

(1979) 12 GUJ CK 0002
In the Gujarat High Court

Devchandbhai Jagubhai Patel and Others	APPELLANT
Vs	
The State of Gujarat	RESPONDENT

Date of Decision : 14-12-1979

Acts Referred:

Customs Act, 1962 — Section 11, 135
Essential Commodities Act, 1955 — Section 11H, 11K, 7

Citation : (1981) CriLJ 684

Hon'ble Judges : B.J. Divan, C.J

Bench : Single Bench

Judgement

B.J. Divan, C.J.—Both these criminal revision applications are against the same judgment and order of the learned Additional Sessions Judge, Broach, in a criminal appeal which he dismissed. The appeal before the learned Additional Sessions Judge was against the judgment and order of the learned Chief Judicial Magistrate, Broach, by which the learned Magistrate convicted three persons of the offence punishable u/s 135 of the Customs Act and sentenced each of the three persons to rigorous imprisonment for two years and to pay a fine of Rs. 2,000/- in default rigorous imprisonment for two months. The facts leading to this case are as follows: On November 20, 1969 at about 9-00 p.m. one Ambassador motor car bearing No. GJG 5446 approached the bridge across the Narmada at Broach. It came from Baroda side and was proceeding towards Surat. It was intercepted by the customs officers of Broach at the northern end of Narmada Bridge. Accused No. 1 was driving the car, accused No. 2 was sitting in the front by the side of accused No. 1 and accused No. 3 was sitting on the rear side. On suspicion the customs officers searched the said car in the presence of Panchas and they found 48 silver bars weighing 189.16 kilograms and the total value of those 48 silver bars was Rs. 94,508/-. These 48 bars were secreted between the rear seat and the spring of the seat and beneath the said seat of this car. These bars were seized by the customs officers, Broach, under a regular Panchnama drawn up on November 20, 1969 and they were seized under a reasonable belief that the silver bars were being taken for being smuggled out of

India from an unauthorised place on sea shore. According to the complaint lodged by the customs officers, accused No. 1 admitted that they were carrying the silver bars which they had brought in an unauthorised manner from Delhi and that they were carrying the same to Surat. He had also admitted that he had transported the said silver without cover of transport voucher contemplated by Section 11K(1) of the Customs Act. Accused Nos. 2 and 3 also admitted these facts and corroborated the version of accused No. 1. Accused No. 3 admitted that he was the owner of the car and had purchased the said car under a mortgage-deed from one Vinodchandra Ramanlal Gohil of Surat for Rs. 14,000/-. The customs authorities alleged in the complaint that from the facts and circumstances it appeared that these silver bars were the goods, export of which was prohibited u/s 3 of the Imports and Exports (Control) Act, 1947 read with Section 11 of the Customs Act, 1962. The silver under seizure was "specified goods" because of the notification dated 3-1-1969 issued u/s 11(1) of the Customs Act and thereby the other sections of the Customs Act were attracted. According to the prosecution, the accused had committed breach of the prohibition imposed under the Customs Act, 1962 and were liable to be punished u/s 135 of the Customs Act, 1962. It appears that though the silver bars were seized in 1969 November, the complaint before the Magistrate was filed only on March 14, 1974. By the judgment and order dated May 31, 1975 the accused were acquitted; An appeal against acquittal was filed and as a result of the decision in appeal in 1977, retrial was ordered and thereafter the learned Chief Judicial Magistrate heard the case and convicted and sentenced the accused as stated above. Against the decision of the learned Chief Judicial Magistrate, all the three accused filed one appeal, being Criminal Appeal No. 42 of 1978, before the Sessions Court and the appeal was disposed of by the learned Additional Sessions Judge, Broach, and the appeal was dismissed by the learned Judge. Thereafter Criminal Revision Application No. 91 of 1979 has been filed by accused No. 1 and Criminal Revision Application No. 92 of 1979 has been filed by accused Nos. 2 and 3, The learned Additional Sessions Judge has held that the goods were intended to be taken from Delhi to Surat and in these revision applications I will proceed on that basis that the destination of the silver bars was Surat, It is common ground before me that Broach is within the specified area contemplated by Section 11H of the Customs Act and that the silver bars were specified goods within the meaning of Section 11H. It is also not in dispute before me that Surat is also a specified area. There is no material before me either in the form of admission or any material on record to show that the route between Broach and Surat passes only through specified area. u/s 11-K(1) "No specified goods shall be transported from, into or within any specified area or loaded on any animal or conveyance in such area, unless they are accompanied by a transport voucher (in such form and containing such particulars as may be specified by rules made in this behalf) prepared by the person owning, possessing, controlling or selling such goods." It is not in dispute before me that no such voucher was carried by the three accused at the time when the car carrying the 48 silver bars was intercepted by the customs authorities at the

