

Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 1 of 2022 with
Crl.Petn. No. 2 of 2022

Date of Decision: 17.02.2022

Directorate of Revenue Intelligence, Vs. Shri Ajay Babu Manda
Shillong Regional Unit, Shillong
Directorate of Revenue Intelligence Vs. Shri Guttikonda Sridhar
Shillong Regional Unit, Shillong

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Dr. N. Mozika, Sr. Adv. with
Ms. T. Sutnga, Adv.
For the Respondent(s) : Mr. J. Shylla, Adv.

i) Whether approved for reporting in Law journals etc.: Yes/No
ii) Whether approved for publication in press: Yes/No

1. Matters taken up via video conferencing.
2. Challenged in these two applications is the common order dated 25.10.2021 passed by the learned Sessions Judge, Shillong in Crl. Revision No. 6 (H) of 2021 and Crl. Revision No. 5 (H) of 2021, whereby the order dated 20.07.2021 passed by the learned Judicial Magistrate, Shillong in Crl. Misc. Applications No 25 of 2021 and Crl. Misc. Application No 26 of 2021 under Section 135(1) (a) and (b) of the Customs Act, 1962 were upheld.
3. Brief facts as enumerated in the petition is that on the basis of specific information, the Officers of the Directorate of Revenue Intelligence, Shillong Regional Unit had intercepted three trucks bearing Registration

numbers AP16TH-7137, AP16TH-7277 and AP16TE-5670 on 09.04.2021 near Thangshalai village, NH-6, East Khasi Hills District of Meghalaya between 06.00 hours and 06.15 hours. On being searched, a total number of 1500 bags of foreign origin black pepper weighing about 75,000 kgs. was seized resulting in the arrest of three drivers and two helpers with the said trucks also seized under the relevant provisions of the Customs Act, 1962.

4. The owners of the trucks numbers AP16TH-7137 and AP16TH-7277 who are the respondents herein, then moved an application under Section 451/457 Cr.P.C. before the Court of the learned Judicial Magistrate First Class, Shillong and the learned Magistrate vide a common order dated 20.07.2021 was pleased to allow the application and had then directed that the said vehicles be released on a bond of ₹ 1,00,000/- (Rupees one lakh) each.

5. The said order dated 20.07.2021 passed by the learned Judicial Magistrate First Class, Shillong was then assailed by the petitioner department before the learned Sessions Judge, Shillong by way of criminal revision petitions numbered as CrI. Revision No. 5 (H) of 2021 and CrI. Revision No. 6 (H) Of 2021, who, vide the impugned order, after hearing the parties has dismissed both the petitions holding that there is no jurisdictional infirmity with the order of the learned Magistrate.

6. The petitioner being highly aggrieved and dissatisfied with the impugned order dated 25.10.2021 has accordingly approached this Court with similar and identical petitions under Section 482 Cr.P.C.

7. Heard Dr. N. Mozika, learned Sr. counsel appearing for the petitioner who has submitted that the main grievance of the petitioner is the manner in which the learned Magistrate has assumed jurisdiction in releasing the said trucks which he could not have done so given the fact that there is an express provision for release of the goods (including the trucks herein) under Section 110 A of the Customs Act, where the proper officer who has caused

seizure of the same under Section 110 of the said Act is empowered to release the seized goods.

8. Dr. Mozika has further submitted that the Customs Act, 1962 is a special Act and as submitted, there are specific provisions as regard arrest and seizure, particularly Section 104 which empowers the competent Custom Official to arrest any person suspected to have committed certain offences under the Customs Act. Sections 110 and 110A deals with the power of seizure and release of the seized goods and as such, exercise of powers under the code of criminal procedure by the learned Magistrate is without jurisdiction for which the original impugned order cannot be sustained.

