

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Junaid Ghaffar, J.

Agha Faisal, J.

SCRA 417 of 2018 : Collector of Customs Karachi vs.
Niaz Muhammad & Another

CP D 1753 of 2020 : Niaz Muhammad vs.
Federation of Pakistan & Another

For the Applicant : Mr. Pervaiz Ahmed Memon, Advocate

For the Petitioner : Ms. Dil-Khurram Shaheen, Advocate

For the Respondents : Mr. Kafeel Ahmed Abbasi
Deputy Attorney General

Date of hearing : 07.04.2021

Date of announcement : 07.04.2021

JUDGMENT

Agha Faisal, J. A dumper truck ("Truck") was intercepted, post a chase on the highway, and inside a concealed specially designed tank was discovered loaded with ostensibly smuggled diesel ("Diesel"). Pursuant to a show-cause notice, an order in original dated 21.12.2016 was rendered, whereby the Diesel was outright confiscated; however, the Truck was allowed release in reliance upon SRO 499(I)/2009 dated 13.06.2009 ("SRO"). In the order in appeal, dated 23.08.2017, the outright confiscation of the Truck was also ordered. In appeal, the learned Appellate Tribunal set aside the order in appeal and restored the order in original, vide its Order dated 18.08.2018 ("Impugned Order"). The present reference application has assailed the Impugned Order; whereas, the present petition seeks implementation of the same. Since the two matters are interconnected, therefore, they were heard conjunctively and shall be determined vide this common judgment.

2. In order to illustrate the *lis* before us, it is considered expedient to reproduce the relevant findings of the order in appeal and the Impugned Order herein below:

Order in Appeal

"I have examined the records of the case and the arguments placed before me from the applicant's and the respondents side. The dumper truck was seized on the fact that it had a concealed tank which was laden with diesel to be delivered to customer

in Karachi. The diesel was loaded from an illegal pump at Hub and not from a Diesel Marketing Company outlet. The construction of a concealed tank in the dump truck is clear evidence of the involvement of the owner to smuggle diesel into the city. Also the vehicle is clearly being solely used for smuggling having built the tank on the dumper. The owner of the truck has not been able to come forth with any logical argument about the dumper having a oil tank constructed inside and loading it with smuggled diesel. This is understandable as the respondents case appears to be defenseless in the light of the facts of the case. I therefore find myself in agreement with the appellants contention and allow the appeal. The dumper truck stands outrightly confiscated."

(Under line added for emphasis.)

Impugned Order

"6. Arguments heard record perused. I also prefer to place my observations on Section 157(2) of the Customs Act, 1969, that the phrase "shall also be liable to confiscation" does not mean liable to confiscation automatically. The discretion given to the authority to confiscate the goods or vehicle must be exercised on sound judicial principles. If the words "liable to confiscation" gives a discretion to the confiscating authority to deprive a person of his property, then it follows that this discretion must be exercised upon the principles of natural justice; that is to say, the person sought to be deprived of the property must be given notice to show cause and they must be provided adequate opportunity of putting forward their point of view and the same must receive due consideration. Furthermore, according to one of principles now well accepted, no person should be deprived of his property by way of penalty unless it is clear that he is in some measure responsible for assisting or furthering the commission of the offence committed and no innocent person should be unjustly punished or deprived of his property. Indeed, there was no indication that the owner of the vehicle was also involved in the act of smuggling. If that be so, it is difficult to appreciate on what basis reasonable suspicion could arise as to the complicity of the appellant. There is nothing on record which shows any collusion between the owner of the vehicle and the owner of the smuggled goods. In the absence of any proof on the record, it is not in accordance with law to hold such vehicle as part of the act which is prohibited by the law. Therefore, it is established that the said vehicle is not deliberately part of the act which is forbidden by law. It is imperative to place on record that equity is the soul of the law in dispensation of justice, the Honourable Supreme Court of Pakistan in a hallmark judgment namely *Imtiaz vs Ghulam Ali* reported as PLD 1963 SC 382 laid down the rule that the proper place of procedure in any system of administration of justice is to help and not to thwart right of the people.