northern end of Narmada Bridge at Broach, u/s 135 of the Customs Act, "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 of such goods..." shall be punishable in the particular manner laid down under that section. The main question which has been agitated before me is whether the provisions of Section 11-K(1) were violated. Learned counsel for the respective petitioners, Mr. Trivedi and Mr. Hazari, have urged that the crucial word in Section 11-K(1) is "transported". They contend that the words "transport" and "transported" being in the concept of a point of origin and the point of destination it is the act of carrying the goods between the definite points of origin and destination that would amount to "transport" of goods or "transporting" the goods. In this connection, reliance is placed on the decision of a Division Bench of the Bombay High Court in *Emperor v. Dagadu Shetiba* 39 Bom LR 1062 : 39 Cri LJ 197. In that case the accused travelled from Jogeshwari near Andheri to Khed taluka in Poona carrying with him five drams of country liquor in an open bottle. To reach his destination he had to change trains at Dadar in Bombay. The accused was charged with an offence u/s 43(1)(a) of the Bombay Abkari Act, 1878 in that he transported liquor from a lower to a higher still-head duty area, namely, Bombay, though the duty at his destination was the same. The quantity of liquor carried was within the limit prescribed in the two places had the same scale of duty. The Division Bench consisting of Sir John Beaumont, C.J. and Norman, J. held that transporting from one place to another did not involve transportation to every place between those two places and that the accused should not therefore be deemed to have transported liquor to Dadar in Bombay. At p. 1064, Beaumont, C.J. speaking for the Division Bench observed:

...the short point on this appeal is whether you can say that transportation from one place to another involves transportation to every place between those two places. Strange results would follow if that be the construction of the Act. It would mean that if a man is taking a bottle of excisable liquor by a motor car from one place to another which is on the same duty level, and if he happens to pass through a place where the duty is higher, he commits an offence under the Act, whereas if he avoids that place he does not. In my view that cannot be the meaning of the Act. I think that when the Act talks about transport from one place to another it means transport from the starting point to the ultimate destination. It is a question of fact for the Court to determine what the destination may be. If a man comes to a place and stays there for an appreciable time and what amounts to an appreciable time would have to be considered in relation to the purposes of the Act - the Court might hold that that place was the destination although it appeared that the journey was to be resumed subsequently. But merely passing through a place in the course of a journey does not, in my judgment, amount to transporting to that place," A similar view was taken by a learned single Judge of the Andhra Pradesh High Court in *P.K. Natesa*

Mudali Vs. State of Andhra Pradesh, . There the question was in connection with transporting of rice from Andhra Pradesh to a place in Tamilnadu and the learned single Judge held that mere transportation of rice or coarse grains through the Andhra Pradesh State area was not per se an offence, under the provisions of the clause. The clause in question only prohibited import and export of rice or coarse grains from Andhra Pradesh State area and the transport involved in such transaction and it was held that the intendment of the provision appeared to be prohibition of either importing into any area of Andhra Pradesh from outside or exporting from any place in the State to outside area and the transport involved therein and not the mere transport through the area from any part outside Andhra Pradesh to another part outside the State.

2. In Atul Chandra Pal and Others Vs. The State, , a Division Bench of the Calcutta High Court held that, in the context of transport of rice which was prohibited under certain orders under the Essential Commodities Act, transport of rice from a place in the border area to a place in the Eastern Zone outside the border area was not prohibited u/s 4 of the Rice (Eastern Zone) Movement Control Order and that Section 4 spoke of transporting from one place in the border area to any other place in that area and that that involved the question of destination. The use of the word "trans- port" connoted movement from one place to another and the mere fact that the normal route was along the border area did not either indicate that it was transported to another place in the same area, while the known destination was elsewhere, that is a place in the Eastern Zone outside the border area. To hold otherwise would be to hold that goods on transit were transported to every point between the starting point and its destination.

