

(1933) 04 MAD CK 0017

In the Madras High Court

In Re: Santhanakrishna Chetty

Date of Decision : 24-04-1933

Acts Referred:

Lands Customs Act, 1924 — Section 7(1)(c)

Citation : 147 Ind. Cas. 46 : (1933) 38 LW 979 : (1933) 65 MLJ 837

Hon'ble Judges : Pakenham Walsh, J

Bench : Division Bench

Judgement

Pakenham Walsh, J.—The petitioner (accused) was convicted of an offence u/s 7(1)(c) of the Land Customs Act for having with him 82

blocks of silver weighing about 15,000 tolas smuggled from Karaikal in French territory without a permit. The motor car in which this accused and

another (who has been acquitted) were travelling was stopped by the Land Customs Inspector (P.W. 1) at the level-crossing gate near

Needamangalam on the Needamangalam-Tanjore road at about 12-30 A.M. in the early morning of 3rd September, 1932. The accused was also

wearing some silk cloths but the latter were found to be his personal wearing apparel. He was not convicted with regard to them. The accused

appealed with regard to this conviction as to smuggling silver and the conviction was confirmed. This revision petition is put in against that

conviction. Certain admitted facts may be noted. It is not the case for the prosecution that this silver had come direct that night from Karaikal. The

Customs Inspector, P.W. 1, says:

If they had passed the Chowk, the silver bars having been in the car would have been detected. The accused could not have brought the silver

bars through the Chowk.

2. The case for the prosecution is that they were brought from Thittacherry

which is in British territory, but that the accused had previously purchased them in Karaikal and had arranged somehow for them to be brought to Thittacherry from which place he was conveying them in his motor car. P.W. 1 says:

I believed the accused when he stated that he got the silver bars at Thittacherry.

3. It is also to be noted that silver became dutiable only in April, 1930. So the conviction was based on the confession which the accused made at

the time to the Customs House Officer. The latter says that he prepared the statement by putting questions, getting answers and recording the same

and that he has not recorded the questions. It is clear from the manner in which the confession is made that a good deal of it must have been in

reply to specific questions. The material part of the confession runs as follows:

At 5 P.M. on 2nd September, 1932, I left Karaikal and went to Thittacherry via Valangudi. While I was going via Chowki, there was nothing in

the car. I went to Thittacherry. One Muhammadan gave 82 silver bars contained in seven bags. Taking them I started from Thittacherry at 8 P.M.

4. Then he narrates how he was stopped by the Customs Inspector at the level-crossing. He proceeds:

I do not know who that Muhammadan is that gave me. I do not know anything about his house and address. Nor do I know how the

Muhammadan took these silver bars from Karaikal. I brought them for sale At Karaikal I purchased for Rs. 40-8-0. I took them and started for

Trichinopoly. I did not pay duty for these silver bars. I do not know how that Muhammadan brought them to Thittacherry from Karaikal.

5. His confession being the only evidence against the accused, it must be taken as a whole and nothing can be read into it which is not contained

there : Pika Bewa v. Emperor ILR (1912) 39 Cal. 855, Emperor v. Balmakund ILR (1930) 52 All. 1011. There is no statement as to when he

purchased this silver at Karaikal. His statements in Ex. B on the above point are clearly in answer to questions. P.W. 1 admits that he did not ask

the accused on what date he purchased silver for Rs. 40-8-0 nor how many years or months ago they were purchased. He did not make inquiries

at Karaikal as to the price of silver prevailing at the time that this silver was seized. The onus of proof in these cases rests on the prosecution and it

is therefore for the prosecution to show that this silver was taken by land from

French territory into British territory at a time when silver was dutiable. As noted in the appellate Court's judgment there are two gaps in the prosecution with regard to this. Assuming that the accused purchased silver at Karaikal after it became dutiable it might possibly have been carried from Karaikal by sea to Nagore and thence conveyed to Thittacherry. The learned Sub-Divisional Magistrate meets this by saying: Neither in his statement nor in the defence evidence was there any suggestion that the silver was conveyed by sea. This is a question of fact which could be properly proved only by the statement of the accused or the evidence of his witnesses.

