

(1983) 03 KAR CK 0005
In the Karnataka High Court
Case No : Criminal A. 479/82

Customs and Central Excise Department	APPELLANT
Vs	
Veerabhadreswara Weaving Factory and Others	RESPONDENT

Date of Decision : 23-03-1983

Acts Referred:

Central Excise Act, 1944 — Section 9 (i) (a), 9 (i) (b), 9 (i) (bb), 9 (i) (bbb)
Criminal Procedure Code, 1973 (CrPC) — Section 103, 165

Citation : (1984) 2 ECC 354 : (1983) 14 ELT 1758 : (1983) ILR (Kar) 409 :
(1983) 2 KarLJ 29

Hon'ble Judges : P.A. Kulkarni, J;A.K. Laxmeshwar, J

Bench : Division Bench

Advocate : Central Government Standing, for the Appellant; B.V. Deshpande and M. Rama Bhat, for the Respondent

Judgement

Kulkarni, J.—The appeal by the Customs and Central Excise Department is directed against the judgment of acquittal, dt. 20-8-1982, passed by the Additional Chief Judicial Magistrate, Bijapur, in CC No. 1558/81 acquitting the accused of the offence under Ss. 9(i)(a), 9(i)(b), 9(i)(bb), 9(i)(bbb) of the Central Excises & Salt Act, 1944.

2. The case of the prosecution is as follows : Veerabhadreswara Weaving Factory, fancy pattal manufacturers, Rabkavi, in Bijapur Dist. is a partnership firm. The said firm was formed with the intention of manufacturing cotton fabrics. A-2 was its managing partner. A-3 and 4 were the other partners. A-1 is the partnership firm. The said firm was manufacturing coloured sarees since 4-1-1976 on the 12 power looms situate in the premises bearing Municipal No. 961, Krishna River Road, Rabkavi. A-1 firm also owns a sales depot in a building Municipal No. 131, D-4, Main Road, Rabkavi. Mr. Nandan, the Inspector of Central Excise, visited the Veerabhadreswara Weaving Factory on 7-12-1976 along with another Inspector Sri S. K. Ummarji. He found the cotton yarn beams loaded in the 12 power looms and there were half woven sarees in them. The managing partner A-2 and the other two persons A-3 and A-4 were present at that time. They had not obtained

licence from the competent authority to manufacture the sarees. In the presence of two respectable persons, namely, Siddappa Miraji (not examined) and Shankarappa Chenni, (PW 3), Inspector Nandan sealed the looms. A panchanama Ex. P-2 was drawn in that connection. All the three persons gave a joint confessional statement as per Ex. P-3, admitting their control over the looms and admitting the manufacturing of cotton fabrics without obtaining licence or tex mark from the department. Thereafter, Inspector Nandan went to the factory office which had a sign board reading "Sri Veerabhadreswara Weaving Factory Office, Rabkavi". Therein 1604 sarees manufactured in Veerabhadreswara Weaving Factory were found. 96 sarees were found uncut and unwrapped. The remaining sarees were found wrapped with the writing thereon as "Shri Veerabhadreswara Weaving Factory, fancy pattals manufacturers, PO Rabkavi (Dist. Bijapur) proprietors : Kokotanur Bros." The said sarees were seized as no excise duty was shown to have been paid. They were removed from the factory without paying the duty and without obtaining gate pass from the competent authority. Along with a report, a panchanama as per Ex. P-4 was drawn. A-2 was present then. He produced the partnership deed, Ex. P-6 and the account book. Thereafter A-2 gave a voluntary confession admitting that as many as 6150 cotton Sarees including the seized 1604 had been manufactured in their factory and had been sold in contravention of the provisions of the Act, without paying the duty. He also gave a supplemental statement as per Ex. P-8 and produced the statement showing the sarees manufactured count wise till them. The copies of all the panchanamas were given to A-2 on 9-12-1976. The copy of his own statement, Ex. P-7, was also supplied to him. His signatures have been taken in token of having supplied all the copies to him. After completion of the enquiry by the Department, the Collector, Central Excise and Customs, Karnataka, Central Excise Collectorate, Bangalore, accorded sanction as per Ex. P-1 to prosecute the firm along with the partners, namely, A-1 to A-4 on 26-4-1978. He authorised Mr. Shirguddin Shaikh, Asst. Collector of Central Excise, to lodge a complaint. Accordingly, a complaint was received in the Court below on 22-11-1978.

