

(2001) 01 MAD CK 0004
In the Madras High Court
Case No : Order No. R.C. No. 8 of 1995

A. Shaud Ali

APPELLANT

Vs

Additional Collector of Customs

RESPONDENT

Date of Decision : 22-01-2001

Acts Referred:

Customs Act, 1962 — Section 107, 108
Evidence Act, 1872 — Section 25, 26

Citation : (2003) 89 ECC 759 : (2001) 133 ELT 554

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Division Bench

Advocate : B. Sathish Kumar, for the Appellant; S. Balaji, for J. Madnagopal Rao, SCGSC, for the Respondent

Judgement

K. Gnanaprakasam, J.—The Customs Preventive Unit Tuticorin, on information, recovered precious stones from the house of the petitioner

on 27.6.1986 alongwith a chit containing the name of one A.C.M. Zubair. On interrogation, the appellant gave a statement, confessing that he had

purchased the said stones from Zubair, who is admittedly a Sri Lankan national. As the petitioner was not having any customs duty paid receipt nor

any valid document to prove the licit nature of the goods and after show cause notice, the Collector of Central Excise and Customs, Madurai, who

is the assessing authority passed an order confiscating the goods and also imposed a penalty of Rs. 2500 to the appellant and Rs. 2500 to A.C.M.

Zubair.

2. On appeal to the Tribunal, the order was modified and the appellant was permitted to redeem the stones on payment of Rs. 25,000 and also

reduced the penalty from Rs. 2500 to Rs. 1000. The petitioner applied to the

Tribunal to refer the following questions to the High Court. The Tribunal, by a majority has made the reference.

3. The questions referred are:

(1) Whether in the facts and circumstances of the case, reliance can be placed on the statement of the appellant?

(2) Whether in the facts and circumstances of the case, the evidence cited against the appellant could be taken to be sufficient to raise a presumption in favour of the department for the purpose of confiscation of the goods?

4. Thiru V. Sathish Sundhar, learned Advocate for the appellant has submitted that the appellant was arrested on 27.6.1986 and he was released

only on 30.6.1986. While the appellant was in custody a statement was obtained from him on 28.6.1986, wherein he has admitted that the stones

seized were smuggled to India through one Zubair and he had entrusted the same to him for sale. According to the appellant, the said statement is

not a voluntary statement and the same was obtained by threat and coercion, while he was under custody i.e. duress and the same is inadmissible.

It is also pointed out that the appellant's wife gave a telegram to the Additional Chief Judicial Magistrate (South) Madurai on 28.6.1986 and the

appellant also gave a telegram after his release on 30.6.1986 and the appellant also took treatment on 1.7.1986 in Government Hospital for the

injuries said to have been inflicted while he was in custody and also produced a copy of the accident register to show the injuries said to have been

caused on the body of the appellant. Pointing out all these factors, it is argued that while the appellant was in the custody of the respondent, he was

forced to give such a statement. As the statement was not a voluntary one, the same could not be taken into consideration and the same is

inadmissible. Learned Counsel for the appellant also relied upon the judgment reported in Nathu Vs. State of Uttar Pradesh, : wherein it was

observed --

It appears to us that the prolonged custody immediately preceding the making of the confession is sufficient; unless it is properly explained to

stamp exhibit p.15, as involuntary. P.W. 33 made no attempt to explain this unusual circumstance. It is true that with reference to this matter the

appellant made various suggestions in the cross-examination of P.W. 33, such as

that he was given bhang and liquor, or shown pictures, or

promised to be made an approver, and they have been rejected and rightly as unfounded.

5. The case of Roshan Beevi and Ors. v. Joint Secretary to Government of Tamil Nadu 1984 Cri. L.J. 134 was also relied upon by the appellant.

That case deals with the confession statement made by a person in other enquiry under Sections 107 & 108 of the Customs Act. It is observed --

In a proceeding under the provisions of the Customs Act, when any person is required or summoned for an enquiry u/s 107 or Section 108, that

person is not an accused person and the officer summoning that person is not a police officer. Any confession made by a person summoned u/s

107 or Section 108 before the Customs Officer is admissible in law since it is not hit either by Section 25 or Section 26 of the Evidence Act.

