

(1980) 05 DEL CK 0045

In the Delhi High Court

Case No : Civil Revision Appeal No. 155 of 1963

H.S. Jolly

APPELLANT

Vs

Sri Kishan

RESPONDENT

Date of Decision : 06-05-1980

Acts Referred:

Citation : (1980) 18 DLT 309

Hon'ble Judges : J.D. Jain, J

Bench : Single Bench

Advocate : J.S. Arora, Satish Aggarwal and Harbans Singh, for the Appellant;

Judgement

J.D Jain, J.

(1) This revision petition is directed against order dated 10.1.77 of a Metropolitan Magistrate discharging the respondent in a complaint case instituted by the petitioner who is Superintendent, Customs & Central Excise, New Delhi against him u/s 135(b) of the Customs Act (hereinafter referred to as the Act). The facts of the case lie in a narrow compass. The respondent carries on his business in the firm name M/s. Novelty Emporium, Chandni Chowk, Delhi, of which he is the sole proprietor. On 13.7.1968 Shri S.M. Kesar, Inspector Customs (Public Witness 3) conducted a search of the business premises of the respondent pursuant to a search warrant issued by the Assistant Collector of Customs. The respondent was present at the time of the search. On enquiry by Shri Kesar as to whether he had any contraband goods in the shop he replied in the negative. However, the search yielded 51 sarees of foreign origin. Of these 41 sarees were embroidered while rest were plain/ printed sarees. The same bore markings indicating their foreign origin. The respondent could not account for their possession and simply stated that some of them had been checked and verified by the Customs Officer -earlier in January 1968 but were released by them. However, he could not produce any proof of their lawful import/possession. Hence the same were seized by Shri Kesar under the reasonable belief that they were smuggled goods vide Panchnama Ex. Public Witness PW3/A. Statement of

the respondent Ex. Public Witness PW3/B too was recorded at the spot. Later on his statement was recorded by the Customs Authorities u/s 108 of the Act. These goods were eventually confiscated by the Collector of Customs who also imposed a personal penalty of Rs. 250.00 on the respondent. The complaint in question was then instituted by the petitioner for prosecution of the respondent u/s 135(b) of the Act on the ground that the import of fabrics made wholly or mainly of synthetic yarn including sarees was restricted/prohibited u/s 4 of the Act read with Section 3(1) of the Imports and Exports Control Act, 1947. Further the provisions of Section 123 of the Act had also been made applicable to such goods by virtue of Notification G.S.R. 621 dated 27.3.1968.

(2) The learned Magistrate has discharged the respondent vide impugned order holding that the aforesaid notification inter alias covered "fabrics made wholly or mainly of synthetic yarn which did not specifically include sarees made of synthetic yarn whereas subsequent notification No. S.O. 263(E) dated 6th April, 1972 which had been issued by the Ministry of Finance (Department of Revenue and Insurance) in exercise of powers conferred by Sub-section (1) of Section 25 of the Act which purported to exempt certain goods from the whole of the duty of the customs livable thereon under the 1st Schedule to the Indian Tarrif 1934 inter alias included "fabrics, sarees and knit wear made wholly or mainly of synthetic yarn. Thus he found that the notification dated 27th March) 1968 which was in force at the relevant time did not forbid possession of the sarees of foreign origin and the charge against him was groundless.

(3) The principal argument advanced by the counsel for the petitioner is that the learned magistrate fell into gave error of drawing a fine distinction between the expressions "fabrics" and "sarees" and in the process he overlooked the fact that the term "fabric" being the genus would automatically cover "sarees" which are just a specie of the same. Further according to him the induction of word "saree" in the subsequent notification way of abundant caution and it was not designed to introduce a new item of prohibited import as such. At the cost of the repetition it may be restated that Gsr 621 dated 27th March, 1968 was issued under Sub-Section (2) of Section 123 of the Act and its manifest objects is to cast the burden of proof on the person whose possession any goods to which the said section applies are seized in the reasonable belief that they are smungled goods. Surely this notification has no direct relevance to the ban imposed on certain types of articles. However, by implication it may be inferred that where fabrics made wholly or mainly of synthetic yarn are found in possession of a person the same arc smuggled goods and the onus of proving that they are not smuggled would lie on him. The term "fabric" has no where been defined in the Act or the Rules and Regulations etc. issued there under. However, as early as 1935 the term "fabric" was defined vide notification Cbrdd is. 179/Cus 1/35 of 2nd August, 1935 as follows :-

"The term "fabric" ordinarily refers to material which is to be further made up before going into consumption. Exceptions to this rule would normally be

included in the list of cotton piecegoods assessable under item 48(3)."

(4) On a plain reading it is crystal clear that the term fabric" has been used in a generic sense and it does not cover garments or clothes which are ready to wear. In a broad sense Therefore this expression would cover only rolls or pieces of cloth/textiles manufactured from cotton, woolen or synthetic yarn. Incidentally this definition is in perfect.....5.00 . accord with the dictionary meaning of the term. In the Shorter Oxford English Dictionary the meaning assigned to the word "fabric" inter alias is "a manufactured material (Now only a textile fabric). Similarly in Chambers 20th Century Dictionary the word fabric has been given the meaning "texture, manufactured cloth". On the other hand the word "saree" has been defined in the Shorter Oxford English Dictionary as "a long wrapping garment of cloth or silk worn by hindu women, also the material of this". Likewise in the Chambers 20th Century dictionary the word "saree" has been defined as "a hindu women"s chief garment, a long cloth wrapped round the waist and passed over the shoulder and head". Thus there can be no shadow of doubt that saree has a different connotation than fabric, in that the former is used as a garment whereas the latter is used as a material out of which the garment is fabricated or manufactured. It is a different thing that "saree" in a sense is a by-product of fabric. All the same they cannot be looked upon as synonymous. Indeed this distinction is reflected even in Schedule I to Imports (Control) Order 1955. Clause 3 of the said order provides that:

"3. Restriction of Import of certain goods.-(1) Save as otherwise provided in this Order, no person shall import any goods of the description specified in Schedule I, except under and in accordance, with a license or a customs permit granted by the Central Government or by any officer specified in Schedule II."

