

BHAMBRA
v.
DIRECTOR-GENERAL OF CUSTOMS
AND OTHERS

COURT OF APPEAL
TILAKAWARDANE, J. (P/CA) AND
WIJERATNE, J.
CA NO. 720/02
NOVEMBER 08, 2002

Customs Ordinance, sections 107A (1) and 154 – Forfeiture of goods – Does writ jurisdiction lie? Alternate remedy – Necessary parties not before court – Fatal?

The petitioner sought to quash the order of the respondents to seize and forfeit the jewellery brought into the country by the petitioner, on the basis that the respondents did not duly consider his explanation.

Held:

- (1) In terms of section 107A (1) an order of forfeiture is imperative, and it is not left to the decision of the inquiry officer. It is, therefore, not one amenable to writ jurisdiction.
- (2) The failure of the petitioner to resort to an alternative remedy prescribed by law – action for damages in a court of competent jurisdiction – section 154 precludes the court from intervention and the exercise of discretionary powers.
- (3) The officer who made the impugned order forfeiting the items of jewellery not being made a party respondent is fatal to the maintainability of the application.

APPLICATION for writs in the nature of *certiorari* and *mandamus*.

Cases referred to :

1. *Palanisamy Nadar v. Lanktree* – 51 NLR 520.
2. *Dissanayake v. Siyane Adhikari Co-operative Societies Union* – 60 NLR 140.

Murshid Maharroof for petitioner.

J. D. Silva, State Counsel for 1st to 4th respondents.

December 10, 2002

WIJERATNE, J.

In this application made against three respondents named in the petition who are officers of the Department of Customs, the petitioner seeks a mandate in the nature of writ of *certiorari* to quash the order of the 2nd and 3rd respondents to seize and forfeit the jewellery brought into the country by the petitioner. He also seeks the relief by way of a writ of *mandamus* compelling the first respondent to release the items of jewellery forfeited to the petitioner. ⁰¹

The petitioner made this application on the basis that on 21. 03. 2001, upon his arrival in the port of Galle, his baggages were checked by the officers of customs and found several items of jewellery which the petitioner says were bought in Dubai as gifts for his wife resident in Australia. The petitioner concedes that he did not make a declaration, but insists that he could not make a declaration as the prescribed forms were not available at the port of Galle. However, the petitioner states that his verbal declaration made to the officers, was not considered as there was a language barrier between them. He seeks to quash the decision of the 2nd and 3rd respondents on the footing that they did not duly consider his explanation that the items of jewellery were not taken for commercial purposes but as gifts to his wife in Australia. ¹⁰

The respondents resisted the application of the petitioner on grounds that the facts elicited in proceedings of the inquiry before the customs officer as well on grounds of law affecting the jurisdiction of this court. ²⁰

At the hearing the counsel for the respondents contested the jurisdiction of this court to grant writ of *certiorari* in view of the admitted fact that the impugned order of confiscation is one made under the provisions of section 107 A (1) of the Customs Ordinance. It being an imperative order under the relevant provisions and not one left to the discretion of the officer making the same, a writ will not lie

on the same. Ancillary to such objection, the counsel also urged that the availability of an alternative remedy provided by the very ordinance by way of an action for damages in a court of competent jurisdiction in terms of section 154, this court will not exercise its discretionary powers. He relied on the decision of the Supreme Court in the case of *Palanisamy Nadar v. Lanktree*⁽¹⁾ where it was held:

"If goods are declared to be "forfeited" as opposed to 'liable to forfeiture' on the happening of a given event, their owner is automatically and by operation of law divested of his property in the goods as soon as the event occurs. No adjudication declaring the forfeiture to have taken place is required to implement the automatic incident of forfeiture."

It was further argued that the failure to name the officer who made the order of forfeiture as respondent, even after his name and the fact of his not being a party is disclosed, is fatal to the application. *Vide* the decision of the Supreme Court in the case of *Dissanayake v. Siyane Adhikari Co-operative Stores Union*.⁽²⁾

The counsel for the petitioner took up the position that P3 and P4 seizure notices were signed respectively by the 2nd and 3rd respondents who are therefore made party respondents to the application. The fact of inquiry being held by another officer was not known to the petitioner who is a foreigner and an officer of a ship by profession, who is mostly out on voyages. With regard to the nature of relief sought and the alternative remedy not being resorted to, the counsel invited this court to consider the circumstances of this particular case, as exceptional.

On a perusal of the proceedings before the customs officer inquiring into the matter 1R3 it is apparent that the petitioner now taking up the position that the non-availability of declaration forms at the port, prevented him from making the declaration, conceded that custom forms were available with the crew members of his ship. At the inquiry he has pleaded ignorance of what need be declared as the reason

for non-declaration of the items of jewellery in his possession. This claim however does not appear to be *bona fide* claim in view of his own admission of having declared items of jewellery and paid duty on his earlier visits to the ports. Further, it was revealed that the petitioner was carrying in his possession cash memos relating to purchases the petitioner made two years prior to this incident, when in fact he has already handed those items of jewellery to his wife in Australia. Thus, the circumstances of the case do not operate in favor of the petitioner. The fact remains that the several items of jewellery were in the baggages of the petitioner without the same being declared to customs, accordingly have to be treated as goods concealed. 70

Section 107A (1) of the Customs Ordinance reads:

"... But, if any prohibited or uncustomed goods shall be found concealed... the same shall be forfeited."

In terms of such provisions an order of forfeiture is imperative and it is not left to the decision of the inquiring officer. Thus, it is not one amenable to writ jurisdiction of this court. The petitioner does not meet this position in his arguments. The failure of the petitioner to resort to alternative remedy provided by law, irrespective of the reason that he is a foreigner and a sailor, precludes this court from intervention and the exercise of the discretionary powers. 80

The officer who made the impugned order forfeiting the items of jewellery, not being made a party respondent to this application, it self is fatal to the maintainability of this application. Ignorance of the name and description of such officer cannot reasonably be considered as an excuse, as they are ascertainable information in the normal course of customs inquiries.

In these circumstances, the application of the petitioner cannot be sustained either on facts or on law. In the result, the application is dismissed with costs. 90

TILAKAWARDANE, J. – I agree.

Application dismissed.