

(2004) 03 CAL CK 0035

Calcutta High Court

Case No: C.R.R. No. 278 of 2004

Maniruddin Ahmed

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision: March 24, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 379, 392, 407, 411

Citation: (2004) 3 CALLT 426

Hon'ble Judges: Provendu Narayan Sinha, J

Bench: Single Bench

Advocate: Milon Mukherjee and Rana Mukherjee, for the Appellant; Biren Roy, for the Respondent

Final Decision: Allowed

Judgement

P.N. Sinha, J.

Leave to amend paragraph 3 of the revision application is granted.

2. This revisional application u/s 401 read with section 482 of the Code of Criminal Procedure (hereinafter called the Code) is directed against the order dated 24.11.03 passed by the learned Sub Divisional Judicial Magistrate (hereinafter called the SDJM), Krishnagar in G.R. Case No. 1090/2003 thereby rejecting prayer of the petitioner for return of the seized articles.

3. The facts as it appears from the averments of the application are that, petitioner is proprietor of M/s. Neha Enterprise situated at Kaliachak and deals with import and export of goods. In course of his business on 27.07.02, he dispatched different kinds of copper materials in a private carriage bearing No. WB 73-1917 for delivery of the said materials at Cossipore in Calcutta. Nephew of the petitioner namely Bablu Ahmed was accompanying the driver of the vehicle. While the said truck was on its way to Calcutta, few miscreants claiming themselves as Customs Officer

intercepted the truck and took away Bablu Ahmed in a car at Nabadwip. The miscreants fled away after dropping Bablu Ahmed at Nabadwip from where he came to Krishnagar and informed the petitioner over phone, and thereafter said Bablu Ahmed came to Bethaudahari at about 11am. Reaching the spot from where he was taken away, he found that their truck was missing. Bablu Ahmed lodged FIR with Nakashipara Police Station and on the basis of it Nakashipara P.S. Case No. 120 dated 29.07.02 under sections 379/407 of IPC was started. During investigation police arrested some of the miscreants who were identified in T.I. Parade, and thereafter, section 392/407 of the IPC has also been added. Police also recovered certain stolen materials and prepared seizure lists and the stolen materials which were recovered were identified by informant as well as by the petitioner.

4. On 12.09.02 the petitioner filed an application before the learned SDJM, Krishnagar praying for return of the seized articles and the learned SDJM called for a report from the investigating officer (hereinafter called the I.O.). On 17.03.03, the I.O. submitted the report and raised objection and also in his report raised question regarding weight of the goods seized and the challan produced by the petitioner. The learned Magistrate in his mind had confusions regarding ownership of the articles and failed to realize that Bablu Ahmed was a mere carrier and the articles in fact were sent by him, and his prayer was rejected. Being aggrieved by and dissatisfied with the order dated 17.03.03 passed by the learned SDJM the petitioner preferred a revision before this Court being CRR No. 1707/03, and this Court sent back the matter again before the learned SDJM with a direction to take up (he matter for return of the seized articles after satisfying himself that the petitioner is the owner of the seized articles. The matter was thereafter again placed before the learned SDJM and on 24.11.03 the learned SDJM again rejected his prayer, and hence, this revision.

5. Learned advocate for the petitioner contended that learned Magistrate passed the order mechanically without applying judicial mind. Learned Magistrate did not consider that the papers produced before him clearly established that petitioner is the proprietor of M/s. Neha Enterprise. He purchased the said articles in auction from Customs Authorities and valid receipt of purchase was produced before the learned Magistrate. He dispatched the articles in a truck towards Cossipore at Calcutta but, on the way the miscreants intercepted the truck and took away Bablu Ahmed, nephew of petitioner to Nabadwip. In the mean time other co-miscreants took away the truck in a different direction at Matiari and disposed of the said articles which were subsequently recovered from shop room of Bhagya Lakshmi Adhikari at Matiari Bazar and from the passage of house of Sumitra Modak of Matiari Bazar para. The petitioner is not the de facto complainant or informant because, he was at Kaliachak and the informant was his nephew only who lodged the FIR. The I.O. in his report mentioned that materials seized were brass like materials and it confused the learned Magistrate whereas the claim of the petitioner was that the articles were copper materials, The articles were not examined by any

expert to establish that the seized articles were brass materials or not. Moreover, the learned Magistrate did not realize that the petitioner prayed for interim custody of the seized articles during pendency of the trial. There is no other claimant in respect of the said seized articles and the incident was on 29.07.02 and no other person claimed the said articles since recovery of the articles on 01.08.02. When the petitioner produced relevant papers, the learned Magistrate should have allowed his prayer putting some conditions. The order of the learned Magistrate being bad in law and without application of judicial mind should be set aside.

