

(1990) 12 MAD CK 0008

In the Madras High Court

Case No : Criminal R.C. No. 412 of 1986

G. Ahmed

APPELLANT

Vs

State by Asst. Collector of Central Excise, Coimbatore I
Division, 6/7 Davaraja Mudali Street, Race Course Road,
Coimbatore

RESPONDENT

Date of Decision : 10-12-1990

Acts Referred:

Customs Act, 1962 — Section 111
Imports and Exports (Control) Act, 1947 — Section 5

Citation : (1991) LW(Cri) 181

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : N. Natarajan, for the Appellant; P. Rajamanickam, for the Respondent

Judgement

Arunachalam, J.—The Petitioner was A.2 in C.C. No. 1229 of 1980 on the file of the Judicial First Class Magistrate, Coimbatore. He was

tried along with one Nagendran arrayed as A-1 for having committed offences punishable u/s 135(b)(i) read with Section 111 of the Customs Act

and u/s 85(ii) read with Section 8(i) of the Gold Control Act. The Petitioner as well as A.1 were convicted as charged and sentenced to undergo

rigorous imprisonment for two years and to pay a fine of Rs. 2,500/- under each count in default to undergo rigorous imprisonment for six months.

The sentences were directed to run concurrently.

2. The Petitioner and A.1 preferred criminal appeal No. 32 of 1983 and Criminal Appeal No. 13 of 1983 respectively, before the first Additional

Sessions Judge, Coimbatore challenging the verdict of the trial Court. The Appellate Court concurred with the findings recorded by the trial

Magistrate and dismissed both the appeals. It appears that Nagendran (A1) had served his sentence and therefore his incarceration did not become necessary, after the disposal of the appeal preferred by him.

3. The Petitioner alone has chosen to canvass the correctness of the convictions imposed on him and the propriety of the sentences awarded.

4. The prosecution case will have to be stated in brief for the disposal of this revision. P.W.1, the Superintendent of Central Excise, had

information that gold was likely to be smuggled and therefore was keeping surveillance at Raja Street, Coimbatore near "Hotel Guru", maintaining

a watch for movement of contraband gold in a car. At or about 1.15 p.m. on 15.3.1970, they found the Petitioner and A.1 near No. 242, Raja

Street, Coimbatore, conversing, being seated inside an Ambassador car, bearing registration No. MDR 4980. The Petitioner was in the driver's

seat while A.1 was seated next to him. P.W.1 and his officers prevented this car from proceeding further and detained it along with the Petitioner

and A.1. The Car was taken to the office of the Assistant Collector of Central Excise, Coimbatore. Though initially the presence of contraband

gold in the car could not be detected, on a Careful scrutiny from the running board 700 gold bars were recovered. The subsequent recovery of

some more gold from the residence of A.1 need not have to detain us for the disposal of this revision. Statements were recorded from the

Petitioner and A.1. The statement of the Petitioner has been marked as Ex.P.4. Wealth of details have been given in Ex.P.4 as to how the

Petitioner had involved himself in the transport of gold, found with foreign markings. According to his confession, he had met one Iqbal at Sathara

and he had travelled along with him upto Bombay. The Petitioner had narrated his miserable financial condition since he was earning a monthly

salary of Rs. 150/- which was hardly sufficient to meet even his bare necessities. Iqbal told the Petitioner that he would give him a good chance a

few days thereafter. On 3.3.1970 at Sathara, Iqbal tore a hundred rupee note and gave one half of the currency to the Petitioner for identification

purposes, after noting down the number of the note, a part of Which had been handed over to the Petitioner. Iqbal told the Petitioner, that a

person will return on 10-3-1970 in a car bearing registration No. MDR 4980 and he will be identified on showing the half piece of the note to that

person who brings the car. Thereafter the car will be left in his possession. The Petitioner should then take the car to Coimbatore and hand it over

to one Nagendran, after contacting him over telephone No. 26602 on the pseudonym ""Kumar"". It was during such operation in which the

Petitioner involved himself, that the seizure of gold was made, from the Ambassador car in his possession. In several places in his confessional

statement, the Petitioner had stated that he suspected that black market articles such as fabricated currency notes, watches, gold or silver must

have been placed within the said car since he was paid Rs. 600/- to take the car from Sathara to Coimbatore. He has further stated that he had

learnt, that there was gold in the car, but he was not aware as to whom the said gold belonged. He had also told the officer admittedly, that the car

was with gold, but he was unaware as to where it had been concealed. The statement also shows, that even prior to this incident, he had come

over to Coimbatore and had met Nagendran, in a car shed, and handed over jackets of gold.

5. Therefore it is apparent that the Petitioner had been involving himself in transporting smuggled gold for quite some time. He was not unwittingly

drawn into this process because of poverty, without any knowledge as to what he was carrying actually in the car. Ex.P.4 has been accepted by

both the courts below as voluntary and nothing serious had been pointed out in evidence, to permit a different view being taken on the acceptability

of Ex.P.4. I am satisfied that the seizure of gold from the car in the possession of the Petitioner, coupled with Ex.P.4 which certainly proclaims its

voluntariness, the Petitioner cannot escape his liability. The convictions recorded under the Customs Act as well as Gold Control Act will have to

be necessarily sustained.

