(1991) 05 P&H CK 0108

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 366-DBA of 1983

Assistant Collector of Customs — APPELLANT

Vs

Palwinder Singh — RESPONDENT

Date of Decision : 13-05-1991

Acts Referred:
Customs Act, 1962 — Section 123, 135, 135(1), 137(1)

Citation : (1992) 57 ELT 33

Hon'ble Judges : S.D. Bajaj, J;Harmohinder Kaur Sandhu, J

Bench : Division Bench

Advocate : Ashok Singh Choudhary, for the Appellant; Vanita Sapra Kataria, for the Respondents 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Bajaj, J.—Sanction conveyed vide F. No. VIII (Law) Hqrs/CHG/80/77 on September 23,1977 reads :-

"Whereas it appears from the records placed before me that on 23-8-1975 precious stones/Rubi emaralds, natural pearls and diamonds jewellery worth Rs. 1,42,973/- and other miscellaneous goods valued at Rs. 863/- were recovered near village Bola Chak from an attache case and the following persons were concerned for attempt to export the above-mentioned goods improperly out of India:-

1. Shri Palwinder Singh S/o Sh. Rattan Singh, H. No. 1790/12, Gali Misgran, Amritsar.

2. Shri Iqbal Ahmed S/o Siraj-u-Din, H. No.12, Gali No. 4, Bhati Gate, Lahore (Pakistan).

3. Shri Gurbachan Singh S/o Dharam Singh, H. No. 1790/12, Gali Misgran, Amritsar.

4. Shri Rattan Singh S/o Dharm Singh, H. No. 1790/12, Gali Misgran, Amritsar.

5. Mrs. Swinder Kaur W/o S. Gurbachan Singh, H. No. 1790/12, Gali Misgran, Amritsar.

6. Shri Chhindu Christian S/o Teja Singh Vill. Kalsian, P.S. Khalra, Distt. Amritsar.

7. Shri Shyam Sunder S/o Jiwan Lai, C/o S.S. Rameshwar Dass, Chhote Lai, Tobacco Katra, Khari Bauli, Delhi.

8. Fazal Mohd. S/o Sh. Isaq Mohd., H. No. 1103, Mohalla Madrasa Hussain Bux, Jama Masjid, Delhi.

9. Shri Balkar Singh Jat, Village Khalra, Distt. Amritsar.

And whereas I am satisfied that adequate ground exist for prosecution of the above-said 9 persons for attempt to export out of India the above-said goods for offences punishable u/s 135 of the Customs Act, 1962.

Now, therefore, in exercise of the powers conferred on me by virtue of Section 137(1) of the Customs Act, 1962, I, K.K. Dwivedi, Collector of Customs and Central Excise, Chandigarh, hereby accord sanction for launching prosecution against above-mentioned nine persons for offences punishable u/s 135 of the Customs Act, 1962 in a competent Court having jurisdiction to try the said offence."

2. On its basis nine persons named therein were prosecuted before the learned trial Court u/s 135 of the Customs Act, 1962. Out of them Iqbal Ahmed (respondent No. 2), Chhindu (respondent No. 6), Shyam Sunder (respondent No. 7) and Balkar Singh (respondent No. 9) were absconding. Rattan Singh (respondent No. 4) was discharged by the learned trial Court. Remaining four named Palwinder Singh, Gur-bachan Singh, Mrs. Swinder Kaur and Fazal Mohd. were acquitted by the learned trial Court vide its impugned judgment dated December 15,1982 holding :-"These articles, no doubt, have been produced in the Court, yet no attempt is made to prove that these are genuine. May be accused Gurbachan Singh and his wife played a fraud on Iqbal Ahmed and what he might have been carrying with him in his attempt to flee from this country, may have been only artificial and in-valuable pieces of stones".

3. It is with this question in mind that the cross-examination effected upon the prosecution witnesses has to be referred to. Now Shri Sarabjit Singh Sandhu (P.W. 3) in his statement dated 7-10-1981 made before this Court, states as follows : -

''I cannot say if these stones are synthetics, cultured or glass chattels.''

4. Shri M.S. Bhandari (P.W. 1) stated that the diamonds studded jewellery is available in the market. Shri G.D. Sidhu (P.W. 2) states that at the time of recovery, they did not know that the recovered articles were not diamonds and that these were non-precious stones. The valuation of these articles was obtained yet that valuer has not been examined. Merely because the accused had been talking about jewellery being diamonds and pearls studded would not

suffice.

5. The charge being of acquiring, keeping, concealing, possessing and of being instrumental in exporting out to Pakistan, the articles with intent to defraud the Govt. of the duty payable on those articles, the main piece of evidence of the Customs Authorities was to prove that the articles so recovered from Iqbal Ahmed were one on which duty was payable before their export from India. That piece of evidence having not been proved, the prosecution case must fail.

6. Feeling aggrieved therefrom Assistant Collector of Customs, Amritsar, has filed Criminal Appeal No. 366-DBA of 1983 in this Court.

7. We have heard Shri Ashok Singh Chaudhary, Advocate, for the appellant, Mrs. Vanita Sapra Kataria, Advocate for respondents 1 to 3, Nemo for respondent No. 4 in spite of due service and have carefully perused the relevant record.

8. Relevant portion of Section 135 of the Customs Act, 1962 reads :-

"135. Evasion of duty or prohibitions. - (1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods,

he shall be punishable. -

(i) in the case of an offence relating to any of the goods to which Section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.

Section 135(1)(a) of the Customs Act, 1962 makes three actions of a person punishable.

9. If we analyse and break-up the provisions enacted in Section 135(1)(a)(ii) it will be clear that structurally it is divisible into three parts, namely:

1. If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

2. If any person is in relation to any goods in any way knowingly concerned in

any fraudulent evasion or attempt at evasion of any prohibition for the time being imposed under the Customs Act, 1962, with respect to such goods, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

3. If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any prohibition for the time being imposed under any other law for the time being in force with respect to such goods, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

The first part deals with a case where in relation to any goods a person is knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable on such goods, obviously, therefore, the first part postulates that the goods in respect of which the offence is committed must be goods chargeable with duty."

10. Articles P. 3 to P. 38 recovered from suit-case Exhibits P. 1 and P. 2 having not been proved to be the ones on which duty was payable before they are exported to Pakistan do not fall within the mischief of Section 135(1)(a) of the Customs Act, 1962. Charge framed against the respondents was rightly held by the learned trial Court as not proved. Appeal against the acquittal of the respondents filed by the Assistant Collector of Customs, Amritsar, is obviously without merit and is consequently dismissed.