

Kanungo & Company vs Collector Of Customs And Ors. on 7 February, 1972

Equivalent citations: AIR 1972 SC 2136, 2003(89) ECC 764, 1983(13)ELT1486(SC), (1973)2SCC438, 1972(4)UJ712(SC), AIR 1972 SUPREME COURT 2136, 1973 2 SCC 438, 1973 SCC(CRI) 846, 1973 2 SCJ 219

Bench: S.M. Sikri, A.N. Ray, M.H. Beg

JUDGMENT

1. This is an appeal by certificate granted to the appellant by the Calcutta High Court against its judgment, in appeal, reversing the decision of the Single Judge who had quashed the order dated June 15, 1963, passed by the Additional Collector of Customs, Calcutta, confiscating 280 watches of the appellant under Section 167(8) of the Sea Customs Act, read with, Section 3(2) of the Imports and Exports (Control) Act, 1947.

2. The relevant facts for the determination of the points raised before] us are as follows : The appellant is a firm carrying on business as dealer, importer and repairer of watches. The appellant's premises at 129, Radha Bazar Street, Calcutta, were searched on October 17, 1959, under a search' warrant issued by the Chief Presidency Magistrate, Calcutta. In the course of! the search, the Customs authorities seized 390 pieces of watches and took: them away. By an order dated January 27, 1960, the Assistant Collector of Customs released 43 watches out of the 390 watches which had been seized.; On September 5, 1960, he released 64 more watches, and on January 11, 1961, he released another three watches and confiscated the remaining 280 pieces of wrist watches.

3. The appellant filed an appeal before the Additional Collector of Customs who quashed the confiscation, without going into the merits of other grounds, as according to him principles of natural justice had not been complied with in the case.

4. A fresh notice was thereafter served on the appellant to show cause why the watches seized should not be confiscated. The appellant thereupon filed a petition in the High Court challenging the initiation of fresh' proceedings in respect of the 280 watches. A consent order was made by the High Court, and in pursuance of that order the Deputy Collector of Customs, decided certain preliminary issues against the appellant, on April 19, 1962.' Aggrieved by this decision, the appellant filed another petition in the High Court. Before the High Court Mr. Kar, counsel for the Customs, agreed to' certain clarifications, namely, (1) that if the petitioner (appellant) is found¹ guilty of having violated the order under Section 3 of the Imports & Exports (Control) Order made in 1955, and (2) if it be found to have imported watches across the customs frontiers as notified under Section 3A of the Sea Customs Act, then only the charge will be taken as established. On these clarifications the High Court held that the charge levied against the appellant did not suffer from vagueness, as complained by the appellant. The High Court concluded:

With the two clarifications made in the charge the adjudication against the petitioner should now proceed.

Subject to the clarifications as herein before made, I discharge the Rule. Let the adjudication proceedings against the petitioner now proceed on the charges as hereby clarified. There will be no order for costs.

The adjudication proceedings have been held up for long long years and I direct the respondents customs authorities to finish the adjudication proceedings as early as possible.

This order was passed on March 7, 1963.

5. It appears that the Customs Authorities sent a memo, dated May 17, 1963, directing the appellant to show cause against the seizure of 280 pieces of wrist watches by the Customs Department. On May 25, 1963, the appellant sent its reply to the memo. The appellant first contested the jurisdiction of the Assistant Collector, and after raising some legal objections, stated in para 6 as follows :

We have sufficiently explained our lawful acquisition and our legal possession of the said wrist watches in our various explanations submitted to you from time to time and we refer you to our explanation dated 22-8-1960, 2-2-1960, 27-4-1962, 20-3-1962, 6-2-1962 to you and also to our explanation contained in our petition filed before you.

In para 8 of its reply, the appellant asserted that principles of natural justice had been violated. In para 10 it was alleged that "the Customs Department has not been able to produce any evidence that the said goods are smuggled goods or that these goods have been brought across any Customs from Frontier of India or in violation of any of the provisions of Sea Customs Act or in violation of any of the notification under that said Act."

