

GUJARAT HIGH COURT

Hon'ble Judges:P.S.Poti and S.B.Majmudar JJ.

Jayantilal Maneklal Soni, And Others And Amritlal Chandmal Jain And Another Versus
Union Of India And Others

Special Civil Appeal No. 69 of 1984 ; 122 of 1984 ; *J.Date :- JANUARY 18, 1984

- [EVIDENCE ACT, 1872](#) Section - [132](#)
- [CONSTITUTION OF INDIA](#) Article - [20\(3\)](#)

EVIDENCE ACT, 1872 - S.132 - WITNESS NOT EXCUSED FROM ANSWERING ON GROUND THAT ANSWER WILL CRIMINATE - CONSTITUTION OF INDIA - ART.20(3) - PROTECTION IN RESPECT OF CONVICTION FOR OFFENCES.

KeyWords: Compulsion - Prejudice - Criminal case - criminal proceedings - Departmental proceedings - Exercise of discretion - show cause notice - testimonial compulsion -

Cases Referred To :

1. T.G. Gaokar V. R.N.Shukla, AIR 1980 SC 1050

Equivalent Citation(s):

1984 (16) ELT 33 : 1984 GLHEL_HC 225236

JUDGMENT :-

P.S.Poti, J.

1 Notice in SCA No. 122/84. Shri H.M. Mehta waives service of notice for the respondents and agrees to have the matter heard today.

2 The petitioners in these cases, four in the first and two in the second have filed these petitions seeking stay of the departmental proceedings under the Customs Act taken up against them pending the disposal of Criminal case No. 639/83 before the Chief Metropolitan Magistrate, Ahmedabad. The 3rd respondent, the Assistant Collector (Preventive) Customs Headquarters filed a criminal complaint in the Chief Metropolitan Magistrate s court at Ahmedabad against 22 persons including the petitioners in the two cases. Summons have been issued on taking cognizance of this. While the criminal proceeding is thus pending proceedings have been taken up by issue of show cause notice to the petitioners and certain others as to why action should not be taken under the Customs Act in regard to violation of the provisions of the Act by them. The plea of the petitioners is that on identical facts and circumstances departmental proceedings under the Customs Act, 1962 are being taken and therefore it is appropriate that these proceedings should be stayed pending the disposal of the criminal proceedings. In support of the prejudice that may be caused to them it is pointed out

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by the petitioners that by being called upon to answer the departmental proceedings the petitioners may be compelled to disclose their defence prematurely, that this will prejudice their defence in the criminal proceedings, that this will violate the guarantee under Article 20(3) of the Constitution and further that there is likelihood of all the petitioners being called upon to appear in the customs cases as witnesses and compelled to speak to matters which may be incriminating. It is further pointed out that one of the petitioners in one of these petitioners, viz. the first petitioner in SCA No. 122/84 has been summoned as a witness and is being cross-examined.

3 It is not in dispute that the proceedings before the Customs Authorities are not criminal proceedings and the petitioners are not accused in such proceedings. They are no doubt accused in the criminal proceedings taken up against 22 persons, including them and it is evidently the petitioner's case that calling upon them to disclose their defence in reply to the show cause notice would be testimonial compulsion falling within Article 20(3) of the Constitution and for that reason proceedings will necessarily have to be stayed as otherwise there would be infringement of the guarantee under Article 20(3) of the Constitution.

4 We need not go into this question elaborately in view of what has been said by the Supreme Court in T.G. Gaokar V/s. R.N. Shukla - AIR 1980 S.C. 1050. In that case proceedings for contempt were moved against the Customs Authorities for taking proceedings under Section 111 and Section 112 of offences under Section 120B of the Indian Penal Code read with Section 135 of the Sea Customs Act, Rule 131B of the Defence of India Rules and S.B. of the Foreign Exchange Regulation Act were pending. The trial before the Magistrate was imminent. It was the case of the appellants therein that the issue of show cause notice and proceedings pursuant thereto were calculated to obstruct the course of justice. This plea did not succeed. In dealing with this question the court observed that the Customs Authorities have discretion to stay the proceedings under Section 111 and Section 112 during the pendency of the trial in the Criminal Court and in the case before them in the exercise of that discretion the authorities had refused to stay the proceedings. Further it was not shown that such action was mala fide or arbitrary and the Court would not under such circumstances issue a mandamus to control the exercise of that discretion. It was argued before the Supreme Court that Sections 111 and 112 are violative of Article 20(3) of the Constitution. In support of this it was urged that if there be no stay the petitioner will be compelled to enter the witness box to rebut the evidence given against him and will be forced in cross-examination to give answers incriminating himself. While noticing that in view of the prosecution against the appellant having been commenced he was an accused the court noticed that it was not possible to say at that stage that he was compelled to be a witness against himself. If to support his defence in the proceedings taken under Section 111 and Section 112 of the Sea Customs Act the appellant felt the need to enter the witness box that would not be on account of compulsion attracting the protection under Article 20(3) of the Constitution, just as an accused in a criminal proceedings offering himself as a witness under Section 342A of the Criminal Procedure Code would not be acting under compulsion if he decides to speak in defence of his case. Those will be instances where the person concerned voluntarily offers himself as a witness and not on account of any compulsion. The Court observed in this context :-

