

(1974) 12 SC CK 0006

In the Supreme Court Of India

Case No : Criminal Appeal No. 79 of 1971

Labhchand Dhanpat Singh Jain

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 03-12-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 342
Customs Act, 1962 — Section 111, 123, 135
Evidence Act, 1872 — Section 106, 114
Penal Code, 1860 (IPC) — Section 411, 414

Citation : AIR 1975 SC 182 : AIR 1974 SC 182 : (1975) CriLJ 246 : (1983) 13 ELT 1603 : (1975) 3 SCC 385 : (1975) 2 SCR 907 : (1975) 7 UJ 75

Hon'ble Judges : Y. V. Chandrachud, J; M. Hameedullah Beg, J; A. C. Gupta, J

Bench : Full Bench

Advocate : Hardayal Hardy and Ashok Grover, for the Appellant; H.R. Khanna and M.N. Shroff, for the Respondent

Final Decision : Dismissed

Judgement

M.H. Beg, J.—The appellant aged 23 was arrested on 9-4-1967 by the Railway Police at the Bombay Central Railway Station as he was hurriedly trying to get into a second class compartment of the Frontier Mail bound for Delhi. It appears that manner in which he was trying to enter the second class compartment and his, nervousness on being questioned by a Railway C.I.D. Police Officer, although the appellant had a ticket on him, aroused suspicion so that the appellant was detained. On a search of his person at the Police Station in the presence of Panchas, nine bars of gold with foreign markings were found secreted in especially made concealed pockets of his trousers. These were seized by the Railway Police/ After further questioning by the Police, the appellant was summoned before Shri L.A. Digama, Additional Chief Inspector of Customs, Bombay, where his statement u/s 108 of the Customs Act 1952 was recorded on 10-4-67. In that statement, the appellant admitted the recovery of gold bars from his person and stated that he had agreed with one Pannalal to carry them

for delivery at Delhi for a sum of Rs. 100 to be paid to the appellant/He stated that, from what Pannalal had told him and also from the weight of the bars, he knew that he was carrying gold. He stated that his father was also with him, but, as nothing incriminating was recovered from the father, he was allowed to go away. He also admitted that he knew that transporting of gold like this was a criminal offence.

2. The appellant was prosecuted and convicted by the Presidency Magistrate of Bombay u/s 135(b) of the Customs' Act of 1962 (hereinafter referred to as 'the Act') and sentenced to three months rigorous imprisonment. Charges under the Defence of India Rules were also preferred against him but he was acquitted of these. The High Court of Bombay, after carefully re-examining the whole evidence in the case, had affirmed the conviction and sentence of the appellant; but, the appellant had obtained special leave to appeal to this Court.

3. Learned Counsel for the appellant had urged before us that the conviction of the appellant is vitiated on three grounds.

4. Firstly, it is urged that there was no evidence whatsoever to hold that the gold seized from the person of the appellant was "liable to confiscation" as contemplated by Section 111 of the Act. It is contended that the only category in which the gold under consideration B could fall is Section 111(d) which describes it as of "any goods which are imported or attempted to be imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force".

5. It was urged that, as restrictions on the import of gold were only imposed in 1948, there should have been some evidence to show when it was brought into India. Apart from other reasons given below, we think that this argument overlooks that an offence u/s 135(1)(b) is punishable if the offender "acquires possession of or is in any way concerned in carrying removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation u/s 111".

6. Secondly, it is contended that the High Court had wrongly used Section 123 of the Act so as to wrongly place the burden of proof on the appellant when this provision did not apply. This Section reads as follows:

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be....

(a) in a case where such seizure is made from the possession of any person....

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were

seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.

(2) This section shall apply to gold, diamonds, manufactures of gold or diamonds, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

7. The argument is that, in order to apply Section 123 of the Act, there must be a "seizure" of the goods by the proper Customs Officer duly authorised as provided by Section 110 of the Act. Learned Counsel relied strongly on *Gian Chand and Others Vs. The State Of Punjab*, where it was held, under the corresponding provisions of Sea Customs Act, 1878, that the burden of proof was shifted on to the accused only when the goods were "seized" in the sense that they were taken out of the possession of an accused by the "proper officer". That was also a case of "seizure" of allegedly smuggled gold. There, the police had initially commenced proceedings u/s 411 and 414 of the Indian Penal Code against the accused, but, afterwards, the case was handed over to the Customs' authorities. The initial "seizure" being one by the ordinary police, it was held to be not one under the Act. In that case, this Court had set aside the order of the High Court because it held that the statutory presumption could not be used to convict. But, it did not, for that reason, acquit the accused. On the other hand, it sent back the case to the Trial Court for decision after considering the evidence without the aid of the statutory presumption.

