

Delhi High Court

Renu Sharma And Ors. vs Collector Of Customs And Anr. on 23 October, 1991

Equivalent citations: 45 (1991) DLT 642

Author: S Pal

Bench: G Mittal, S Pal

JUDGMENT Sat Pal, J.

(1) In this writ petition the petitioners have challenged the order dated 17th January, 1989 passed by Collector of Customs, New Delhi, respondent No. 1. By this order the said respondent rejected the application dated 19th December, 1988 filed on behalf of the petitioners requesting to order the withdrawal of the summons directing the petitioners to present themselves for cross examination by a co-noticee in the adjudication proceedings pending against the petitioners and Indian Express Newspapers (Bombay) Private Limited (hereinafter) referred to as "INBPL").

(2) Briefly stated the facts of the case are that the petitioners were served with a show cause notice dated 5th October, 1987 under the Customs Act, 1962 (hereinafter referred to as 'the Act') by the Collector of Customs stating therein that they had conspired along with Inbpl to under invoice a Hell's colour scanner purchased by Inbpl which resulted in the evasion of customs duty.

(3) On 19th October, 1987 on the basis of the same allegations mentioned in the show cause notice, a criminal complaint was filed against the petitioners, Inbpl and its Chairman and Managing Director under Section 120B of the Indian Penal Code read with Sections 135(i)(a) and 132 of the Act.

(4) The officers of respondent No. 1 recorded the statements of all the three petitioners under Section 108 of the Act during the investigation. However, after recording of the statements, the petitioners including the Managing Director of Inbpl retracted their statements (5) During the adjudication proceedings before respondent No. 1 the co-noticees, namely, Inbpl and its Directors moved an application praying that persons including the petitioners whose statements under Section 108 of the Act were being sought to be relied upon against them should be permitted to be cross-examined by them. The request of Inbpl and its Directors was granted by respondent No. 1. Pursuant to this, the petitioners were summoned to appear before respondent No. 1 on 19th and 20th December, 1988 for cross examination.

(6) An application was, however, filed on behalf of the petitioners before respondent No. 1 wherein an objection was raised that in view of the constitutional guarantee given to the petitioners under Article 20(3) of the Constitution of India, the petitioners could not be compelled to be a witness against themselves. Respondent No. 1, was, therefore, requested to order the withdrawal of the summons issued directing the petitioners to give evidence in the adjudication proceedings. As desired, respondent No. 1 gave a personal hearing to the petitioners and thereafter by his order dated 17th January, 1989 rejected the application of the petitioners. Respondent No. 1 In the said order observed that any person to whom the summons has been issued for appearance or for participation for cross-examination is duty bound to act in pursuance of the summons. It was further stated in this order that the statements or evidence recorded during the departmental

proceedings but subsequent to filing of the complaint against them in the Court, shall not be usable in the prosecution proceedings before the Court. Aggrieved by this order, the petitioners have approached this Court in this writ petition for quashing the said order.

(7) Mr. Mukul Rohtagi, the learned Counsel for the petitioners submitted that after filing of the criminal complaint against the petitioners in the Court, all the petitioners, have become accused of an offence. He, therefore, submitted that they cannot be compelled to be a witness against themselves under Article 20(3) of the Constitution. He further submitted that the observations of respondent No. 1 that the statements of the petitioners recorded during the adjudication proceedings but subsequent to filing of the complaint against them in the Court shall not be usable in the prosecution proceedings, are contrary to law inasmuch as the statement under Section 108 of the Act is admissible against the person making the statement himself. He, therefore, contended that in view of the above submissions the impugned order dated 17th January, 1989 directing the petitioner to present themselves for cross-examination by a co-noticee was illegal, void and wholly without jurisdiction - and liable to be quashed in writ jurisdiction.

(8) In support of his contentions the learned Counsel relied on three Supreme Court judgments, in *State of Bombay*,-. *Kathi Kalu Oghad*, , *Ramesh Chandra Mehta v. The State of West Bengal*, and *Smt. Nandini Satpathy v. P.L. Dani*, .