"It may be very necessary for the accused person to enter the witness box for substantiating his defence. But this is no reason for saying that the criminal trial compels him to be witness against himself and is in violation of Article 20(3). Compulsion in the context of Article 20(3) must proceed from another person or

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authority. This appellant is not compelled to be witness if he voluntarily gives evidence in his defence."

5 The further question as to what would be the situation where a person is summoned to give evidence in proceedings under Sections 111 and 112 was also adverted to by the learned Judge in that case. But noticing that the situation had not arisen in the case before them the Supreme Court did not express any opinion on the question whether in the event of such a person being summoned he can claim the protection under Article 20(3) and whether in the event of his being then compelled to give incriminating answers he can invoke the protection of the proviso to Section 132 of the Indian Evidence Act against use of those answers in the criminal proceedings. The Court also noticed the statement of Counsel for the Customs authorities that in the criminal proceedings the statement, if any, made by the appellant during the course of the adjudication proceedings would not be made use of.

6 In the case before us the petitioners have no doubt been called upon to answer notices to show cause why proceedings should not be taken against them under the Customs Act. This by itself would not amount to any testimonial compulsion. The petitioners have not been called upon to be witnesses against themselves. There is no prohibition against proceedings under the Customs Act being taken up and continued during the pendency of the criminal proceedings. At that stage the question of invoking Article 20(3) does not arise. If Article 20(3) is invoked, as was done in the case just now adverted to by us to contend that in the proceedings under the Customs Act the petitioners may have to be witnesses in order to support their case that would not amount to testimonial compulsion as held by the Supreme Court. That question is therefore not open to the petitioners. The only other question is what may happen in the event the petitioners are summoned as witnesses.

7 The petitioners in SCA No. 690/84 have not been summoned as witnesses at all and it would lie too premature to say in that petition as to what consequences there would be if they are summoned as witnesses. But one of the petitioners in SCA No. 122/84 has been summoned and he has been examined also in part prior to his coming to this Court. The learned counsel for the Central Government Shri H.M. Mehta submitted before us that whatever statements are made by the witnesses in proceedings under the Customs Act those will not be made use of in the criminal proceedings. It is true that in the Supreme Court case such a statement made by the Customs Counsel before the High Court was noticed. But even so the Court did not purport to decide that question finally. The only question therefore that we should consider now is whether in the case of the 1st petitioner in SCA No. 122/84 he should be permitted to be examined as a witness. Section 132 of the Evidence Act deals with the situation where a person deposes in proceedings in which he is not an accused. When he is a witness in such proceedings he has no excuse to refrain from answering any relevant question upon the ground that answer to such question will incriminate, or may tend to criminate, directly or indirectly, such witness, or that it will expose, or tend to expose such witness to a penalty or forfeiture of any kind. In other words, when a person who is a witness is called upon to answer a question relevant to the matter in issue he cannot take cover under the fact that the answer will incriminate him. The protection given to him is to be found in the proviso to Section 132. That proviso reads :

"Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceedings, except a prosecution for giving false evidence by such answer."

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The protection under Section 132 is wide enough to cover a case where an accused in a criminal case is a witness in other proceedings and the testimony that he may give in answer may incriminate him. The protection provided by the proviso to Section 132 is buttressed by the statement of Customs Counsel that such statement will not be used in the criminal proceedings. In SCA No. 69/84, para 6 of the impugned order itself records the fact that such evidence will not be used against the deponent in the Court of the Chief Metropolitan Magistrate where the criminal proceedings are pending. Even without any such assurance the proviso to Section 132 affords protection.

8 We do not think that the order of the Customs Authorities declining to stay the proceedings is vitiated by any erroneous exercise of discretion. Appropriate consideration has been made by him. It is pointed out on behalf of the Customs Authorities by their counsel that in view of the complexity of the issues involved, the number of accused in the case and other circumstances it is likely that the criminal proceedings may take considerable time for its finalisation and apart from the fact that it will be difficult to preserve the evidence available up to that time the delay in the imposition of any penalty in the event the case is found to be one in which penalty is imposed may also prejudice the Department. Whatever that be on the facts stated in the order impugned we see no reason to hold that there has been any erroneous exercise of discretion. Hence, we dismiss the Special Civil Applications. Notice discharged. No costs.

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