(1975) 03 MAD CK 0039

In the Madras High Court

K.R. Ahmed shah APPELLANT

Vs

The assistant Collector of Customs RESPONDENT

Date of Decision : 18-03-1975

Acts Referred:
Customs Act, 1962 — Section 135(b)

Citation : (1976) CriLJ 932 : (1975) 88 LW 427

Hon'ble Judges : Krishnaswamy Reddy, J

Bench : Single Bench

Judgement

Krishnaswamy Reddy, J.—The appeal has been preferred by the accused Ahmed Shah who was convicted u/s 135 (b) Clause II of the Customs Act and sentenced to pay a fine of Rs. 1,000/-, by the Sub-divisional Magistrate. Poonamallee. The revision petition has been filed by the Assistant Collector or Customs, Madras, in the same case for enhancement of the sentence on the appellant.

2. The facts of the case are briefly these:

3. The appellant arrived along with other passengers at pore, at about 9,30 or 10 p.m. on 7-2-1970. P- W. 1 the Air Customs Officer, Meenambakkam Airport was on duty at ^the airport at the baggage counter. The '' passengers including the appellant proceeded to the counter with their baggage. P.W. 1 asked the appellant to separate his own baggage and accordingly, the appellant separated one bag claiming it as his own and produced it for his examination. P.W. 1 asked him to give a declaration. The appellant gave a written declaration in the form given to him vide Ex. P-l. The appellant declared in that form that he had one pair of earrings set with diamonds, two rings set ith diamonds and 51 diamond stones. They were marked as M. Os, 1 to 3 series. The then market value of those items were given as Rs. 80,850/-. According to P.W. 1, the appellant had no licence or permit to import jewellery and the diamonds M. Os. 1 to 3 series either from the Reserve Bank of India or Trade Control Authority, P.W. 1, therefore, detained M. Os. 1 to 3 and subsequently, the authorities concerned gave a show cause notice to the appellant as to why those items shall not be

confiscated. In the confiscation proceedings, a penalty of Rs. 40,000/- was levied. Subsequently, the Additional Collector of Customs accorded sanction for prosecution. These facts were spoken to by P- W. 1. No other evidence has been let in by the prosecution.

4. When the appellant was questioned, he stated that he had no mala fide intention and that he had complied with the provisions of the Act by giving a declaration voluntarily and spontaneously. He further stated that he was under the bona fide impression that the jewels which were brought by him would be passed on payment of duty.

5. In Ex. P. 1, the declaration form, the appellant stated that he was a resident of Saigon, that his local address in India is No. 36, West Street, Koothanallur, that along with him, his family members were accompanying, that he had come to India to stay for some time with " his children and his family members, that his Vietnam wife in Saigon had given those three jewels for making a presentation to his wife and children in India and that, therefore, he had brought these jewels with the hope that they might he passed by the Customs on payment of duty. He further stated that besides his wife in India, he has three sons and one daughter and that his Vietnam wife in Saigon had no issues and, therefore, she delivered these jewels to be presented to his wife and children in India.

6. It is unfortunate that the learned Sub-divisional Magistrate on this evidence without any other evidence, even suspecting the bona fides of the appellant convicted him (the appellant). It is also rather very unfortunate that the Assistant Collector of Customs had not only sanctioned prosecution but also filed a revision for enhancement of sentence. There is not a whisper from the prosecution evidence that the appellant had behaved in such a manner to create suspicion that he was smuggling the diamond Jewels into this country. On the other hand, P.W. 1 stated that when he asked him to give a declaration of the contents in the bag, the appellant immediately gave a declaration Ex. P. 1 about its contents. P.W. 1 has not stated that there was any hesitation or any other behaviour of the appellant, suspecting his bona fides. What a passenger has to do on his arrival at the Customs counter, the appellant has done. The appellant further stated that he thought that the diamond jewels which he had brought would be passed on payment of duty. There is nothing to show that he would not have had that intention at the time when he brought the jewels.

7. The learned Counsel appearing for the Assistant Collector, Sri G. Ramaswami has made an attempt to argue that when the appellant brought the diamonds and alighted at the Airport, he has committed the offence of smuggling then itself. He further contended that the appellant should have known that the diamonds could not be passed even on payment of duty and, therefore, his intention in having brought them was only to smuggle them. I am unable to agree with him. So far as the intention is concerned, I have already found that there was nothing to show that he was bringing the diamond jewels with the object of clandestinely importing into this country. There was no concealment.

There was no indication of lack of bona fides on his part.

8. In regard to the other contention that the appellant committed the offence as soon as he alighted at the Airport itself with the diamonds, I do not think that there is any force in it.

9. If I accept the argument of the learned Counsel, it would create an utter confusion in respect of the bona fide passengers bringing goods from foreign countries into this country. The object of having a Customs counter is to make the passengers coming from foreign countries to give a declaration of what they had brought, so that the officials concerned may pass certain goods on payment of duty or detain the other goods which could not be passed even on payment of duty and if the passengers agreed to return such goods to the place of origin. I am, therefore, of the view that once a passenger coming from a foreign country had entered into the Customs counter and had given a declaration of what all he had brought, irrespective of the fact whether the goods could be passed on payment of duty or not, unless there were circumstances to indicate that such passenger was bringing the goods with the intention to smuggle, no offence is committed by him.

10. I am supported by the decision of the Division Bench of this Court, rendered by Chief Justice and Natarajan, J., in A. Shankly v. Collector of Customs Madras W. A. No. 84 of 1968 (Mad), In that case, their Lordships had occasion to discuss the connotation of the word ''import'' and they observed as follows:

The word ''import'' for purpose of the Act (Customs Act) is defined as ''bringing into India from the place outside India'', ''Smuggling'' is defined as any act or omission which will render such goods liable to confiscation under Sec, III. In different contexts the expressions Import'' and ''export'' have been construed by Courts with reference to the customs frontiers or the customs barriers. But on a question of import through aircraft, the question arises whether the moment the aircraft arrives in an international airport in this country, the goods are imported. On this question, we are inclined to share the view of the Delhi High Court in Union of India and Others Vs. Khalil Kacherim, . To take a different view would introduce confusion in the matter of levy of duty under the provisions of the Act, More so, as we think, in the case of goods in the hands of transist passengers. So long as they were not taken out of the clearance line in the Customs office in the airport, they cannot be said to be imported within the meaning of the Act.

(underlining is (nine).

I am bound by this decision. Applying the principles of this decision, it cannot be said that the appellant Imported the diamonds into this country, as he had given a declaration unhesitatingly before P.W. 1 the Air Customs Officer. The conviction and sentence are set aside and Y the appellant is acquitted. Fine, if paid, will be refunded to the appellant

11. The appeal is allowed.

12. On the view I have taken in the appeal, Cr. R. C. No. 58 of 1972 filed by the Assistant Collector of Customs is dismissed