9. Dr. Mozika has again submitted that the fact that the persons arrested by the Custom Officer was produced before the learned Magistrate for the purpose of remand to judicial custody is not an indication of submission to the jurisdiction of the said Magistrate, but only in compliance with the provisions of sub-Section 2 of Section 104 of the Customs Act, and more particularly when prima facie the offence is non-bailable, then resorting to sub-Section 6 of Section 104, the arrested persons were duly produced before the said Magistrate. Again, the fact that when the said arrested persons were produced before the learned Magistrate for remand as provided under Section 104 of the Customs Act, the concerned Custom Officer has also produced the inventory/seizure list, this does not tantamount to submission before the jurisdiction of the said Magistrate to enable Section 451/457 Cr.P.C. to be resorted to on application, since any seizure under Section 110 in a confiscation proceedings requires that the inventory of the seized goods has to be prepared before the Magistrate for the limited purpose.

10. Another aspect of the matter raised by Dr. Mozika is that the case is still at the stage of show cause and for prosecution to be launched, under Section 137 of the said Customs Act, the sanction of the Principal Commissioner has to be obtained which will be followed by filing of a regular criminal complaint whereupon, the learned Judicial Magistrate will

then assume jurisdiction. Such stage has not yet reached at the time of passing of the impugned order by the learned Magistrate and as such, it is reiterated that powers under Section 451/457 Cr.P.C. could not have been exercised by the learned Judicial Magistrate. The case of *Directorate of Revenue Intelligence v. PRK Diamonds Pvt. Ltd & Anr: 2019 SCC Online Del 8226* was cited by the petitioner to support the contentions made herein.

11. Mr. J. Shylla, learned counsel for the respondents in his reply has candidly admitted that under the various provisions of the Customs Act, 1962, there is no provision for production of materials seized by the Custom Officials before the Magistrate to seek permission for custody of the same. However, in the present case, an official of the petitioner's department has filed a preliminary complaint before the learned Chief Judicial Magistrate, Shillong making specific prayer for sending the accused persons to judicial custody and at the same time has also made a prayer for grant of custody of the seized goods. When the preliminary complaint was endorsed to the learned Judicial Magistrate, Shillong, on perusal of the preliminary complaint along with the inventory of the seized goods and on prayer made, the learned Magistrate vide order dated 10.04.2021 has firstly, remanded the accused persons to judicial custody and secondly, has acknowledged production of the seized good before the court and has also directed that the same be returned to the Intelligence Officer to be deposited at the designated Godown of Disposal Unit of Custom Hqrs. Shillong for custody. This, according to the learned counsel for the respondents, is a clear indication that the Custom Officials has submitted the custody of the seized goods to the jurisdiction of the Magistrate.

12. Under the circumstance, the owners of the said trucks has no option, but to approach the learned Magistrate with an application under Section 451/457 Cr.P.C. for interim release of the trucks which was allowed. The revision petition filed by the petitioner herein before the learned Sessions Judge, Shillong was also dismissed vide a detailed order dated 25.10.2021, it is further submitted.

13. However, Mr. Shylla has fairly submitted that in the event that this Court finds that the learned Magistrate has no jurisdiction to pass the impugned order dated 20.07.2021, the respondents may be allowed to approach the competent authority under Section 110 A of the Customs Act. Again, considering the peculiar circumstances of this matter and taking into consideration the fact that the said trucks were in custody for more than nine months contrary to the direction of the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai v. State of Gujarat: (2002) 10 SCC 283* wherein at paragraphs 17 and 21 the Hon'ble Supreme Court has held that seized articles should not be kept in custody for more than 15 days to one month, if approached under Section 110 A of the Customs Act, the competent Custom Official may cause release of the seized trucks at the earliest and to also relax the conditions, particularly the security deposit which may be fixed reasonably.

14. The contentions and submissions raised by the learned counsels for the parties have been given due consideration and the main issue to be decided herein is whether the learned Magistrate have correctly assumed proper jurisdiction while passing the original impugned order under Section 451/457 Cr.P.C.? or the same have been passed without jurisdiction.