6. Learned advocate appearing for the State contended that the petitioner claimed that he dispatched copper materials in a truck towards Cossipore of Calcutta which was hijacked on the highway and the said articles have been recovered from two places of Matiari Bazar. The seizure list as well as report of I.O. reveals that goods recovered were made of brass like materials and not copper materials. The seizure list reveals that bolder made of brass like materials were seized and some pipe like brass were seized. In the challan produced by the petitioner only copper tubes and pipes (cutting) were mentioned. The papers produced by the petitioner did not tally with the seized articles and accordingly learned Magistrate rightly rejected the prayer of the petitioner. There is no illegality in the order and it requires no interference.

7. After considering the submissions of the learned advocates of the parties and perusing the revisional application and annexure made thereto and the case diary, I find that, there is no dispute that the petitioner is the proprietor of M/s. Neha Enterprise. Copy of income tax clearance certificate provisional certificate issued by Pradhan, Kaliachak II Gram Panchayat, Malda and a paper issued by Foreign Trade Development Officer of the Office of Joint Director General of Foreign Trade, Ministry of Commerce, Government of India, Calcutta-69 reveals that the petitioner Maniruddin Ahmed is the proprietor of M/s. Neha Enterprise. The challan dated 22.07.02 issued by the Office of Superintendent of Customs, Mahadipur, Malda reveal that M/s. Neha Enterprise deposited Rs. 5,18,853/- as import duty for 25MT copper tubes and pipe (cutting). The Bill of Entry for Home Consumption was also issued by Inspector of Customs, Mahadipur, Malda and it reveals that in. all 313 bags of copper tubes and pipe (cutting) and other vide H.S. Code No. 7411.29.00 were also issued in favour of M/s. Neha Enterprise. The road challan dated 27.07.02 reveals that in truck No. WBV 73 6917 copper tube and pipes (cutting) other were dispatched for Bijoy Trading Corporation of 123/2, A.P.C. Road, Calcutta. The packing list reveals that one M/S. Alfaj & Sons of Nawabganj, Bangladesh was the exporters and consignee was M/s. Neha Enterprise and 313 bags of copper tubes and pipes (cutting) other pipes vide H.S. Code No. 7411.29.00 were imported by M/s. Neha Enterprise and for the import of these articles M/s. Neha Enterprise duly paid customs duties.

8. There was no examination of the seized articles by any metallurgy expert who could have been given experts opinion as to whether the seized articles were copper articles or articles looking like brass as mentioned in the seizure list or brass materials. The I.O. is definitely not an expert of examining metals to give experts opinion whether the seized articles were copper articles or articles looking liked brass. When the papers produced before this Court establishes that M/s. Neha Enterprise was owner of the copper tubes, pipe (cutting) and others which were imported from Bangladesh and for which customs duties were also paid and which were dispatched to Calcutta by packing list and road challan, there was no ground for the learned Magistrate to reject the prayer. Learned Magistrate did not realize that there was no other claimant of the said articles. On the basis of FIR lodged by Bablu Ahmed regarding hijacking of the truck from the highway, the articles were seized from shop room of Bhagya Lakshmi Adhikari of Matiari Bazar and from the entry passage of house of Sumitra Modak of Matiari bazar.

9. Moreover, this was the application for interim custody of the articles during pendency of trial and not an application for final disposal of seized articles. It was not claimed by third party but it was claimed by the genuine person who was prima facie owner of the said articles for which he had valid road challan, packing list, customs challan, Bill of Entry for Home Consumption issued by Customs Authority by Mahadipur etc. In my opinion no person other than petitioner could have produced better papers than the papers produced by petitioner. But the learned Magistrate failed to realize the matter and confused himself relying on the basis of the I.O. 's report and seizure list in which it was mentioned that the seized articles looked like brass. Even well polished copper may sometime look like brass and some times unpolished brass may look like copper. Where there was no experts opinion regarding what type of materials it was, the learned Magistrate should have relied upon so many valid papers produced by the petitioner. Accordingly, the impugned order passed by the learned SDJM. Krishnagar being not in accordance with law is set aside.

10. As the matter is concerning return of seized articles during pendency of the trial, learned SDJM, Krishnagar shall pass necessary order releasing the seized articles in favour of the petitioner asking him to execute a bond, the amount of the bond to be fixed by the learned SDJM and putting condition that the petitioner shall not change the nature and character of the articles during pendency of the trial until further order of the lower Court as the case may be and shall not dispose of, transfer or alienate the said articles during pendency of the trial and without order of Court and shall produce the said articles at the time of trial in Court whenever required at his own cost and other condition which the learned SDJM may think fit and proper.

11. The revisional application accordingly succeeds and is disposed of in the list of the observation made above.

12. Send a copy of this order to the learned SDJM, Krishnagar for information and necessary action.

Urgent xerox certified copy be given to the parties, if applied for, expeditiously.