8. Even if we were to apply the ratio decidendi of *Gian Chand's* case (supra) in the case before us, we find that the result would only be that no presumption u/s 123 of the Act could be used against the appellant. We do not think that the High Court or the Magistrate had used this presumption. We find that they had relied upon circumstantial evidence in the case to infer the character of the gold recovered and the accused's guilty knowledge.

9. This brings us back to the first and the main contention on behalf of the appellant which was that there is no evidence to support the conviction of the appellant u/s 135(b) of the Act. We are unable to accept this submission. A reference to *Bhau Ram Vs. B. Baijnath Singh and Others*, is enough to show that the conduct of the accused and the incredible version set up by him were enough to saddle the accused with the necessary knowledge of the character of the goods found in his possession. In the case before us, we have not only evidence of the suspicious conduct of the appellant but his own admission that he knew that it was an offence to carry the gold which he had been asked to transport for payment of money to him. He had put forward an incredible story of having been entrusted with so much gold by one Pannalal whose identity was not established and whose address was not revealed by the appellant. According to the appellant, Pannalal had just met him by chance. It is incredible that any person would entrust gold valued at about Rs. 40,000 on which Rs. 17,000 was payable

as duty alone, to a youngster who was an utter stranger to him even if the carrier was to get Rs. 100 for the risky undertaking. It is significant that the appellant was found carrying gold from Bombay, a port of entry for smuggled goods, to Delhi, where there is a good market for gold. If it was not recently smuggled gold carried contrary to law there was no need for the clandestine and guilty manner of transporting it. We think that, in the circumstances of the case, an inference could very well be made that the gold must have been recently imported into the country, or, at any rate, after the law passed in 1948 restricting its entry. The appellant admitted, in his statement u/s 108 of the Act. that H transporting of these pieces of gold was an offence. If the gold had been legally imported before 1948 it could not be an offence to carry it. The appellant had not proved who Pannalal, the person who was alleged by him to have given him the gold to carry, was. Atleast, the burden of proving an innocent receipt of gold lay upon the appellant u/s 106 Evidence Act. The totality of facts proved was enough, in our opinion, to raise a presumption u/s 114 Evidence Act that the gold had been illegally imported into the country so as to covered by Section 111(d) of the Act. The appellant had not offered any other reasonable explanation of the manner in which it was being carried.

10. Thirdly, it was urged that Section 342 of the Criminal Procedure Code had not been complied with inasmuch as only two very general questions were asked by the Trying Magistrate, followed by two others on one point. But, the seizure of gold from his possession and the surrounding circumstances were not put to him. The first two questions and answers were:

Q. 'Have you heard the evidence ?

Ans. Yes.

Q. What have you to say in regard to the evidence?

Ans. I am filing my written statement. I have nothing more to say.

I want to examine one witness from Chief Reservation Inspector, Western Railway, Bombay Central.

The questions and answers which followed afterwards were:

"Q. Have you heard and followed the Mint Report read out and explained, to you ?

Ans. Yes.

Q. What have you to say about the same?

Ans. I have to say nothing. I want to add that I am producing the notice given by the Customs dated 6-10-67.

11. It is clear to us that the appellant was fully aware of the nature of the allegations made against him. He had not merely given a detailed explanation u/s 108 of the Act, of the circumstances in which he said he was arrested with the gold bars, but, he had also filed an elaborate written statement. He had indicated

that this is the only form in which he would give his explanation. It is true that the general form of questions put does not strictly comply with the provisions of Section 342 Criminal Procedure Code. But, we are unable to hold that the appellant suffered any injustice for this reason. Indeed, he had not even raised such a question in the Trial Court or before the High Court. If he had done so, the alleged defect could have been easily cured. The objection seems to us to be most technical and flimsy. The defect could not have possibly vitiated the conviction of the appellant.

12. Lastly, it is urged that the appellant has already served nearly three months of the sentence and there is no previous conviction recorded against him so that we should reduce his sentence to the period already undergone. In view of the age of the appellant and the fact that there is no previous conviction proved against him, we consider it to be undesirable to send the appellant back to jail for a few days. We, therefore, reduce the sentence to the period already undergone. Subject to this modification, this appeal is dismissed. The appellant, who is on bail, need not surrender.