3. After recording some evidence, the Court framed a charge against all the accused for offence punishable under Ss. 9(i)(a), 9(i)(b), 9(i)(bb) and 9(i)(bbb) of the Central Excises and Salt Act, 1944.

4. All the accused pleaded not guilty to the same.

5. The prosecution, in support of its case, examined in all five witnesses and marked Exs. P-1 to P-10.

6. All the accused claim that they had not committed any offence.

7. The trial Court, on the basis of the evidence of Asst. Collector Mr. Shirguddin Shaikh (PW 1) and the evidence of Excise Inspector Mr. Nandan (PW 2) and relying on the joint confessional statement Ex. P-3 of all the accused and also the written confessional statement of A-2 marked as per Ex. P-7 and further

statement of A-2 marked as per Ex. P-1, has concluded that A-1 firm had manufactured 6150 sarees including 1604 sarees seized in their factory and Krishna Road, Rabkavi and that no excise duty on the said sarees had been paid by the accused persons to the department and that accused had removed 1604 sarees from their factory to the factory office without paying the duty and without obtaining the gate pass and that the accused were found in possession of 1604 sarees knowing or having reason to believe that they are liable to be confiscated under the provisions of the Act and thus had ultimately found that the accused persons had committed the offences under Ss. 9(i)(a), 9(i)(b), 9(i)(bb), and 9(i)(bbb) of the Central Excises and Salt Act, 1944. It is no doubt true that PWs 3 to 5 have turned hostile. Though PWs 3 to 5 might have turned hostile, there is ample evidence consisting of oral evidence of Asst. Collector (PW 1) and (PW 2) and the joint confessional statement of accused persons marked as Ex. P-3 and confessional statement of A-2 marked as Ex. P-7 and the additional confessional statement marked as Ex. P-8. We are taken through the entire evidence. Though Sri Deshpande, very vehemently commented upon the evidence of PWs 1 and 2, and the confessional statements, his arguments did not impress us in the least. The evidence of PWs 1 and 2 sounds absolutely natural, believable and consistent. The joint confessional statement Ex. P-3 and the confessional statement Ex. P-3 and the confessional statement of A-2 marked as P-7 and the additional confessional statement (Ex. P-8) conclusively prove beyond doubt that the firm had manufactured 6150 sarees including 1604 sarees seized in their factory office and that the accused and removed 1604 sarees seized in their factory office and that the accused had removed 1604 sarees from the factory to their office without paying the duty and without obtaining the gate pass and knowing full well that the said 1604 sarees on which excise duty had not been paid, were liable to be confiscated. Therefore, the material on record conclusively proves that the accused persons have committed the offences punishable under Ss. 9(i)(a), 9(i)(b), 9(i)(bb) and 9(i)(bbb) of the Central Excises and Salt Act, 1944.

8. The trial Court, however, held that the search was in contravention of Ss. 103 and 165 of the Cri. P.C. and therefore the search and consequent seizure were illegal and therefore, on this technical ground it ordered acquittal of the accused.

9. The trial judge had relied on a decision reported in K. L. Subbayya v. State of Karnataka (1) which deals with S. 165(1) of CrI. P.C. S. 165(1) reads as :

"Whenever an officer in charge of a Police Station or a Police Officer making an investigation has reasonable grounds for believing that anything necessary for the purpose of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is incharge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to

be made, for such thing any place within the limits of such station."

In this case admittedly no such reasons have been recorded by the searching party and no satisfactory explanation has been given by the searching party also as to why they could not obtain a warrant from the jurisdictional Magistrate also. Therefore, we have no hesitation to agree with the view of the Magistrate that the search in this case is in contravention of Ss. 103 and 165 of the Crl. P.C.

10. It is no doubt true, that the Supreme Court in the said Subbayya's (1) case has stated that the entire search was without jurisdiction and the further proceedings taken on such an invalid search were all vitiated and it set aside the conviction. The Supreme Court also held in the said Subbayya's (1) case that Ss. 53 and 54 of the Karnataka Excise Act gave valuable safeguards for the liberty of the citizens in order to protect them from ill-founded or frivolous prosecution or harassment. The said judgment is dt. 24-1-1979.

11. In a subsequent judgment in State of Maharashtra Vs. Natwarlal Damodardas Soni, which was decided on 4-12-1979, the Supreme Court held thus :

"Taking the first contention first, it may be observed that the police had powers under the Crl. P.C. to search and seize this gold if they had reason to believe that a cognizable offence had been committed in respect thereof. Assuming arguendo, that the search was illegal, then also, it will not affect the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs."

