

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4073 OF 2023

Jayendra Chandulal Thakkar	..Petitioner
Vs.	
The State of Maharashtra & Anr.	..Respondents

Mr. Mohammed Wasim Qureshi i/b. Qureshi & Associates for the
Petitioner.

Ms. Shruti Vyas, 'B' Panel counsel for State.

Mr. Karan Adik with Ms. Sangeeta Yadav for Respondent No.2.

**CORAM : G. S. KULKARNI &
JITENDRA S. JAIN, JJ.
DATE : JUNE 22, 2023**

Oral Judgment (Per G. S. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. Respondents waive service.

By consent of the parties heard finally.

2. This petition filed under Article 227 of the Constitution of India, although has number of prayers, the principal challenge as mounted by the petitioner is to an order dated 29 November, 2017 passed by the Principal Commissioner & Ex-officio Additional Secretary to Government of India, by which the revision application filed by the petitioner under Section 129DD of the Customs Act, 1962, has been rejected. By the impugned

order, the order dated 08 October, 2013 being an order in appeal passed by the Commissioner of Customs (Appeals), Mumbai-III, dismissing the petitioner's appeal, has been confirmed.

3. Briefly the facts of the case are:-

As it was observed that the movements of the petitioner were suspicious, the petitioner was intercepted by the officers of the Customs Air Intelligence Unit at Chhatrapati Shivaji Maharaj International Airport, Sahar, Mumbai on 14 March, 2006. The petitioner declared himself to be a passenger travelling from Mumbai to Doha by Qatar Airways flight No. QR 201. As set out in detail in the show cause notice dated 11 September, 2006, when the petitioner cleared the immigration and customs, the petitioner was taken to the baggage identification area, when he was asked whether he was carrying any contraband, Indian or foreign currency in excess of the equivalent of US \$ 4000 or any prohibited goods either on his person or in his baggage. On such question being asked, the petitioner repeatedly stated that he was carrying foreign currency equivalent to US \$ 4000 only, as he was an NRI. The Customs Air Intelligence Officers thereafter decided to conduct a detailed examination of the petitioner's person and his baggage at the designated area.

4. The officers in the presence of panchas informed the petitioner that he had the right under the law to be examined of his person and his baggage before a Magistrate or a Gazetted Officer and also informed him that the Superintendents Shri P. S. Salian and M. C. Shiakh were the gazetted officers. The petitioner consented for the examination/search of his person and baggage to be taken in the presence of the said Superintendents. In the presence of such officers and as set out in detail in paragraphs 3 to 9 of the show cause notice dated 11 September, 2006 issued to the petitioner, on the search of the person of the petitioner as also of his baggage, the petitioner was found to be carrying foreign currency equivalent to Indian currency valued Rs. 33,06,667.60. The said currency was US Dollars, Euros, UAE Dirhams and Saudi Riyals. The amount being recovered from the person of the petitioner was substantial. A statement of the petitioner as per the provisions of Section 108 of the Customs Act, 1962 was also recorded (dated 14 March, 2006) in which the petitioner stated that he was a trader of industrial electronic parts and leather luggages and that his business was totally based in foreign countries mainly Singapore and Hong Kong and he had no business in India. He stated that his family was based in Gujarat and he was an NRI and travelled to various countries in connection with his business of

trading. He also stated that he was holding an Indian passport issued at Ahmedabad on 27 February, 2004 which was valid upto 26 February, 2014 and prior thereto, he was holding an Indian passport issued at Kuala Lumpur on 27 April, 1984. He stated that he had lost his passport in Vadodara and hence had got a new passport issued. On being asked on the details as to how he lost his earlier passport, he stated that the passport, which was issued at Kuala Lumpur, was seized/detained by the Singapore police, as he was involved in a quarrel case in Singapore and while applying for his new passport, he did not mention this fact to the passport authorities. He also stated that he had received foreign currency from Nepal and on being asked whether he declared the said currency on his departure from Nepal or on his arrival in New Delhi, he stated that he had not declared the foreign currency, on his departure from Nepal or on his arrival at New Delhi. He stated that he was fully aware that currency notes beyond US Dollars 5000 or equivalent had to be declared on arrival in India.

5. It is on the above backdrop, the petitioner was issued a show cause notice dated 11 September, 2006. The petitioner filed a reply to the said show cause notice, which was adjudicated by the Commissioner of Customs by following the due procedure, who proceeded to pass an

Order-in-Original dated 30 January, 2008, by which the Commissioner ordered absolute confiscation of the impugned foreign currency equivalent to Indian Rs. 33,06,667.60 under the provisions of Section 113(d), (e) and (h) of the Customs Act, 1962. A penalty of Rs. 4,00,000/- was imposed on the petitioner under the provisions of Section 114(i) of the Customs Act, 1962 alongwith the order of confiscation of the other items namely pouch as also the shoes.

6. It appears from the record that the Commissioner of Customs as per the provisions of Section 113(d), (e) and (h) read with Section 118(b) of the Customs Act, 1962 read with Section 6(3) of Foreign Exchange Management Act, 1999, passed a further order-in-original dated 22 October, 2010 which was also on the similar terms as in the terms of the order dated 30 January, 2008.