3. In view of these three decisions and particularly in view of the decision in Emperor v. Bagadu Shetiba 39 Bom LR 1062 : 39 Cri LJ 197 (supra) which is binding on me, it must be held that the word "transport" in Section 11-K(1) means taking the goods or carrying the goods from a point of origin to a point of destination. Looking to the use of the words "from", "into" or "within" it is obvious that either the point of origin or the point of destination or both must be within the specified area and if specified goods are transported without any voucher in that behalf as contemplated by Section 11-K(1) of the Act, if it is meant for fraudulent evasion, would be punishable u/s 135 of the Customs Act. However, on the facts found by the learned Additional Sessions Judge, the point of destination was not Broach which was Within the specified area but it was Surat which was also within the specified area. The point of origin being Delhi which is within unspecified area or until the goods reached the point of destination, namely, Surat, in specified area, there would be no violation of Section 11-K(1) until the goods, namely, the silver bars, entered the specified area in which Surat is situated. Merely because en route Surat from Delhi the car carrying the silver bars passed through another specified area, namely, Broach, it does not mean that at Broach there was any violation of Section 11-K(1). The violation of Section 11-K(1) would occur if, (a) there was a continuous specified

area from Broach to Surat, or, (b) after leaving the specified area of Broach the car entered the specified area in which Surat is situated. Until either of these two events occurred it cannot be said that mere presence of silver bars at Broach which is within the specified area in the course of journey from Delhi to Surat would constitute an offence because at Broach there being no point of destination in the specified area of Broach, there is neither transporting from, nor into nor within the specified area of Broach.

4. In this connection, two decisions of the Supreme Court have a bearing. In *Malkiat Singh Vs. The State of Punjab*, the Supreme Court was dealing with a situation when paddy was sought to be transported from a place outside the prohibited zone to a place-Delhi-within the prohibited zone and the truck carrying the paddy was stopped at Smalkha Barrier. It was held by the Supreme Court that as the Barrier was at considerable distance away from the limits of the prohibited zone of Delhi, there was locus poenitentiae to the driver and cleaner of the truck not to take the truck into the prohibited zone and therefore in view of that locus poenitentiae, the matter was at the stage of preparation. The truck loaded with paddy being seized at Smalkha Barrier well outside the boundary, there was no export of paddy within the meaning of Section 7 of the Essential Commodities Act. There was merely preparation on the part of the appellants to commit an offence of export. It was quite possible that the accused might have been warned that they had no licence to carry the paddy at any place between Samalkha Barrier and Delhi-Punjab boundary and not have proceeded further in their journey, A similar view was taken by the Supreme Court in *Nasu Sheikh and Others Vs. The State of Bihar*. In that case, cultivators in a village in Bihar had lands also in West Bengal. They were intercepted by police in Bihar at a place 75 yards from the border of West Bengal while carrying paddy without permit. When asked they said that they were taking it to another village in Bihar. The Sub-Inspector of Police who was bound to know exact location of places within his own Police Station did not give any correct information about the geographical situation. No plan was filed in the case nor any mention of distance was made in seizure memo or the first information report and on these facts, the Supreme Court held that in such cases the question of distance assumes much importance as there is possibility of accused persons changing their minds at any time between the place of seizure and the State boundary. Therefore, in absence of correct information about the geographical situation, it was not safe to convict the accused for breach of Clause 3 of the order in question.

5. In view of these two decisions it must be held that until the car carrying the 48 silver bars entered the specified area in which Surat is located, it cannot be said that the goods were being transported in the sense of being taken to a place of destination in a specified area. Even though Broach was itself a specified area, the goods were not transported to Broach because Broach was not the place of destination and it was a fortuitous circumstance of the car being intercepted at Broach that was responsible for the finding of the silver bars (specified goods) at a place in a specified area but to Broach or into Broach there was no transport as

known to law. Hence it must be held that the prosecution, in the light of the authorities discussed above, has failed to establish the ingredients of the offence constituted by the alleged violation of Section 11-K(1) of the Customs Act. The ingredients of the offence, namely, transporting into a specified area has not been established by the prosecution and the feature of locus poenitentiae specified by the Supreme Court in Malkiat Singh Vs. The State of Punjab, and other decisions referred to above must be constantly borne in mind.

6. In the result, it must be held that the learned Additional Sessions Judge, with respect to him, was in error when he came to the conclusion that there was transporting of silver bars within the specified area and consequently when he upheld the order of conviction and sentence passed by the learned Chief Judicial Magistrate, Broach,

7. I allow both these criminal revision applications and set aside the orders of conviction and sentence passed against the three accused by the learned Chief Judicial Magistrate, Broach and confirmed by the learned Additional Sessions Judge. Fine, if any, paid by the accused to be returned to them. Bail bonds cancelled. Rule absolute in each matter.