6. Further reliance is made in respect of the case of A. Abdullah Vs. Foreign Exchange Regulation Appellate Board and another, wherein a

Division Bench of this Court held:

In the light of the immediate retraction of the said statement and in the light of the above-said accident register and injury report and other features

of the case, it would be indeed erroneous in law, to hold that the above-said confessional statement was voluntary and true. It is also significant to

note that the Enforcement Officer and three other officers with him, against whom serious allegations have been made by the appellant about the ill-

treatment meted out by them to him in extracting the said confessional statement, have not even come forward to at least file an affidavit stating that

what has been alleged in the retracted statement of 25.1.1985, in all details, are not true.

7. Further reliance is also made in the case of State of Andhra Pradesh v. Gangula Satya Murthy 1997 SCC (Cri.) 325 wherein in paragraph 19,

the Apex Court held:

It is true any confession made to a police officer is inadmissible u/s 25 of the Act and that ban is further stretched through Section 26 to the

confession made to any other person also if the confessor was then in police custody. Such custody need not necessarily be post-arrest custody.

The word "custody" used in Section 26 is to be understood in a pragmatic sense. If any accused is within the keen of surveillance of the police

during which his movements are restricted then it can be regarded as custodial surveillance, for the purpose of the section. If he makes any

confession during that period to any person be he not a police officer, such confession would also be hedged within the banned contours outlined in

Section 26 of the Evidence Act.

8. On the contrary, learned Advocate for the Revenue has submitted that in the statement of the appellant he has voluntarily confessed that the

goods were smuggled into India and that therefore the said statement cannot be assailed. The appellant was neither ill-treated nor was the

statement obtained under threat and force. The respondent also pointed out that the appellant was ordered to be released on the next day of the

incident, but, he was not able to offer sureties immediately and offered sureties only on 30.6.1986 and on that day, he was released. The

respondent is not aware of any treatment said to have been taken by him for the alleged injuries. Though the telegrams were alleged to have been

sent to the Additional Chief Judicial Magistrate (South), Madurai by the appellant's wife and by the appellant, such intimation was not given to the

respondents. Even, after the release on 30.6.1986, the appellant had not chosen to send any letter/notice retracting the statement given by him and

also about the treatment taken by him. The appellant came forward with this story only in the reply notice sent by him through his Advocate on

3.2.1987 to the show cause notice of the respondent dated 17.12.1986. As such the argument of the appellant that his statement is made

inadmissible has got to be rejected as the retraction and reply notice were belated and an after-thought and there is no truth in the said statement.

9. The learned Advocate for the appellant next submitted that the stones seized from the appellant are not smuggled goods and there is no

evidence to establish the same. It is further submitted that these goods are permissible goods to be imported and that therefore there can be no

presumption on the part of the department to hold that these goods are smuggled goods and the burden is upon the department to show that these

goods are smuggled goods.

10. Learned Advocate for the appellant has further submitted that the department has failed to discharge the burden cast upon it as provided u/s

123 of the Customs Act as the goods seized are not gold or any other goods

notified by the Central Government and in the absence of any such notification the order passed by the assessing authority and confirmed by the Tribunal are without any basis and they are liable to be set aside.

11. No doubt, it is true that the stones, which were seized from the appellant's house, are the goods permissible to be imported, but the appellant had not shown any valid receipt for having imported the said precious stones. The appellant, in his statement, has confessed that one Zubair a Sri

Lankan is the owner of these goods and he had entrusted them to him to sell the same and he acted for and on behalf of Zubair. But, the said

contention of the appellant is false, as Zubair had disowned the stones seized from the appellant in his reply on 15.1.1987 to the show cause notice

issued by the respondent. On the face of the reply given by the Zubair, it is very difficult to accept the explanation offered by the appellant that the

stones were entrusted to him for sale and in such situation, he was holding the same and, therefore, he had not committed any offence. If that be

so, there is no necessity for Zubair to give such a reply and the appellant has not chosen to give any explanation for such a reply by Zubair. It is

argued that Zubair came forward with a statement to extricate himself from the offence. But, the appellant in his reply to the show cause notice had

stated-

My client submits that the documents available on record do not also disclose that the stones in question are smuggled one. The goods are not

notified goods under the Act and as stated supra, my client has come into possession of the same in his regular business transactions".

But, however, he also does not claim ownership to the goods seized and thereby making a dual stand of his possession of the goods seized.

12. Considering the issue in the light of the facts and events set forth above, the appellant has not made out a case that the statement given by, him

was extracted under threat, while he was in custody and as such, the statement given by him and the confession made thereon are voluntary and

acceptable. As the appellant has also not produced any material to draw an inference that the goods seized are not smuggled into India, we find it

difficult to accept the contentions of the appellant.

13. In the result, both the questions are answered in favour of the Revenue and against the appellant.