(1986) 07 BOM CK 0020

In the Bombay High Court

Case No : Writ Petition No. 1505 of 1982

Brahmanand Morandram Malkani — APPELLANT

Vs

Dy. Collector, Gold Control Cell — RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Constitution of India, 1950 — Article 226
Gold (Control) Act, 1968 — Section 2, 27, 27(1), 8(1), 8(6)

Citation : (1988) 19 ECR 208 : (1988) 37 ELT 507

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

1. By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging the legality of the order dated February 20, 1982 passed by Government of India in exercise of revisional jurisdiction under the Gold (Control) Act, 1968, (hereinafter referred to as the "Act"). The facts giving rise to the filing of this petition are required to be briefly stated to appreciate the grievance against the impugned order.

2. Father of petitioner No. 1 is running a shop known as M/s. M.B. Malkani Jewellers at Sindhi Colony, opposite Paradise Cinema, Lady Jamshedji Road. Mahim. The father of petitioner No. 1 also carries on business in gold and gold ornaments at Shaikh Memon Street. Bombay, and holds licence required under the Act. It is the claim of petitioner No. 1 that petitioner Nos. 2 and 3 were carrying on business of gold ornaments at the rear of the shop situated at Mahim and petitioners Nos. 2 and 3 were certified goldsmiths.

In January 1979, the petitioner No. 1 was in charge of the shop at Mahim as his father was ailing. The petitioner No. 1 is also a partner in the business at Shaikh Memon Street. On April 7, 1979, while petitioner No. 1 was in charge of the shop at Mahim, the Superintendent of Gold Control raided the premises and recovered 83 gms. of primary gold and gold ornaments weighing 874.200 gms. The value of the gold ornaments was Rs. 64,200/-. The gold ornaments were seized by the

Superintendent in the belief that the provisions of the Act were contravened. The gold ornaments and the primary gold was recovered from a Safe kept in the shop and which was under the control of petitioner No. 1 who produced the key of the safe.

2. On August 3, 1979 petitioner No. 1 was served with show cause notice alleging that petitioner No. 1 had contravened the provisions of Section 8(1) read with Section 8(6) of the Act and also Section 27(1) of the Act, as the business was carried as Gold dealer without holding a valid licence. Petitioner Nos. 2 and 3 were also charged for having contravened the provisions of the Act. The Deputy Collector of Customs (Prev.) Gold Control, Bombay, by order dated April 21, 1980 came to the conclusion that the gold ornaments belonged to petitioner No. 1 and not to petitioner Nos. 2 and 3. The Deputy Collector held that the charge against petitioner No. 1 was proved ad thereupon directed that gold and gold ornaments should be confiscated but granted permission to redeem on payment of Rs. 5000/- a penalty of Rs. 1000/- was also imposed on petitioner No. 1 Petitioner Nos. 2 and 3 were held to be not guilty of any contravention. The appeal preferred by the petitioners before the Collector of Customs. (Appeals) Bombay, ended in dismissal by order dated February 28, 1981.

The petitioner thereupon preferred revisional application before the Government of India and the revisional authority came to the conclusion that there was clear contravention of Section 27 of the Act by petitioner No. 1. The revisional authority set aside the finding of the lower authorities that petitioner No. 1 had violated Section 8(1) read with Section 8(6) of the Act. The revisional authority came to the conclusion that petitioner No. 1 should be permitted to redeem the gold ornaments on payment of fine of Rs. 1000/- only instead of Rs. 5000/- ordered by the lower authorities. The penalty of Rs. 1000/- on petitioner No. 1 was confirmed. The order of revisional authority is under challenge in his petition filed under Article 226 of the Constitution of India.

3. Shri Kanuga, learned counsel appearing on behalf of the petitioners, submitted that the finding of the revisional authority that the provisions of Section 27 of the Act were contravened is clearly unsustainable. The learned counsel argued that the finding is recorded without any evidence on record but on the other had, there is positive evidence to establish that the ornaments belonged to petitioners Nos. 2 and 3. Before adverting to the submission of the learned counsel it would be appropriate to refer to the provisions of sub-section(1) of Section 27 of the Act which demands that no person shall commence, or carry on, business as a dealer unless he holds a valid licence issued in that respect. The expression "dealer" unless he holds a valid licence issued in that respect. The expression "dealer" has defined u/s 2(H) of the Act and means any person who carries on directly or otherwise the business of making, manufacturing, preparing repairing polishing buying, selling, supplying, distributing, melting, processing, or converting gold, whether for cash or for deferred payment or for commission remuneration or other valuable consideration. The plain reading of this definition

makes it clear that the expression ''dealer'' is of wide ambit and includes each and every imaginable dealing in respect of gold or gold ornaments.