6. But the case of the accused is that he did not know How the Muhammadan from whom he got the bars brought them to Thittacherry. Under these circumstances it was not for him to specify the route but for the prosecution to prove it. But an even more important matter is the date of the purchase. This is dealt with by the learned Sub-Divisional Magistrate in paragraph 7, where he says:

Another point made by the accused's vakil is that the silver first became dutiable under the Finance Act of 1930 from April, 1930 (and not as wrongly stated by P.W. 1 from October, 1931) and that if the silver pieces had been purchased before that date the appellant's act of removing them would not be against the law. But it is to be observed that u/s 5(1), Land Customs Act, a permit has to be taken for the passage of all goods whether dutiable or not from foreign territory into British; and as the appellant had no such permit for the silver, he was liable to the penalties imposed by law.

7. In this argument he has overlooked the effect of the amendment to Section 7. No doubt u/s 5(1) and (2) a person desiring to pass any goods whether dutiable or not by land out of or into any foreign territory has to apply in writing for a permit. u/s 5(3) any land customs officer may require a person in charge of any goods which such officer has reason to believe to have been imported, or to be about to be exported by land from, or to, any foreign territory to produce the permit; any such goods which are dutiable and which are unaccompanied by a permit or do not correspond with the specification contained in the permit shall be detained and shall be liable to confiscation. The old Section 7(a) and (c) then proceeds to

say:

Any person who (a) in any case in which the permit referred to in Section is required, passes or attempts to pass any goods by land out of or into

any foreign territory through any land customs station without such permit, or (c) aids in so passing or conveying any goods, or, knowing that any

goods have been so passed or conveyed, keeps or conceals such goods or permits or procures them to be kept or concealed shall be liable to a

penalty not exceeding, where the goods are not dutiable, fifty or, where the goods or any of them are dutiable, one thousand rupees, and any

dutiable goods in respect of which the offence has been committed shall be liable to confiscation.

8. By the amended Act it is only in the case of dutiable goods or of any goods in respect of which a notification u/s 19 of the Sea Customs Act,

1878, prohibiting the bringing or taking by land of such goods into British India or any specified part thereof, has been issued, passed by land out

of any foreign territory that a complaint in respect of an offence under Sub-Section (1) can be made to a Magistrate having jurisdiction that an

offence under Sub-Section (1) has been committed in respect of such goods when the customs officer considers that the penalty provided in that

sub-section is inadequate. Therefore assuming that for non-dutiable goods the accused had no permit, the offence, if any, would be one to be dealt

with only by the Land Customs Officer himself u/s 7 and would not constitute an offence for which a complaint could be made to a Magistrate.

9. For the Crown Mr. Bewes has pointed out some suspicious circumstances against the accused. P.W. 1 says that the accused said to him ""This

is the second time. Please excuse me"" and offered him Rs. 500 to do so. With regard to this it may be noted that even in Ex. B which is a careful

confession made at the time the accused is said to have stated ""this is the first time"". It is suggested for the petitioner that the accused might have

offered this money because he was liable to a fine by the Customs Officer for taking dutiable goods without a permit. It is pointed out for the

Crown that he was travelling with these silver bars in the middle of the night. Suspicion however would not amount to proof and in this case there is

no proof that the accused purchased silver at Karaikal and kept or concealed such goods knowing them to have been passed or conveyed by land

into British India as dutiable goods mentioned in the amended section. That being so, it is unnecessary to discuss the further question as to whether the confession is admissible or not.

10. The conviction must be set aside. The bail bond will be cancelled. The order of confiscation passed by the Magistrate is also set aside, and the fine, if paid, will be refunded.