The decision in Radhakrishnan v. State of U.P. (1963) Su 408 (1) SCR 408 was referred to in the said Supreme Court case decided on 4-12-1979. It is laid down in the said Radhakrishnan's (3) case :

"The appellant was a postman. He and his father were living in the same house. Certain undelivered postal articles were recovered from an almirah in the house, the key of which was produced by the father. The appellant Radhakrishnan was tried and convicted of an offence under S. 52 of the Post Offices Act, for secreting postal articles. One of the contentions raised on behalf of the appellant was that the search and seizure was illegal inasmuch as it was in contravention of the provisions of Ss. 103 and 165 of the Crl. P.C. Mudholkar, J. speaking for the Court, repelled this contention thus : "So far as the alleged illegality of the search is concerned, it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Ss. 103 and 165 of Crl. P.C. are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequences ensues."

Similar principle also is laid down in Shyamlal v. State of MP (4) and State of Kerala v. Alaserry Mohammed (5). These observations apply aptly to the instant

case.

12. This Court also in recent decision reported in Collector of Customs and Central Excise v. Lal M. Budrani (6) said thus :

"The learned single judge also held that the seizure of goods was invalid because in his view the search was invalid. We have upheld the validity of the search. Assuming that the search was invalid, the seizure pursuant to such search did not become invalid. In State of Maharashtra Vs. Natwarlal Damodardas Soni, the Supreme Court reiterated its earlier view in Radhakrishnan v. State of U.P. (1963) Su 408 (1) SCR 408 that even assuming that the search was illegal, the seizure of articles pursuant to such search was not illegal". The rule in K. L. Subbayya's (Supra) case is one rendered much earlier to the decision reported in State of Maharashtra v. Natwarlal Damodardas Soni's (Supra) case, which has been decided on 4-12-1979. If there are two decisions of the Supreme Court the one which is rendered later in point of time has to be accepted. These subsequent rulings do not appear to have been brought to the notice of the learned Chief Judicial Magistrate. Therefore, in view of the said principles that the contravention of Ss. 103 and 165 does not vitiate the search and further investigation and conduct of the trial and in view of the close and careful scrutiny of the evidence on record, we have come to the conclusion that the accused have committed the offence under Ss. 9(a), 9(i)(b), 9(i)(bb) and 9(i)(bbb) of the Central Excises and Salt Act, 1944.

13. The learned counsel Sri Deshpande, for the accused persons contended that this was the first offence of the accused persons. However, S. 9(3)(i) states that the fact that the accused has been convicted for the first time for an offence under this Act shall not be considered as special and adequate reason for awarding a sentence of imprisonment for a lesser term. Therefore, the said argument cannot hold good in this case. It was next contended by Sri Deshpande that the accused persons have been ordered to pay a penalty and the goods in relation to be confiscated. But S. 9(3)(i) says that such circumstances should not be taken as a special and adequate reason for awarding a lesser sentence. S. 9(3)(iv) says that the age of the accused is no criterion for imposing a lesser sentence. S. 34A of the Act says that no confiscation may or penalty imposed under the provisions of this Act or of any rule made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law. However, it cannot be forgotten that the case has been detected in 1976. We are in the year 1983. The sword of the prosecution has been hanging on the head of the accused and that too close to the head of the accused persons, since last about eight years. Therefore, these are circumstances which will have to be taken into consideration while imposing the sentence on the accused persons.

14. As the accused are the first offenders, it is S. 9(1)(ii) that would be applicable to the facts of the case. In this case, it was stated, very frankly by the learned counsel Sri Padmarajaiah that the penalty of Rs. 15,233-70P has been

imposed on the accused persons. Therefore, it is less than a lakh. Therefore, it is only S. 9(1)(ii) that would be applicable to the facts of the present case. Sri Padmarajaiah, learned Central Government Standing Counsel contented that the persons evading taxes require maximum sentence, in order to impress upon the tax evaders that it is an offence against the Society itself. After all these are petty files. Therefore, taking into consideration all the circumstances in the case, we think that imposition of fine only would meet the ends of justice.

15. Therefore, under the said circumstances, the judgment of acquittal is set aside; the appeal is allowed; each of the accused 1 to 4 is convicted of the offences under Ss. 9(i)(a), 9(i)(b), 9(i)(bb) and 9(i)(bbb) of the Central Excises and Salt Act, 1944 and each of them is sentenced to pay fine of Rs. 250 or in default to undergo simple imprisonment for one month, in respect of all the offences put together.