(9) Ms. Pinky Anand, learned Counsel for respondent No. 1, however submitted that for the purpose of adjudication proceedings, the petitioners were not accused and they cannot refuse to answer questions which are relevant to the matter under adjudication in view of Section 132 of Indian Evidence Act 1872 and also in view of the observations made in the impugned order by the Collector of Customs that statements or evidence recorded during the departmental proceedings which are subsequent to filing of the complaint against the petitioners in the Court, shall not be usable in the prosecution proceedings before the Court. In the alternative the learned Counsel submitted that even if for the sake of argument it 'is admitted that the petitioners are persons accused of an offence within the meaning of Article 20(3) of the Constitution they cannot refuse to give answers to those questions which do not tend to incriminate them. In support of this contention she relied on a judgment by a Constitution Bench of the Supreme Court reported in *Ramanlal Bhogilal Shah and Another v. D.K. Gupta and Others*, .

(10) Shri Arun Jaitley, Senior Advocate, who appeared on behalf of respondent No. 2 contended that the onus to prove the case against respondent No. 2 is on the Customs Authorities. He, therefore, submitted that respondent No. 2 should be given an opportunity to cross-examine the petitioners who are substantial witnesses in the adjudication proceedings. In support of his contention he relied on a Supreme Court judgment in *Amba Lal v. Union of India and others*, Air 1961 Sc 264.

(11) 'Admittedly a criminal complaint against all the petitioners was. filed on 19th October, 1987 (Annexure 'B' to the writ petition). The petitioner therefore, became the persons accused of an offence within the meaning of Article 20(3) of the Constitution on the date when the complaint was filed in view of the law laid down by the Supreme Court in the case of *Ramesh Chandra Mehth* (supra).

(12) In the Case of State of Bombay v. Kathi Kalu Oghad (supra) the Supreme Court held that "self incrimination must mean conveying informal based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in Court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge only". In this case it was further held that "a testimony of an accused person may be said to have been self incriminatory, the compulsion of which comes within prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so".

(13) From the law laid down by the Supreme Court it is clear that though the petitioners are persons accused of an offence within the meaning of Article 20(3) of the Constitution, the only protection that Article 20(3) gives to them is that they cannot be compelled to be a witness against themselves but they cannot refuse to give answer to those questions pertaining to matters which do not tend to incriminate them. In the case of Ramanlal Bhogilal (supra) the facts of which were almost identical to the facts of the present case. the Supreme Court declined to set aside the summons directing the petitioner in the case to appear before the Deputy Director, Enforcement Directorate. It was held in that case that the petitioner must appear before the Deputy Director and answer such questions as do not tend to incriminate him.

(14) The learned Counsel for the petitioners, however, has placed strong reliance on the decision of the Supreme Court in Smt. Nandini Satpathy (supra) and submitted that answers to some of the questions put in adjudication proceedings may not be implicative when viewed in isolation and confined to those proceedings but still have a reasonable prospect of exposing the petitioners to guilt in the prosecution proceedings. In this connection be referred to a portion of the aforesaid judgment which is reproduced, herein below : "We have explained elaborately and sum up, in substance, what is self-incrimination or tendency to expose oneself to a criminal charge. It is less than 'relevant' and more than 'confessional'. Irrelevance is impermissible but relevance is licit but when relevant questions are loaded with guilty inference in the event of an answer being supplied, the tendency to incriminate springs into existence. We hold further that the accused persons cannot be forced to answer questions merely because the answers thereto are not implicative when viewed in isolation and confined to that particular case. He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation underway is not with reference to that.

(15) We do not find any force in the above submission as In the same paragraph it was further observed, "however, fanciful claims, unreasonable apprehensions and vague possibilities cannot be the bidding ground for an accused person. He is bound to answer where there is no clear tendency to criminate." Even in this case the appellant who was accused of an offence within the meaning of Article 20(3) of the Constitution, was directed to file an undertaking in the Court to the effect that she would answer all questions put to her which did not materially incriminate her in the pending or imminent investigation or prosecutions.

(16) In view of the law laid down by the Supreme Court we are not inclined to quash the impugned order dated 17th January, 1989 passed by read pendent No. 1 and we direct the petitioners to appear

before the Collector (Customs), New Delhi and answer such questions as do not tend to incriminate them.

(17) To view of the above discussion, the petition falls and is dismissed with costs. Counsel fee Rs. 1000.00.