6. On June 15, 1963 (Order issued on August 7, 1963) the Additional Collector, after giving reasons, passed an order confiscating the watches under Section 167(8) Sea Customs Act, read with Section 3(2) of the Imports and Exports (Control) Act, 1947 After referring to the history of the litigation and the reply of the appellant, dated May 25, 1963, it was stated in the order that on June 13, 1963, the appellant company was granted a personal hearing, when its representatives desired to be furnished with the details of the enquiries conducted by the Customs House. The Additional Collector of Customs also referred to their contention that the watches had been purchased between 1956 and 1959 and they had produced vouchers for the same and as such they had been able to establish that the watches had not been obtained by them in an illegal way.

7. The Additional Collector gave the following reasons for coming to his conclusions:

The party originally sought to connect the watches under seizure with certain transactions some of which have been found on enquiry to be false and fictitious. The result of the enquires and the evidence on which the charges were framed were made known to the party specifically under para 6 to 19 of the Show Cause Notice. The party in his reply to the show cause notice has merely denied the charges but could not make any submission in rebuttal of those specific allegations. The watches under seizure are of foreign origin. The cash memos and vouchers etc. produced by the party in disclosure of his knowledge about the source from which these watches were obtained and in proof of their licit source have been found on enquiry to be false and fictitious. Besides in respect of 11 pieces of watches (item Nos. 22, 34, 65, 66, 74, 80 & 95 of the inventory) no document whatsoever showing their licit source could be produced. It is clear that these watches could not have been legally imported. I therefore hold that these watches were imported into India clandestinely from a foreign country and the party made a desperate attempt to connect these watches with some false and fictitious transactions.

8. The appellant then filed a writ petition challenging this order. Banerjee, J., quashed the order on the ground that the Customs authorities had failed to prove that the appellant had imported the wrist watches without valid licence from beyond the Customs frontiers of India.

9. The High Court (Bose C.J. and B.C. Mitra, J.) allowed the appeal. The High Court held that the onus of proof that the wrist watches were lawfully imported had shifted on to the appellant after the Customs Authorities had informed the appellant of the results of the enquiries and investigations regarding the claim made by it with regard to the possession of the said watches, and this onus the appellant had failed to discharge. The High Court observed :

The watches were seized from the possession of the respondent No. 1 (appellant) who had not obtained a licence or a customs clearance permit for importation of the same. They were of foreign make and must have been imported across the customs frontier. The explanations offered by the respondent No. 1 regarding its coming into possession of the same between 1956 and 1957 were found, upon enquiries by the customs authorities, to be false, the result of those enquiries were communicated to the respondent No. 1 who was thereafter heard by the adjudicating officer. Yet no attempt was made by the respondent No. 1 to substantiate its claim regarding lawful importation of the watches. In this same matter, the respondent No. 1 came to this Court twice previously with writ petitions, for relief, and appropriate reliefs were granted to it. Yet it failed to satisfy the customs authorities that 280 watches were not imported in violation of the statutory restrictions. The customs authorities came to the conclusion that the said 280 watches were illegally imported and thereupon made an order for confiscation of the same. It is not for this Court, in exercise of its jurisdiction under Article 226 of the Constitution, to revise, set aside or quash this order, in the facts of this case.

10. The High Court granted the certificate under Article 133(1)(a) and (b) of the Constitution and the appeal is now before us.

11. The learned Counsel for the appellant contended that the burden on the Customs Authorities had not been discharged. He urged that there was no evidence that the watches had not been brought into India lawfully. He urged, secondly, that the impugned order wrongly placed the burden on the appellant, thirdly, that the impugned order was made in contravention of natural justice; and fourthly, that there was no evidence that watches had been imported in contravention of law.

12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed to be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force in the third contention of the appellant.

13. There is also no force in the second point because we do not read the impugned order as having wrongly placed the burden on the appellant. What the impugned order does is that it refers to the evidence on the record which militates against the version of the appellant and then states that the appellant had not been able to meet the inferences arising there from. In our opinion, the High Court was right in holding that the burden of proof had shifted on to the appellant after the Customs Authorities had informed the appellant of the results of the enquiries and investigations.