7. What has been discussed and observed herein above and interpretation of the legal proposition referred in the prescribed law and to follow the ratio decidendi in the judgments of Superior Courts and observations made thereon. I hereby set aside the impugned order-in-appeal No.475/2017 dated 23.08.2017 and upheld the order of Adjudicating authority. The respondent department is directed to release the impugned vehicle bearing Registration No.TKV-172 and Chassis No.VIN-JHDFYIKULXXX10069) to its lawful owner subject to payment of 20% redemption fine in terms of SRO 499(I)/2009 dated 13.06.2009 on the present value of the vehicle to be ascertained by the Valuation Department and also pay the penalty of Rs.10,000/- as imposed upon the owner of the vehicle."

3. Learned counsel for the applicant assailed the Impugned Order, by raising various questions of law, and submitted that the same was in *prima facie* dissonance with the law. On the other hand, the petitioner's learned counsel submitted that the Impugned Order ought to be maintained in the interests of justice.

4. We have heard the respective learned counsel and have also perused the documentation to which our surveillance was solicited. It appears to be admitted that the Diesel, being carried in a concealed specially designed tank in the Truck, was smuggled; hence, the confiscation thereof has not been impugned. The only issue that remains is whether the Truck could be ordered

to be released per the SRO. In view hereof, the question re-framed for determination is “*Whether in the present facts and circumstances the Truck could be released per the SRO*”.

5. Petitioner’s counsel has articulated no cavil to the factum that the Diesel being carried in the Truck was smuggled. It was also admitted before us that the Truck, being a dumper truck, had a tank, concealed under sand / reti / bajri, specially designed to ferry the contraband. It is further gleaned from the record¹ that Diesel was being smuggled upon the instructions of the owner of the Truck.

6. The preliminary aspect to consider is the *locus standi* of the petitioner seeking implementation of the Impugned Order. The record demonstrates that the petitioner was the *cleaner* of the Truck, arrested along with the driver at the time when the Diesel and Truck were apprehended. The record shows that, per the statements of the driver and the petitioner himself, the owner of the Truck is one Haji Abdullah. However, the present petition has been preferred on behalf of the *cleaner* and at no place in the memorandum of petition does the petitioner even claim ownership of the Truck.

7. The exercise of powers, per Article 199 of the Constitution, was required to be undertaken upon application of an aggrieved person². The petitioner’s counsel failed to make any case before us to qualify the petitioner within the definition of an aggrieved person³. In such regard it is manifest that the petitioner has no *locus standi* to prefer / maintain the present petition.

8. The next aspect to address is the remit of the SRO. The said instrument expressly excludes smuggled items and conveyances carrying smuggled items from the purview of the relief granted therein⁴. In view of the admitted factum that the Truck was found carrying smuggled diesel in false / concealed cavities, no case has been made out before us to justify the extension of the benefit of the SRO in the said facts.

9. The honorable High Court of Balochistan was seized of a similar matter, in the *Muhammad Hanif case*⁵, wherein it was held that release of a

¹ Per statements of driver Abdul Aziz and cleaner Niaz Muhammad

² Barring certain exceptions, i.e. writ of *quo warranto*, however, no case was made out to qualify the present petition within an exception recognized by law; 2019 SCMR 1952.

³ *Raja Muhammad Nadeem vs. The State* reported as PLD 2020 Supreme Court 282; *SECP vs. East West Insurance Company* reported as 2019 SCMR 532.

⁴ ... the Federal Board of Revenue is pleased to direct that no option shall be given to pay fine in lieu of confiscation in respect of ... (a) smuggled goods ... (b) lawfully registered conveyance ... found carrying smuggled goods in false cavities or being used exclusively or wholly for transportation of offending goods...

⁵ *Collector MCC Gaddani vs. Muhammad Hanif (SCRA 09 of 2020)*; judgment dated 23.07.2020.

confiscated vehicle carrying smuggled goods could not be sanctioned in lieu of payment of a redemption fine, pursuant to clause (b) of the SRO. The said judgment was recently maintained by the honorable Supreme Court⁶.

10. It is, thus, our deliberated view that the Impugned Order is in dissonance with the law, as enumerated supra, hence, cannot be sustained. Whereas, the findings contained in the order in appeal are in correct appreciation of the law, for the time being in force.

11. In view of the reasoning and rationale herein contained, the question framed for determination supra is answered in the negative; hence, in favor of the applicant department and against the respondent in the reference application. The reference application stands allowed in the above terms. As a consequence hereof, the subject petition, along with pending application/s, is hereby dismissed. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE

Amjad/PA

⁶ Per *Maqbool Baqar J* in *Civil Petitions 730-K to 760-K of 2020*; Order dated 11.02.2021.