the opening line of paragraph 7 of that judgment), yet, in the present case, in which the conviction of the first petitioner herein already became final in the year 1980 with the order of confiscation of gold also having become final at that stage itself, again it would have to be interpreted that what has been held in *Rungtas'* case would be an exercise of jurisdiction under Article 142 of the Constitution of India.

23. Hence, to repeat, there being no savings clause or any substantive provision in the Gold (Control) Repeal Act, 1990, to the effect that all action taken during the validity of the said Act would stand reversed, or that the gold seized during the validity of the Act be returned to the person from which it was seized, the contention of learned counsel for the petitioners in that regard cannot be accepted at all.

24. There is yet another aspect of the present case; i.e. that the

conviction of the first appellant herein was not only for the commission of an offence punishable under Section 85 of the now repealed Gold (Control) Act, 1968, but also under Section 135 (b) of the Customs Act, 1962, the relevant part of which reads as follows:-

“135. Evasion of duty or prohibitions--- [(1) Without prejudice to any action that may be taken under this Act, if any person---

xxxx xxxx xxxx xxxx xxxx

(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 reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or

xxxx xxxx xxxx xxxx xxxx

he shall be punishable:-

(i) in the case of an offence relating to,—

(A) any goods the market price of which exceeds one crore of rupees; or

(B) the evasion or attempted evasion of duty exceeding thirty lakh of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds thirty lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment

of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.]

xxxx xxxx xxxx xxxx xxxx”

Hence, in any case, with that provision not having been repealed and this court already having held hereinabove that even the proceedings under the Act of 1968 already having become final in the year 1980, the repealment of that Act in 1990 cannot come to the aid of the petitioner, I would see no ground to entertain this petition, which is consequently dismissed.

March 24, 2021
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes