
(1979) 02 CAL CK 0003
In the Calcutta High Court

Narendra Prasad Srivastava

APPELLANT

Vs

Assistant Collector of Customs and Another

RESPONDENT

Date of Decision : 06-02-1979

Acts Referred:

Customs Act, 1962 — Section 105, 108, 111, 123, 135

Citation : (1979) CriLJ 451

Hon'ble Judges : Monoj Kumar Mukherjee, J

Bench : Single Bench

Judgement

Monoj Kumar Mukherjee, J.—This Rule is directed against the judgment and order dated January 1978 passed by the Additional Sessions Judge, 6th Court, Alipore in Criminal Appeal No. 82 of 1977 affirming the judgment and order dated August 11, 1977 passed by the learned Chief Judicial Magistrate, Alipore in Case No. C 8 of 1974 convicting the accused petitioner Narendra Prasad Srivastava u/s 135(1)(b)(ii) of the Customs Act, 1962 (hereinafter referred to as the Act) and sentencing him to pay a fine of Rs. 10,000/- in default, to suffer rigorous imprisonment for 9 months.

2. The ease for the prosecution briefly stated was as follows:

On the strength of a search authorisation issued u/s 105 of the Act by the Assistant Collector of Customs, the residence of the accused was searched on February 10, 1974 by some Customs Officers on the reasonable belief that diamonds, rubies and precious stones of foreign origin liable to confiscation, were secreted therein. Prior to the search, the petitioner was asked to voluntarily surrender any contraband goods, if kept by him. He admitted before two independent witnesses and the Customs Officers that he had in his possession some stones and brought out a packet from inside a mattress spread on the bed which was covered by a bed cover. The packet on examination was found to contain two pieces of white stones, believed at the time of seizure to be diamonds and four pieces of big red stones and 468 pieces of small red stones, believed to be rubies. The search of the petitioner's residence thereafter resulted

in the recovery of Indian Currency of Rs. 2,200/- all in Rs. 100/- notes, kept in the bed room. In absence of any satisfactory explanation from the petitioner regarding the manner of acquisition and possession of the diamonds and the rubies and in view of the fact that the stones were kept in a packet concealed inside the mattress spread on the bed, it was reasonably believed by the Customs Officers that they were illegally imported into India and liable to confiscation under the Act and as such they seized the stones in the presence of the independent witnesses and drew up a search list incorporating the details of the goods seized. The Indian Currency of Rs. 2,200/- was also seized in the belief that it represented sale proceeds of smuggled goods and therefore liable to confiscation under the provisions of the Act. After completion of search and seizure, a summons u/s 108 of the Act was served upon the petitioner asking him to appear before the Rummaging Inspector (Intelligence) at the Customs House, Calcutta. Pursuant to the summons the petitioner appeared before the Customs Officers and made a voluntary statement regarding acquisition of the above stones. The stones were thereafter sent to the appraiser for getting them valued, A complaint was therefore filed by the Asstt. Collector of Customs against the petitioner and Anr., after obtaining the necessary sanction, u/s 135 of the Act. As the other accused mentioned in the petition of complaint could not be apprehended the case against her was filed and the case proceeded against the petitioner only. After 11 witnesses were examined by the prosecution, a charge u/s 135(1)(b)(ii) was framed against the petitioner by the Chief Judicial Magistrate, Alipore, which reads as follows:-

That on 10-2-74 at about 8 a. m. at premises No. 265/D, Old Quarters, Calcutta Airport, P.S. Dum Dum you had in your possession and/or were knowingly concerned in carrying, depositing, harbouring, keeping and concealing two pieces of Diamonds, four pieces of big red stones and 468 pieces of small red Stones (rubies) which were seized from inside a packet kept inside the mattress of your bed covered by a bed cover and which were all of foreign origin and the market value of which was about Rs. 49,913.35 which you knew or had reason to believe that they were liable to confiscation and you have thereby committed an offence punishable u/s 135(1)(b)(ii) of the Customs Act, 1962 and within my cognizance.

3. The defence was a plea of innocence and a denial of the material prosecution allegations. On the materials on record the learned Magistrate held that in view of the evidence of the witnesses to the search and seizure and in view of the statement (Ext. 9) made by the accused before the Customs Officer which was a voluntary one, the recovery of the stones from the residential premises of the petitioner was proved beyond all reasonable doubts. The learned Magistrate then took up the question whether the said diamonds and rubies were liable to confiscation u/s 111 of the Act and answered the same in favour of the prosecution relying on the provisions of Section 123 of the Customs Act, 1962 and a decision reported in *The Asst. Collector of Central Excise Vs. Achal Singh*, . In taking recourse to the provisions of Section 123 of the Act. the learned Magistrate held that the Customs Officers who conducted the search and seizure

have, given their reasons to believe that the stones were smuggled goods and therefore the onus shifted upon the accused to prove that they were not smuggled and the accused signally failed to discharge the onus. On such findings, he convicted the petitioner as already stated. The learned Additional Sessions Judge in dismissing the appeal concurred with the finding of facts arrived at by the learned Magistrate and held that the seized goods were smuggled and were liable to confiscation u/s 111 of the Act and there was no reason or evidence to suggest the contrary.

4. In view of the concurrent findings of fact arrived at by the learned Courts below, it must be held that the accused was found in possession of diamonds and rubies and that the statement made by the accused to the Customs Officers (Ext. 9) was a voluntary statement, and not an involuntary one as contended by the petitioner. Mr. Roy, the learned Advocate appearing for the petitioner fairly conceded that this being a revisional application he is not challenging any of the concurrent findings of fact. He, however, contended that there was no material on record to hold beyond all reasonable doubt that the goods were liable to confiscation u/s 111 of the Act nor were there materials to suggest that the accused knew or had reason to believe that they were liable to confiscation.

5. To ascertain the correctness of the findings of the learned Courts below let me now therefore advert to the voluntary statement made by the petitioner. The incriminating part of the lengthy statement made by the accused is contained in a few lines which read as follows:

After seeing these stones I told her (Arjun's wife) that these stones appear to be costly and since these stones were left behind by a foreigner it must be imported and valuable.

Both the learned Courts below relied upon this part of the statement of the accused and with the aid of Section 123 of the Act held that the goods were liable to confiscation under S. III of the Customs Act and as such the petitioner has committed an offence punishable u/s 135(1)(b)(ii) of the Act. It appears to me that both the Courts below failed to appreciate the requirements of a successful prosecution u/s 135(1)(b)(ii) of the Act.

6. The ingredients of an offence under the aforesaid Section are (i) that the goods are smuggled as they have been brought to India in contravention of one of the clauses of Section 111 of the Act and (ii) that the accused knew or having reasons to believe that the goods were of that character did any of the acts specified in Sub-section (1)(b) of Section 135 of the Act. In the instant case the above quoted incriminatory statement of the accused only proves that he had "reasons to believe" that the stones were imported goods when he stated that as the stones were costly and were left by a foreigner it must be imported and valuable. But such proof of "reason to believe" alone will not make out an offence u/s 135(1)(b)(ii) unless the other ingredient is proved. It is only when both the ingredients are satisfied that an offence under the aforesaid section can be said

to have been proved. In that view of the matter, the statement of accused, by itself, does not make out a case u/s 135(1)(b) of the Act. Let me now therefore see whether with the aid of Section 123 of the Act, the accused can be said to have committed an offence as alleged by the prosecution.

7. Section 123(1) of the Act provides that where any goods to which the Section applies are seized under the Act in the reasonable belief that they were smuggled goods, the burden of proving that they were not smuggled goods shall be on the person from whose possession the goods were seized. The goods to which the Section applies are enumerated in Sub-section (2) thereof and they are gold or diamond, manufacture of gold or diamonds, watches and any other class of goods which the Central Government may by notification in the Official Gazette specify. At the time of argument Sri Mukherjee, the learned Advocate appearing for the opposite party was asked to ascertain whether rubies have been notified as a class of goods under the Section and Mr. Mukherjee on enquiry informed this Court that rubies have not been notified as such. So far as the present case is concerned therefore, Section 123 will apply only to the diamonds seized and not to the rubies. I however find that both the learned Courts below proceeded on the assumption that the Section 123 applies to all the Stones seized in this case and this assumption has contributed to their incorrect findings as would be evident from the discussions hereinafter.

8. Sri Satyabrata Debnath, P. W. 1, Preventive Officer of the Calcutta Customs, who was one of the members of the searching party stated in his evidence that he seized stones under the reasonable belief that those were smuggled goods and such belief was based on the facts, that the accused initially denied having possession of any stones like rubies etc, his subsequent confession that he had such stones and production of such stones from a secret place, namely, from inside the mattress of his bed.

9. Mr. Roy submitted that though the sufficiency of materials for such reasonable belief is not justiciable the relevancy of such materials is. According to Mr. Roy, the above materials on which the Customs Officers reasonably believed them to be smuggled goods are not relevant materials and therefore Section 123 of the Act cannot come in aid of the prosecution. I am, however, unable to accept this contention.

10. The materials on which the Customs Officers obtained satisfaction, in my view, are relevant materials regard being had to the initial refusal and subsequent confession made by the accused and the secretive manner of the keeping of those materials. It is true that the voluntary statement of the accused cannot come in aid of the prosecution for forming such reasonable belief, as contended by Mr. Roy, because the statement was made after seizure but still then the materials as deposed to by the Customs Officers, on which they obtained satisfaction are, relevant materials and therefore in view of the provisions of Section 123 of the Customs Act, the burden shifted upon the accused to prove that the diamonds found in his possession were not smuggled

goods. The accused failed to discharge this onus and on the contrary, Ext. 9 shows- that he was also; under the reasonable belief that they were smuggled goods. In that view of the matter, it must be held that the prosecution has; been able to prove that the diamonds seized from the petitioner were liable to Confiscation under S. III of the Act and the accused had reason to believe that they were liable to such confiscation.

11. Since the rubies are not notified goods the burden of proof was on the Customs Authority to prove their illicit importation. As I have already indicated the voluntary statement of the petitioner does not in any way prove that they were illicitly imported. Then again, the Customs Officers who seized the articles have in their depositions " stated that they reasonably believed that those were smuggled but they did not find any mark on the goods that those were of foreign origin. The Jewellery Expert Sri V. K. Chaturvedi. P. W. 3 nowhere stated that the stones were of foreign origin. In fact, so far as the rubies are concerned, except the voluntay statement of the petitioner there is not an iota of evidence to show that the goods were of foreign origin. As I have already indicated, the accused never admitted that the stones were ot foreign and his statement only proves that he had reason to believe that they were of foreign origin. In all such circumstances, it must be held that the prosecution failed to prove that the rubies were of foreign origin and were liable for confiscation u/s 111 of the Act.

12. In view of the discussions as above, I must therefore hold that the accused has been rightly convicted for being found in possession of two pieces of diamonds but his conviction for 472 pieces of rubies cannot be sustained. In view of the success, though limited, the sentence of fine of Rs. 10,000/-is liable to be reduced. As I feel that a fine of Rs. 2,000/- in default rigorous imprisonment for two months will meet the ends of justice, I reduce the sentence accordingly.

13. Subject to the above modification regarding sentence, this application fails and the Rule is discharged.