14. This also disposes of the first point. As we have said, the burden was on the Customs Authorities which they discharged by falsifying in many particulars the story put forward by the appellant.

15. Coming to the fourth point, we are of the opinion that except for certain items there is evidence in favour of the conclusion of the High Court. It cannot be disputed that a false denial could be relied on by the Customs Authorities for the goods had been illegally imported. In *Issardas Daulat Ram v. Union of India* (1962) Supp. S.C.R. 358 : 363 the credibility of the story about the purchase of gold from certain parties was treated as a relevant piece of evidence.

16. It, however, seems to us that there is something to be said for the appellant in respect of 54 pieces of watches which are stated to have been received by the appellant for correction and repair. In paras 8, 9 and 10 of the show-cause notice it was stated as follows :

8. Of the persons from whom the said 54 pes watches are alleged to have been received for correction and repair, almost all of them made more or less stereotype statements on the following lines.

- (a) That the watch in question was imported into India by relative who had arrived from East Pakistan.
- (b) That the watches were presented to him/her by a relative.
- (c) That the watch was new at the time of presentation but not keeping correct time.
- (d) That the watch was given to M/s. Kanungo & Co. for correction/repair as M/s. Kanungo & Co. were known to them for a long time.
- (e) That he/she was not sure about the watch band as he/she had asked M/s. Kanungo & Co. to change the band.
- (f) That the cost for correction had not been settled but had been left to M/s. Kanungo & Co.
- (g) That he/she has no documentary evidence whatsoever in support of the watch in question having been legally imported or acquired.

9. Further some parties from whom watches were alleged to have been received for repairs under Repair Receipts produced and which watches were claimed by M/s. Kanungo & Co. to have been seized on 17-10-59 have confirmed that they did never give any watches to M/s. Kanungo & Co. and neither were they in possession of any repair receipts but that they have been falsely implicated.

10. For the reasons mentioned heretofore the bonafide of the correction slip and Repair Receipt Books cannot be accepted and only goes to show that M/s. Kanungo & Co. have as an after thought made an attempt to satisfactorily account for 54 pieces watches which are in fact not covered by any documentary evidence to establish legal acquisition or legal importation and there are reasons to believe prima facie that these 54 watches were illegal imported into India.

In our opinion it would be impossible for a watch repairer to produce any further evidence in order to justify possession of watches. A watch-repairer cannot be expected to go into the history of the acquisition of a watch when it is given for repair. The onus being on the Customs Authorities, the type of the statements mentioned in para 8 cannot be held to be sufficient to discharge the onus which lay on them. Further, no indication has been given in para 9 as to how many parties had stated that they never gave any watches to the appellant. The apparent bonafides of the correction slip and receipt book mentioned in para 10 could not be ignored on the reasons given by the Customs Authorities. Para 10 proceeds on the basis that the onus is on the appellant to prove that the watches had not been illegally imported.

17. There is also one wrist watch mentioned in para 18, which in our opinion has been wrongly confiscated. In para 18 it is stated :

18. I piece 'Homer' wrist watch (item 51 of the inventory) was claimed by M/s. Kanungo & Co. to have been imported from M/s. Rornar Watch Co. Switzerland under Factory Invoice No, 1007/PM/JN dated 8-2-55 and cleared under Bill of entry No. Cash 1857 dated 9-2-55. This 1 piece was not shown in the stock Register of M/s. Kanungo & Co. for 1958-59 where the balance shown was 'Nil' and as such the watch seized could not possibly be the same watch as was imported by M/s. Kanungo & Co. and had been illegally imported into India.

The fact that it was not shown in the stock register is not material to show that it had been illegally imported. It is not stated by the Authorities that the invoice and the bill of entry had nothing to do with this watch.

18. Accordingly, we allow the appeal in part and quash the order dated June 15, 1963, regarding the confiscation of 54 watches mentioned in para 8 and the one watch mentioned in para 18 of the show cause notice. There will be no order as to costs in this appeal.