7. The petitioner being aggrieved by the order-in-original passed by the Commissioner of Customs, filed an appeal before the Commissioner of Customs (Appeals) which came to be adjudicated by an order dated 08 October, 2013, rejecting the petitioner's appeal. The learned appellate authority observed that the petitioner had failed to substantiate his claim by submitting any evidence in support of the grounds in appeal. It was

observed that in absence of any evidence, the procurement of the currency itself was tainted and it could be safely concluded that the currency was obtained through illegal channels. It was also observed that the petitioner had earlier used another passport in the name of Jitendra Chimanlal Thakkar which was obtained through fraudulent means and used for travel, as revealed in two earlier cases detected by the Department, one in Mumbai in 2001, pertaining to the seizure of Indian and foreign currency at Mumbai Airport, equivalent to Rs. 22 Lakhs and the other in Bangalore, where 85 mobile phones valued at Rs. 18,53,000/- were seized on his arrival from Switzerland on 04 September, 2003. The appellate authority, on examination of the material on record, observed that it was therefore apparent that the petitioner was a habitual offender, well conversant with the rules and regulations concerning import and export, and his deposition that the currency was procured from Nepal, was just an attempt to escape the consequences of law. In these circumstances, examining all the contentions of the petitioner, the appeal came to be rejected.

8. The petitioner, being aggrieved by the order passed by the appellate authority, approached the Government of India in a revision application which has been dismissed by the impugned order dated 29 November, 2017 as passed by the Principal Commissioner & ex-officio Additional

Secretary to Government of India.

9. Learned counsel for the petitioner in assailing the concurrent findings of all the authorities below, has limited submissions. His first submission is that when the petitioner approached the Court of learned Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, in an order passed on the petitioner's bail application, the learned Metropolitan Magistrate made an observation that it was not possible for the petitioner to wear shoes after the currency was kept inside the shoes, although in making such observations, the bail application itself was rejected. It is hence submitted that considering such observations, the case of the department cannot be believed that the foreign currency could not have been kept by the petitioner in his shoes. In our opinion, the prima-facie finding as recorded by the learned Metropolitan Magistrate in considering the bail application of the petitioner in no manner would be material in so far as the proceedings under the Customs Act as adopted against the petitioner were concerned. The Customs Act is a code by itself under which a detailed procedure as discussed was followed by the Customs Officers which included recording of statement of the petitioner, providing of an opportunity to the petitioner to cross-examine the departmental witness in adjudication of the show cause notice resulting

into the consequences of confiscation and penalty. The adjudication of the show cause notice was subject to a statutory appeal being an appeal on the factual matrix as also on all issues of law. Thus, the adjudication of the show cause notice under the Customs Act cannot be rendered to be faulty or defective on any prima-facie findings recorded by the Metropolitan Magistrate in deciding the petitioner's bail application. Such inter mixing of jurisdictions under the customs law and the penal law which is the general law, which also operate in different fields, is certainly not permissible, much less when the adjudication before the Metropolitan Magistrate was merely of a bail application recording prima facie observations, only in the context of bail, which in any event were certainly not conclusive. We, therefore, reject such contention as urged on behalf of the petitioner.

10. The second contention as urged by learned counsel for the petitioner is that the petitioner was not put to notice of the provisions of Section 102 of the Customs Act namely that the petitioner would have an option to be taken to the nearest gazetted officer and/or Magistrate and in whose presence he could have been searched. Such contention appears to be totally untenable from the reading of paragraph 2 of show cause notice which records thus:-

“2. Thereafter, the Officers in the presence of panchas informed the passenger that he had the right under the law to have the examination of his person and his baggage done before a magistrate or a Gazetted Officer and also informed that Superintendents S/Shri P. S. Salian and M. C. Shaikh, who were present were gazetted officers to which the passenger consented for the examination/search of his person and baggage to be taken in the presence of the Superintendents.”

11. The petitioner has not placed any material on record, that such statement as made in the show cause notice was in any manner incorrect and/or the same was assailed by the petitioner in the subsequent proceedings. Thus, such contention as urged on behalf of the petitioner needs to fail.

12. In exercising our discretionary jurisdiction under Article 226 of the Constitution, there is another aspect which would be material, namely the finding as recorded against the petitioner namely that the petitioner is a habitual offender as correctly observed by the revisional authority. Learned counsel for the petitioner has not made any submission to assail such finding as recorded by the revisional authority.

13. Learned counsel for the petitioner did not have any other contention to be urged in assailing the impugned order.

14. We are in agreement with the learned counsel for the respondents

when he submits that the petition deserves to be dismissed as this is a case of concurrent findings of all the authorities below, and that the findings of the facts ought not to be interfered by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution.

15. In the light of the above discussion and having heard learned counsel for the parties and having perused the record, in our opinion, as observed above, none of the contentions as urged on behalf of the petitioner are accepted. The jurisdiction of this Court under Articles 226 and 227 of the Constitution to interfere in the impugned orders would be very limited namely to examine whether there is any patent perversity and illegality in the orders passed by the authorities below. This Court in exercise of such jurisdiction would not re-appreciate evidence to come to a conclusion different from what has been arrived at by the authorities on appreciation of facts and/or on consideration of materials. We do not find any perversity much less patent illegality in the order-in-original as also followed by the appellate authorities. The petition miserably fails. It is accordingly rejected. No costs.

[JITENDRA S. JAIN, J.]

[G. S. KULKARNI, J.]