6. Learned Counsel for the Petitioner made a fervent plea that the Petitioner need not have to be sent back to jail since the offence had been

committed 20 years ago and the Petitioner had spent a few days in Jail as well. He relied upon the judgment of the Apex Court in Inder Vs. State

of Maharashtra, wherein speaking on behalf of the Bench Fazal Ali, J., on the facts of that case observed that after a lapse of 10 years, it did not

appear to be conducive to the ends of justice to send the Appellant back to jail. While upholding the convictions, the sentence of imprisonment

was reduced to the period already served, but a total fine of Rs. 30,000/- was imposed.

7. In that case, neither the value of gold seized nor the prior antecedents of the accused therein, is available. On facts of this case, it is very clear

that the Petitioner is not a first offender and he had been involved in transporting gold even earlier. The value of gold seized in this prosecution is

Rs. 14,28,315.00. The observations of the Supreme Court in the aforesaid case will have to be restricted to the peculiar facts available in that

case.

8. Mr. P. Rajamanickam, learned Counsel appearing on behalf of the Respondent had placed before me the judgment of the Supreme Court in

State of Maharashtra Vs. Champalal Punjaji Shah, . That was a case where the Respondent was convicted by the trial Court for offences under

the Customs Act, but was acquitted in appeal by the High Court. The Supreme Court while holding, that non-interference with the judgment of the

High Court, would lead to miscarriage of justice, restored the conviction imposed on the Respondent by the trial Magistrate. A very fervent plea

was made, that the accused therein should not be sent back to prison due to long lapse of time and the further fact that he had been preventively

detained for over 2 years, on the basis of the very case complained in that prosecution. Negating the plea, the Supreme Court observed as

hereunder:

The offence is one which jeopardises the economy of the country and it is impossible to take a casual or a light view of the offence. It is true that

where the offence is of a trivial nature such as a simple assault or the theft of a trifling amount, we may hesitate to send an accused person back to

jail as it would not be in the public interest or in the interest of anyone to do so. But the offences with which we are concerned and the stakes

involved clearly show that sympathy in this case would be misplaced.

9. In Balkrishna Chhaganlal Soni Vs. State of West Bengal, , V.R. Krishnan Iyer, J, speaking on behalf of the Bench, while considering possession

of gold by the accused therein punishable under the Customs Act, on the aspect of sentence, observed as hereunder:

17. Guilt being established, the fifth act of the tragedy is reached Social and economic offences stand on a graver footing in respect of punishment.

The Appellant's advocate pleads in elimination of the imprisonment that gold of considerable value has been confiscated, that his client has gone out of business (his licence having been cancelled) and the possibility of further mischief is absent, seven years of criminal proceedings have been a long ordeal deterrent enough to inhibit future anti-social adventures, and some jail term he has already undergone. Counsel submits that his client will now turn a new leaf if he is not returned to prison. We decline to be moved by this dubious prospect.

18. The new horizons in penal treatment, with hopeful hues of correction and rehabilitation are Statutorily embodied in India in some special enactments; but crimes professionally committed by deceptively respectable members of the community By inflicting severe trauma on the health and wealth of the nation and the numbers, of this neo-criminal tribe are rapidly escalating-form, a deterrent exemption to human softness in sentencing.

19. The penal Strategy must be informed by social circumstances, individual factors and the character of the crime. India has been facing an economic crisis and gold smuggling has had a disastrous impact on the State's efforts to stabilize the country's economy. Smugglers, hoarders, adulterators and others of their ilk have been busy in their tinder-world because the legal hardware has not been able to halt the invisible economic aggressor inside. The ineffectiveness of prosecutions in arresting the wave of white-collar crime must disturb the judges' conscience. While we agree that penal treatment should be tailored to the individual in the extreme category of professional economic offenders, incarceration is peculiarly potent. When all is said and done, the offences for which the Appellant has been convicted are typical of respectable racketeers who, tempted by the heavy pay-off face the perils of the law and hope that they could smuggle on a large scale and even if struck by the Court they could get away with a light blow.

20. Mr. Justice Abhyankar observed in a Bombay case State Vs. Drupati Sahijisingh Bhawnani, u/s 5 , Imports and Exports Control Act:

A serious view must therefore be taken of such offences which show a distressingly growing tendency. The argument that the accused comes from a respectable or high family rather emphasises the seriousness of the malady. If

members belonging to high status in life should show scant regard

for the laws of this country which are for public good, for protecting our foreign trade or exchange position of currency difficulties, the

consequential punishment for the violation of such laws must be equally deterrent. The offences against export and import restrictions and customs

are of the species of "economic" crimes which must be curbed effectively.

21. We endorse this approach. It may not be out of place to notice in this context the observations of the Central Law Commission Forty-Seventh

Report on, ""The Trial and punishment of social and Economic offences"" against light sentences on the score that; (i) the case is one of first

conviction; (ii) that the matter has been already dealt with by severe departmental penalty; (iii) that the convicted person is a young man. To the

extent to which gold smugglers and other anti-social operators in the field of crime can be given an unhappy holiday in jail, the Courts must help the

process on conviction, if judicial institutions are not to be cynically viewed by the community. We confirm the sentence. The appeal fails and is

dismissed.

Applying the principles enunciated by the Supreme Court, any sympathy shown to the Petitioner, would certainly be misplaced. I do not consider

any case has been made out, for reduction of sentence. This revision which has no merit, shall stand dismissed.