
Ibrahim Sattar Ganchi Vs Inspector of Customs

Criminal Revision No. 2455 of 2002

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: June 4, 2010

Acts Referred:

Customs Act, 1962 " Section 135

Citation: (2010) 4 RCR(Criminal) 329

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Advocate: Vikram K. Chaudhri, for the Appellant; H.P.S. Ghumman, for the Respondent

Final Decision: Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.

Present revision petition has been preferred by Ibrahim Sattar Ganchi. He was prosecuted by Inspector of

Customs, Ministry of Finance, Department of Revenue, Govt. of India, Amritsar in a complaint instituted u/s 135 of the Customs Act, 1962

(hereinafter referred to as, "the Act") in the Court of Chief Judicial Magistrate, Amritsar. The trial Court vide its impugned judgment dated 12th

December, 2000, held the petitioner guilty for importing fake currency and vide a separate order of even date, sentenced him u/s 135(1)(ii) of the

Act to undergo rigorous imprisonment for a period of one year with a fine of Rs. 1000/- and in default of payment of fine he was ordered to further

undergo rigorous imprisonment for one month.

2. Aggrieved against the same, petitioner had filed an appeal. The Court of Additional Sessions Judge, Amritsar found no merit in the appeal and

had dismissed the same, while upholding the conviction and maintaining the sentence.

3. In the complaint, it was stated that on 18th August, 2000, the accused-petitioner Ibrahim Sattar Ganchi entered India at Land Customs Station

Attari Rail from Lahore, Pakistan by Samjhota Express and was seen moving in suspicious circumstances by a senior Customs officer. He was

asked to report at Counter No. 14 for detailed examination of his baggage and also for his personal search. Before the search could be conducted,

two independent witnesses, namely Kulwant Singh and Jasbir Singh were called and the accused- petitioner was asked to declare if he was

carrying any contraband, narcotics, gold or fake currency. In answer thereto, the accused-petitioner declared that he was carrying Indian currency

amounting to Rs. 11,600/- consisting of 22 notes of the denomination of Rs. 500/- each and 6 notes of the denomination of Rs. 100/- each, and

had handed over the same to the Customs officer. Since all the notes were new and were in a single series, on scrutiny they were found to be fake.

The recovery memo was attested by independent witnesses, namely Kulwant Singh and Jasbir Singh. Jaswant Singh, Seizing Officer and A.K.

Bhatnagar, Superintendent Customs also attested the said recovery memo. For being in possession of fake currency, a complaint dated 2nd

September, 2000 was instituted against the accused-petitioner. The list giving details of currency notes including their denomination and serial

number was proved as Ex. PA and the Panchnama of recovery as Ex. PB. Recovery-cum-Seizure memo was proved as Ex. PC and statement of

the accused recorded by the Customs officer as Ex. PD. The arrest memo of the accused was proved as Ex. PG.

4. Thereafter, the complainant led pre-charge evidence, in which Jaswant Singh Inspector Customs appeared as PW-1. He proved various

documents, the details of which have been given above. A.K. Bhatnagar, Superintendent Customs appeared as PW-2.

5. After the pre-charge evidence was led, on 30th October, 2000 charge was framed against the petitioner. The charge stated that on 18th

August, 2000, the petitioner was found in possession of Indian currency amounting to Rs. 11,600/-, out of which 22 notes were of the

denomination of Rs. 500/- each and 6 notes were of the denomination of Rs. 100/- each and all the notes were found to be fake, and thereby the

petitioner had smuggled Indian fake currency in violation of Notification No. 23/99 dated 13th April, 1999 and Sections 11 and 77 of the Act, and

thus he had committed an offence punishable u/s 135 of the Act. The accused petitioner pleaded not guilty and claimed trial.

6. PW-1 and PW-2 were not cross-examined by the accused-petitioner. Thereafter, prosecution examined Suresh Kumar, Inspector Customs as

PW-3. He stated that Jaswant Singh, Inspector Customs PW-1 had deposited one packet sealed with seal No. 152, Customs Division, Amritsar

along with inventory with him. S.P. Janjua, Deputy Treasurer, Reserve Bank of India, Chandigarh appeared as PW-4 and stated that Budh Singh,

Inspector Customs, Amritsar came to his office with a sealed envelope on 19th August, 2000, along with permission letter Ex. PE issued by

Rajesh Jindal, Deputy Commissioner, Amritsar addressed to the Deputy General Manager, Reserve Bank of India, Chandigarh. This witness had

examined the currency notes and declared them to be fake.

7. Thereafter, statement of the accused u/s 313 Cr.P.C. was recorded and all incriminating circumstances were put to him. He denied the same

and pleaded false implication. He stated that he was not able to differentiate between the fake and genuine currency notes.

No witness was examined in defence.

However, Kulwant Singh and Jasbir Singh, the independent witnesses were given-up as won-over.

8. Mr. Vikram K. Chaudhri, Advocate appearing for the petitioner, has raised following three arguments:

(a) No independent witness was examined by the prosecution. Two independent witnesses, namely Kulwant Singh and Jasbir Singh associated

have been given-up on the false pretext of won-over.

(b) Section 102 of the Act is para-materia similar to Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and it has been

held by a Constitution Bench of Hon"ble the Apex Court in "State of Punjab v. Baldev Singh" 1999(3) RCR (Cri) 533 that it is imperative for the

officer to inform the accused that he has a right to be searched before a Magistrate or a gazetted officer and the prosecution is bound to prove that

such an offer was made. It is contended that no offer in terms of Section 102 of the Act was made to the accused-petitioner. Therefore, the

recovery of fake currency notes is to be ignored. In support of this argument, further reliance has been placed upon a judgment rendered in Yusuf

Suleman Hattia Vs. V.M. Dosi, Intelligence Officer, Narcotics Control Bureau, Bombay and Another, .

(c) Lastly, it was submitted that the petitioner is an innocent person. The prosecution has failed to prove the necessary mens-rea on the part of the

petitioner that he intended to smuggle fake currency into India.

9. I have considered all the above submissions and am of the opinion that the same are to be rejected outrightly. In the present case, the

testimonies of Jaswant Singh, Inspector Customs PW-1 and A.K. Bhatnagar, Superintendent Customs PW-2 inspire confidence. At the time of

recovery, two independent witnesses were present and they had attested the recovery memo. If these independent witnesses have not come

forward to prove the recovery, the testimony of official witnesses cannot be discarded. It is only in those cases, where the deposition of official

witnesses does not inspire confidence, the Court looks forward for corroboration from an independent source. But, where the official witnesses are

truthful and their testimonies are trustworthy, there is no need for the Court to insist for examination of independent witnesses.

10. So far second submission of counsel is concerned, in the present case no personal search of the accused-petitioner was conducted. Before the

personal search could be undertaken, the accused was asked to declare as to whether he was carrying any contraband/narcotic substance/gold

etc. or not. The accused volunteered and took the currency out of his pocket and tendered/produced the same for examination before the

Customs officials. When no personal search of the accused-petitioner was to be carried, Section 102 of the Act is not attracted. Now it is well

settled that it is only in case of a personal search that Section 50 of Narcotic Drugs and Psychotropic Substances Act, 1985 is required to be

followed and not otherwise.

11. The petitioner was coming from Pakistan. He was carrying fake currency. In such type of cases, it is not for the prosecution to prove mens-rea

on the part of the accused, rather the presumption that the accused is guilty, operate against the accused-petitioner.

12. Hence, there is no merit in the present revision petition and the same is hereby dismissed.