(1972) 09 GAU CK 0004

In the Gauhati High Court

Assistant Collector of Customs and Central Excise — APPELLANT

Vs

Roshanlal Chourasia — RESPONDENT

Date of Decision : 12-09-1972

Acts Referred:
Customs Act, 1962 — Section 109, 111, 123, 135, 7

Citation : (1973) CriLJ 133

Hon'ble Judges : D.M. Sen, J;B.N. Sharma, J

Bench : Division Bench

Judgement

D.M. Sen, J.—This Is an appeal against the order of acquittal passed by the learned Sub-divisional Magistrate. Imphal West, in a case where the accused was tried u/s 135 of the Customs Act, 1962 for having illegally acquired possession of certain contraband precious stones weighing 17,967.510 grams worth Rs. 18.821.70 and a foreign made transistor radio worth Rs. 200/-.

2. Although the learned Sub-divisional Magistrate held in his lodgment that the possession by the accused. respondent of the aforesaid precious stones and of the transistor had not been proved, we find there is sufficient evidence to prove such possession. In point of fact, the accused. respondent himself In a signed voluntary statement dated 10.7.1967 (Ext. P. 12) admitted the possession of the aforesaid articles. He, however, stated that he had purchased the precious stones in several lots from different persons in Manipur. And that the transistor was left with him in the hotel, where he was working, by some unknown persons to be taken back by him later. The accused. respondents possession of the precious stones and of the transistor is. therefore, not in dispute and, to that extent, the finding of the learned trial Court cannot be sustained.

3. However, tinder Section 135(b) of the Customs Act. which evidently is the relevant sub. section that can at all relate to this alleged offence, the accused must not only have acquired possession of the goods in question, but he must also know or have reason to believe that such goods are liable to confiscation u/s 111 of the said Act.

4. Section 111 of the Customs Act (hereinafter called "the Act") specifies various categories of goods brought from outside India, which are liable to confiscation, Mr. Sen. the learned Counsel for the appellant, submits that the goods found in possession of the accused. respondent were liable to be confiscated under Clauses (b) (i) or (k) of Section 111. Clause (b) reads as under:

(b) any goods imported by land or Inland water through any route other than a route specified in a notification issued under Clause (c) of Section 7 for the import of such goods

Clause (i) reads as under:

(i) any dutiable or prohibited goods found concealed in any manner in any package either before or after the unloading thereof; and

Clause (k) reads as under:

(k) any dutiable or prohibited goods imported by land in respect of which the order permitting clearance of the goods required to be produced u/s 109 is not produced or which do not correspond in any material particular with the specification contained therein.

5. Clause (i) of Section 111 is clearly not related to the facts in the present case. This clause will be relevant only to a case where any dutiable or prohibited goods are found concealed either before or after the unloading thereof, and such unloading in view of Clause (a) of Section 111 must refer to unloading after its importation by sea or air at any place other than a customs port or customs airport, as the case may be.

6 Clauses (b) and (k) both require that the goods must have been imported by land or inland water in order that they may come within the mischief of these two clauses.

7. Section 135(b) on a plain reading thereof, requires knowledge or belief on the part of an accused person in possession of goods that such goods are liable to confiscation u/s 111 of the Act And if the prosecution case is that the goods in question come within the mischief of Clauses (b) or (k) of Section 111, there must additionally be the knowledge or belief that the goods had been imported by land or inland water and not otherwise. It is therefore incumbent on the prosecution to fasten the accused with the necessary knowledge or belief as contemplated in Section 135(b) of the Act. and Clauses (b) or (k) of Section 111 of the Act. before a charge thereunder can be brought home against him.

We respectfully agree with the observations of K. Sadasivan, J. in Asst. Collector of Assistant Collector of Customs Vs. Pratap Rao Sait and Another, that "for bringing home the charge under this section it is incumbent on the prosecution to fasten the accused with the necessary knowledge as contemplated in this section. The section deals with penal action against the accused over and about the confiscation, of the goods, and other steps provided in the Act. The section provides that for the imposition of penalty it must be shown that the accused was knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or had acquired possession of or in any way concerned in carrying, removing, depositing or purchasing etc of goods which he knew or had a reason to believe, are liable to confiscation u/s 111. In other words the prosecution must show that the accused was in possession of the articles knowing their nature and being alive to the consequences of possessing them."

8. Our attention has been drawn to Section 123 of the Act, but in view of the fact that the prosecution has not been able to show us any notification applying that section to precious stones and radio transistor, the burden of proof rests squarely on the prosecution to show that the accused knew or had reason to believe that the goods, i.e. precious stones and transistor found in his possession, were liable to confiscation for violation of any of the conditions specified in Section 111 of the Act. This, the prosecution, has utterly failed to do. Mere possession of precious stones or of a transistor radio, which may not be indigenous to this country will not be sufficient to raise a presumption against the accused of such guilty knowledge or belief. The prosecution has to prove such guilty knowledge or belief, as required u/s 135(b).

9. Also, by adducing evidence that the precious stones and the transistor were of foreign origin, and that their import was prohibited under the Imports Control Order. 1955 (item 255 In Part IV of Schedule I being relatable to precious stones, and item 289 being relatable to transistor radio set. assuming that such article is included within wireless reception instruments and apparatus!, the prosecution cannot be held to have discharged the onus, that rests on it to prove such knowledge or belief on the part of the accused.

10. In the above view of the matter, we do not find that the order of acquittal can be interfered with. The appeal fails.

B.N.S Arma, J.

11. I agree.