With this background, it is now necessary to consider whether the orders passed by the authorities below holding that petitioner No. 1 had contravened Section 27(1) of the Act is sustainable on the material on record. As mentioned hereinabove, the Superintendent of Gold raided the shop premises at Mahim and gold ornaments were recovered from the Safe kept in the shop and the key of which was in the custody of petitioner No. 1. It is not in dispute that petitioner No. 1 was in the control and custody of the shop and the safe placed therein. The claim of the petitioner No. 1 was that petitioner Nos. 2 and 3 were certified goldsmiths and they were permitted to carry on their business at the rear of the shop. It was further the claim of petitioner No. 1 that the gold ornaments found in the Safe belonged to petitioners Nos. 2 and 3 were stored in the Safe only for safe custody. The authorities below rejected this claim and, in my judgment, for sound raisins. The petitioner No. 1, in his statement recorded on April 9, 1979 admitted that he was looking after the goldsmith work done by his father and petitioner Nos. 2 and 3 were working in his shop and the account in respect of the goldsmith work was written by him. It is undoubtedly true that petitioner No. 1 at the subsequent stage in his statement claimed that the gold ornaments belonged to petitioners Nos. 2 and 3 The statements of petitioner No. 2 was recorded on April 7, 1979 i.e. the date on which the raid was carried out and petitioner No. 2 admitted that he was doing goldsmith work in the shop of petitioner No. 1 and petitioner No. 1 used to give him unfinished gold ornaments and gold for repairing etc. and the account were written by petitioner No. 1. The petitioner No. 3 in his statement on the date of raid, accepted the claim made by petitioner No. 2 and further stated that they were engaged by petitioner No. 1 on daily charges and the gold ornaments were prepared as per the instructions of petitioner No. 1. It was also accepted on behalf of petitioner Nos. 2 and 3 that they did not pay any rent to petitioner No. 1. The authorities below relying on these statements, came to the conclusion that the gold ornaments belonged to petitioner No. 1 and this finding based on appreciation of evidence cannot be faulted with.

Shri Kanuga, learned counsel appearing on behalf of the petitioners very strenuously urged that it should have been held that the ornaments belonged to petitioners Nos. 2 and 3 in support of the submission, claimed that petitioners Nos. 2 and 3 were certified goldsmith and were required to maintain the record of receipt and sale of gold ornaments and two Registers in respect thereof were found at the time of raid Shri Kanuga had to concede that petitioner Nos. 2 and 3 had not made any written record about handing over gold ornaments to petitioner No. 1 for Safe custody. The learned counsel submitted that the letters sent by the customers were produced before the authorities to establish that ornaments were handed over to petitioner Nos. 2 and 3 and in addition some of the customers were also examined as witnesses in support of the claim. The learned counsel wondered why the evidence of such customers should have been discarded. The learned counsel overlooks that this Court while exercising writ jurisdiction is not re-assessing the evidence but is only required to find out whether there was some material of which a reasonable person could have come to the conclusion that the charges were proves. The reliance by the authorities below on the statements of petitioners Nos. 2 and 3 made immediately after the raid cannot be faulted with as, in my judgment, those statements along with the surrounding circumstances leave no manner of doubt that it was petitioner No. 1 who was alone in charge of the gold ornaments and had control over it. The explanation given by petitioner No. 1 that gold ornaments were entrusted to him for safe custody by petitioners Nos. 2 and 3 cannot be accepted in the facts and circumstances of the case. It is impossible to believe that petitioner No. 1 who was running the jewellery shop, though not dealing in gold, but only in silver and diamonds, would permit lowly placed petitioners Nos. 2 and 3 to carry on their independent business at the rear of the shop. In my judgment, it is not possible to find any infirmity in the reasoning and the conclusion recorded by the authorities below. The evidence on record unmistakably establishes that petitioner No. 1 was dealing in gold and gold ornaments and had contravened Section 27(1) of the Act as the business was carried on without a valid licence. In view of this finding the petition must fail.

4. Accordingly rule is discharged. In the circumstances of the case, there will be no order as to costs.