Thus Schedule I contains detailed list of the articles/goods import of which is banned except under and in accordance with a license or a customs permit.

(5) Chapter 50 of Schedule I pertain to textiles and textile articles. It only refers to woven fabrics of silk or waste silk or foil silk. Chapters 51 and 52 relate to man-made fibres (continuous) and metallised textiles respectively .They also speak of woven fabrics of man-made fibres and woven fabrics of metal thread or of metallised yarn. Chapter 53 converts wool and other animal hair and it inter alias includes woven fabrics of sheep"s or lamb"s wool or fine animal hair etc. Chapter 55 concerns cotton and includes inter alias terry fabrics of cotton and other woven fabrics of cotton. Similarly chapter 56 which relates to man-made fibres (discontinuous) talks of woven fabrics of man-made fibres (discontinuous or waste). It is noteworthy that in none of the chapters there is even an obliquities reference to garments as such. However, Chapter 60 deals with knitted and crocheted goods and it speaks of not knitted or crocheted fabrics but also of garments, both outer garments, knitted or crocheted. The next Chapter 61 carries the heading: "Articles of Apparel and clothing Accessories of Textile Fabrics other than knitted or crocheted goods" and it includes a long list of garments meant for men, boys and women which include shawls, scarves,

mufflers, mantillas, veils and the like. Similarly Chapter 62 deals with other made-up textiles articles like traveling rugs and blankets, sacks and bags etc. Lastly chapter 63 relates to old clothing and other textile articles; rags which include traveling rugs, blankets, household linen etc.

(6) That it is manifestly clear that the rule making authority drew a clear distinction between fabrics made of wool, man-made fibre, silk or cotton and the garments of or other articles made from textiles. Hence by no stretch of reasoning it can be inferred that the term "fabrics" as used in the abovementioned notification dated 27.3.1968 would take into its sweep even garments which are ready to wear. In other words sarees cannot be held to fall within the ambit of the expression "fabrics". The submission of the counsel for the petitioner, however, is that a roll of cloth meant for sarees can be easily converted into sarees by tearing it off into pieces of the requisite length and no person can be allowed to resort to this kind of maneuvering in order to circumvent the provisions of and escape liability under the Act. No doubt conversion of a roll of cloth into sarees is a very easy task but it is well settled that where a provision of law is susceptible of two possible interpretations the one favorable to the accused has to be adopted. So even if a saree being just a piece of cloth may be looked upon as fabric there can be no doubt that it would also fall within the purview of garments as it can be readily worn without any further process like embroidering or printing etc. Indeed rolls of cloth for printed sarees can be easily converted into sarees. Anyhow, there is no valid reason why the interpretation adopted by the learned court which is in tune with the context and tenor of the above- mentioned Schedule etc) should be taken exception to. Hence the submission made by the petitioner counsel that the word sarees was introduced in subsequent notifications dated 3.1.69 and 6.4.1972 was just by way of abundant caution, is not tenable; rather it would appear that the rule making authority did so consciously while recognising the distinction between the term "fabrics" as meaning textiles and "sarees" as being a garment. Hence notification dated 27.3.63 which had been issued under sub-section (2) of Section 123 of the Act which merely lays down a rule of evidence would not be attracted to- the facts of the instant case.

(7) That apart the investigation conducted in this case by the customs officials concerned is quite superficial and perfunctory in nature. In his statement Ex. Public Witness PW3/B which was made by the respondent at the spot to the Inspector of Customs he had clearly alluded to an earlier search of his shop by the Customs Officials as a result of which some embroidered sarees were recovered. However, he produced bills pertaining to 68 sarees. Consequently the sarees recovered from his shop were released then, and there. During cross examination Shri S.M. Kesar denied at first that the accused had told him so but on going through the statement Ex. Public Witness PW3/B he had to admit it. He further conceded that he did not verify this fact from the Customs authorities. It bears repetition that as many as 41 sarees out of a total of 51 were embroidered, thus leaving a balance of only 10 sarees- which were either plain

or printed. In other words the possibility of the respondent still having the embroidered sarees which had been earlier released by the Costumes officials has not been ruled out. So it is difficult to assume, that respondent was aware of the smuggled nature of the remaining 10 sarees especially when he made it known at the time o.f the search itself that he was doing merely embroidery work to order on the sarees. This would cast grave doubt on the prosecution version about these goods having been seized under the Act in the reasonable belief that they were smuggled goods which is a condition precedent to the applicability of section 123 of the Act. In other words it was incumbent upon the prosecution to prove that these goods were liable to be confiscated u/s 111 of the Act before any adverse inference against the respondent could be drawn, specially, when it is commonly known that imported sarees have been freely available in the market and confiscated sarees were being sold even by Government agencies like Super Bazar.

(8) To sum up, Therefore, I find no merit in this revision petition. It is accordingly dismissed.