15. At the outset, it is necessary to look at the provision of Section 451 Cr.P.C. which reads as follows:

“451. Order for custody and disposal of property pending trial in certain cases.– When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.”

16. The above provision empowers a Criminal Court to order for custody and disposal of property pending trial in certain cases and when such property was produced before the said Court, an appropriate order may be

passed for the custody of such property.

17. As was noticed by the Hon'ble Delhi High Court in the case of **PRK Diamonds Pvt. Ltd** (supra), for the applicability of Section 451 of the Cr.P.C, an inquiry or trial has essentially to be in progress.

18. Coming to the Customs Act, 1962 what is seen is that there are specific provisions for searches, seizure and arrest under chapter XIII of the Act which empowers the proper officer to resort to the provisions of Sections 100 through Section 110-A for the same. However, for the limited purpose of this matter, the relevant provision would be Section 110 which speaks of seizure of goods, documents and things and Section 110-A which provides for release of goods, documents and things seized pending adjudication. For the sake of clarity, the above mentioned provisions are reproduced herein as under:

“110. Seizure of goods, documents and things. – (1) *If the proper officer has reason to believe that any goods are liable to confiscation under this Act, he may seize such goods:*

1[Provided that where it is not practicable to remove, transport, store or take physical possession of the seized goods for any reason, the proper officer may give custody of the seized goods to the owner of the goods or the beneficial owner or any person holding himself out to be the importer, or any other person from whose custody such goods have been seized, on execution of an undertaking by such person that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that where it is not practicable to seize any such goods, the proper officer may serve an order on the owner of the goods or the beneficial owner or any person holding himself out to be importer, or any other person from whose custody such goods have been found, directing that such person shall not remove, part with, or otherwise deal with such goods except with the previous permission of such officer.]”

“110-A. Provisional release of goods, documents and things seized pending adjudication. – *Any goods, documents or things seized under section 110, may, pending the order of the adjudicating authority, be released to the owner on taking a bond from him in the proper form with such security and conditions as the adjudicating authority may require.]”*

In a proceeding under the Customs Act, it is but natural to expect that the provisions of the said Act would be applicable to enable the concerned party to resort to for specific directions or relief as the case may be. When in Section 110-A it has been specifically laid down that the proper officer is empowered to release the seized goods to the owner on taking a bond from him, then there is no necessity to approach the Magistrate to employ Section 451 of the Cr.P.C. for the purpose of release of such goods. It may be mentioned that the Customs Act, 1962 is a special Act while the Code of Criminal Procedure deals with the general law. It is also well settled that the provisions of the Special Act will override the provisions of the general law as in the case in hand. The principles of the latin maxim of “generalia specialibus non derogant”, i.e., general law yields to special law should they operate in the same field on same subject will be applicable here.

19. It is also apparent that at the time of passing of the original impugned order, the matter was still under investigation by the Customs officials and the stage of prosecution has not yet commence as evident from the fact that the relevant sanction for prosecution by the Principal Commissioner of Customs or Commissioner of Customs have not yet been issued to enable the Court to take cognizance of the offence. Therefore, the learned Magistrate in the absence of a trial or inquiry could not have passed the said impugned order under Section 451/457 Cr.P.C.

20. For the reasons stated above, this Court finds that the learned Magistrate has acted without jurisdiction while passing the impugned order dated 20.07.2021 and thus, an abuse of the process of the court has been occasioned. The same is hereby set aside and quashed. Consequently, the order dated 25.10.2021 passed by the learned Sessions Judge, Shillong also cannot be sustained in the light of the findings above.

21. Before parting with the records, this Court expresses its view that the respondents are at liberty to approach the proper officer under the Customs Act, 1962 particularly under Section 110-A for release of the seized

vehicles and the same to be duly considered and expeditiously disposed of keeping in mind that the said vehicles have been under custody for more than nine months.

22. With the above, these two petitions are hereby disposed of. No cost.

Judge

Meghalaya
17.02.2022
"D. Nary, PS"

