

(1979) 01 MAD CK 0016

In the Madras High Court

Case No : Criminal A. No. 815 of 1975

Assistant Collector of Central Excise

APPELLANT

Vs

Nagappa Chettiar

RESPONDENT

Date of Decision : 04-01-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378(4)

Citation : (1979) CENCUS 163 : (1979) 4 ELT 179

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Suryamurthy, J.—Appeal u/s 378(4) of the Code of Criminal Procedure, 1973 against the acquittal of the aforesaid respondent (Accused)

of an offence under Sections 85 and 86 of the Gold Control Act by the Chief Metropolitan Magistrate, Egmore, Madras in C.C. No. 5109 of 1974 on his file.

This appeal coming on for hearing on Wednesday on the 26th day of October 1978 and this day upon perusing the petition of appeal and the

record of the evidence and proceedings before the said Lower Court and upon hearing the arguments of Mr. Habibullah Badsha for the Central

Government Prosecutor on behalf of the Appellant and of Mr. N. Natarajan for M/s. K. Asokan and R. Thangavel, Advocates for the respondent

(Accused) the Court delivered the following Judgment:

This is an appeal by the Assistant Collector of Central Excise, Madras against the judgment of the learned Chief Metropolitan Magistrate, Egmore,

Madras, acquitting the accused (Respondent) in C.C. No. 5109 of 1974 against

whom a complaint was laid by the appellant for offences punishable under Sections 85 and 86 of the Gold Control Act.

2. The respondent, who was the accused in the Court below and who will be referred to hereafter as the accused, is the head of a joint Hindu family consisting of himself, his wife and daughter. All of them are residing at No. 44, Spurtank Road, Chetput, Madras, Even from before the date on which the Gold Control Act of 1968 (to be referred to hereafter as the Act) came into force, the family was possessed of gold ornaments weighing 9,400 grams. After the Act came into force, the family was entitled to possession of 4036. 500 grams of gold, and any gold held in excess thereof had to be declared within a month after the Act came into force. The excess gold in the possession of the family of the accused was 5363.500 grams. No declaration was made by the accused in respect of this excess gold either within a month after the-Act came into force or at any time later till Exts. P-1 and P-2 dated 22.1.1973 were filed. However, there was no attempt by the accused to conceal the total extent of gold in the possession of his family in his returns to the Income Tax and Wealth-tax authorities filed during the years between 1959 and 1972.

Therefore, there can be no doubt about the fact that there was no mala fide attempt at concealing the excess gold in the possession of the family by the accused. On 22.1.1973, the accused and his wife filed declarations in Form G.S.3, which have been exhibited as Exts. P-1 and P-2 before he Central Excise Department, Gold Control Circle, disclosing the total weight of the gold ornaments in their possession. Thereupon, the Superintendent of Central Excise, directed them by Ex.1-3 to explain as to how they came into possession of gold ornaments. Exts. P-4 and P-5 were sent in reply stating that they were heirlooms or family ornaments which were in their possession from about the year 1950 It cannot be and is not disputed that these gold ornaments had legally come into the possession of the accused and his wife and have been in their possession, as contended by them, from about 1950.

3. After receiving these declarations, the Assistant Collector of Central Excise searched the premises of the accused on 24.5.1973 and found that the accused was in custody and control of gold ornaments weighing 9400 grams. The excess in the possession of the family of the accused was

found to be 5363. 500 grams. As no declaration of this excess had been made by the accused and his wife prior to the date of Exts. P-1 and P-2,

the excess gold ornaments weighing 5363.500 grams were seized under cover of the mahazar Ex. P-7 and departmental proceedings were

initiated against the accused. Subsequently, an order of adjudication evidenced by Ex. P-12 was passed by the Collector of Central Excise

confiscating the gold ornaments weighing 5363.500 grams under the Gold Control Act. In addition, this prosecution has been launched against the

accused on the ground that he failed, without any reasonable cause, to make a declaration of the excess gold in his possession.

4. The contention of the accused was that he did not know that he was in possession of more than 4000 grams of gold ornaments at he was visiting

and staying in foreign countries at the time the Gold Control Act came into force and that he has given declaration regarding the jewellery in his

possession to the Wealth-tax and Income Tax authorities in the regular course.

5. The learned Chief Metropolitan Magistrate came to the conclusion that the accused had reasonable cause for not declaring the possession of the

excess quantity of gold ornaments within the prescribed period and that, therefore, he has not violated the provisions of Section 16 of the Act by

reason of his non-declaration of the excess quantity of the Gold ornaments in his possession within the period prescribed. Finding that the accused

is not guilty of the offence u/s 85(viii) and also Section 16(g) read with Section 86 of the Act, he not only acquitted the accused, but directed the

return of the gold ornaments weighing 5363.500 grams of gold which were confiscated by the department.

6. On the admitted and indisputable facts of the case, there is no doubt about the fact that though the accused was in possession of 5363.500

grams of gold in excess of the permitted limit, he was in such possession legally and that these ornaments have been in the possession of his family

from a long time. It is seen from the passport issued to the accused that though he was in India at the time when the Gold Control Act came into

force, he left India on 4.9.1968, that is to say, three days after the Act had come into force. It is seen from the various entries made in this passport

that he has been frequently out of India. Ignorance of law is undoubtedly no excuse.

Ignorantia Juris haud excusat, as the saying goes. Therefore, the respondent cannot plead ignorance of law as a sufficient excuse for his failure to file the declaration. If this contention of the accused is to be upheld, no accused can be convicted for a similar offence, because illiteracy or ignorance due to other causes can always be pleaded. Mensrea is not a necessary ingredient for the commission of offence u/s 85(viii) and Section 16(g) read with Section 86 of the Act. The accused cannot also plead ignorance about the quantity of gold in the possession of his family, because he has declared the correct weight in his statement to the Wealth-tax and Income Tax authorities. However, in view of the fact that he had no intention to conceal and did not attempt to conceal the extent of gold in the possession of his family, I am inclined to take a very lenient view of the offence committed by him in awarding the sentence. There is, however, no doubt about the fact, and I find it as a matter of fact, that by failing to give the declaration in accordance with the provisions of Section 16 of the Act, the accused has committed an offence punishable u/s 86 as well as an offence punishable u/s 85(viii) of the Act.

7. Therefore, the appeal is allowed and the accused is found guilty of offences punishable u/s 86 read with Section 16(g) of the Act and u/s 85(viii) of the Act, convicted there under and sentenced on each count to pay a fine of Rs. 100/- and in default of payment of fine to undergo rigorous imprisonment for a period of one month on each count. Time for payment of fine one month.

8. The order of the learned Chief Metropolitan Magistrate directing the return of the jewels confiscated by the Department is set aside. It is open to the accused to pursue his remedies departmentally for return of the jewels confiscated.