
(1978) 04 CAL CK 0070
In the Calcutta High Court
Case No : Matter No. 868 of 1977

Phanindra Bikash Roy Chowdhury

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-04-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Gold (Control) Act, 1968 — Section 16(1), 16(2), 2, 5, 8

Citation : AIR 1978 Cal 544 : (1979) CENCUS 124

Hon'ble Judges : Sabyasachi Mukharji, J

Bench : Single Bench

Advocate : D.N. Das and D.N. Mukherjee, for the Appellant; Dipak K. Basu and Subrate Roy, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—This is an application under Article 226 of the Constitution challenging the adjudication proceedings culminating in the orders dated 30th May, 1975, 24th April, 1976 and 18th July, 1977. It appears that on or about 23rd April, 1974 certain officers of the Central Excise searched the residence of the petitioner and amongst other seized and took away one "Ananta", an armlet in the form of two and a half circles of wire of 22 carat fineness weighing 127.500 grams, the value of which was estimated at Rs. 6,630/-. Thereafter the petitioner gave a statement, in writing, at the time of the search. In the said statement, the petitioner stated, inter alia, as follows:

"I signed the said authorisation in token of my having seen it. The officers then searched the rooms under my occupation in the above said residence in my presence and also in presence of two independent witnesses. On search the officers recovered primary gold "Araipanch" (24 circles) weighing 127.500 gms. with other ornaments from steel almirah in my bed room. This gold belongs to my wife who wears it as ornament. She got it during marriage ceremony in 1939 and since then it has been lying with her. The Gold Control Officer seized the said

primary gold in presence of witnesses and gave the copy of Panchanama."

2. The petitioner was thereupon served with the show cause notice and the petitioner showed cause. The petitioner contended that the gold seized was not primary gold but an ornament called "Ariapanch" owned by his wife which was given to her at the time of her marriage in 1939. The said ornament, according to the petitioner, was in finished form for use, without any craftsmanship and it was made according to the choice and design prevailing at the time before the partition of Bengal. The ornament was received as a gift, according to the petitioner and his wife had occasionally used it according to Hindu mythology and its maintenance, according to Hindu mythology, should be continued until it was gifted to another person. The Assistant Collector of Central Excise in the order dated 31st March, 1975 observed, inter alia, as follows :

"The gold piece does not bear the slightest trace or sign of wear by any male or female. The irregularity of the shape itself is proof enough that it cannot be worn as an ornament by any human being. At best it can be called as semi-finished ornament and can rightly be described as primary gold as denned u/s 2(r) of the Gold (Control) Act, 1968. As such, the violation of the provisions of Section 8 (1) of the Gold (Control) Act, 1968 is established."

The Assistant Collector of Central Excise therefore made an order of confiscation u/s 71 of the Gold (Control) Act, 1968 and imposed a penalty of Rs. 100/-. The petitioner preferred an appeal and reiterated more or less the said contentions. The petitioner was heard by the Collector of Central Excise. In the grounds of appeal, the petitioner had stated, inter alia, as follows:

"This armlet or "Ananta" is not primary gold but is an ornament which was given to his wife Sm. Kanika Roy Chowdhury by her parents at the time of her marriage in 1939 and it has since been retained by her as an item of good luck according to religious beliefs and social customs and conventions of your petitioner's family and society and it is of great sentimental value. As a matter of fact, bits from it have already been given by your petitioner's wife to her daughter and daughters-in-law at the time of their marriages as tokens considered to bring a long life and marital happiness and bliss to them."

The petitioner further contended that the absence of any sign of use was because the ornament of this type was hardly used and this type of ornament was used only on special occasions. As to the Irregularity of shape, it was pointed out that due to constant transfer from place to place it had lost some shape and besides certain bits and pieces had been given away as gifts to family members on special occasions. It was contended that the ornament in question was not semi-finished but it was fully finished and ready for use as ornament. The Collector of Central Excise by his order observed as follows:

"No new point has been raised in the appeal except that by way of explanation regarding signs of use as mentioned in the order (Original) it has been stated that the said ornament is used only on special occasions. Against this the find his

of the adjudicating authority after Inspection of the seized gold article is relevant, He has held that "the irregularity of the shape itself is proof enough that it cannot be worn as an ornament by any human being".

The petitioner thereupon made an application for revision to the Government. The Joint Secretary, Finance Department. Government of India, after reciting the contention of the petitioner observed in the order dated 2nd Aug. 1977, *inter alia*, as follows:

"The Government of India have examined the articles. It was found to be a gold wire kept in the form of coil. It is soft and when stretched it took the shape of wire. It is not an ornament.

The irregularity of the shape of wire itself is a proof enough that it cannot be worn as an ornament. The contravention of Section 8 (1) of the Gold (Control) Act. 1968 is established.

The Government of India, therefore, see no reason to interfere with the order-in-appeal passed by the Collector which is correct in law and based on facts and reject the revision application." The petitioner, as mentioned hereinbefore, has challenged the said adjudication proceedings under the Gold (Control) Act, 1968 and the impugned orders referred to hereinbefore.

3. It was contended on behalf of the petitioner that the petitioner was entitled to hold primary gold if the petitioner was holding the same from 1939. It was urged that the Gold (Control) Act, 1968 had come into effect in 1968 and the provisions of the said Act were prospective in nature. It was, therefore, urged that the petitioner was not required to file or submit any declaration in respect of the primary gold which the petitioner had held since 1939 u/s 16 of the Act and therefore the possession of the said gold by the petitioner in the circumstances was not illegal u/s 8 of the Act and therefore the petitioner could not be said to have contravened the provisions of the Gold (Control) Act, 1968. It was, further, urged that there was no positive finding controverting the assertions of the petitioner that the item in question had been held by the petitioner since 1939. It appears that the said contentions of the petitioner are based on misapprehension of the provisions of the Act. u/s 8 of the Act, as I see it, possession of primary gold after the Act coming into operation, would be contrary to law unless the same is held in the manner as provided by the Act. Section 16, Sub-section (1) and Sub-section (2) and Section 5 deal with, declaration in connection with articles and ornaments. In view of the definition provided under the Act, primary gold is neither article nor ornament. Therefore, in case primary gold is held, the question whether beyond certain quantity, an individual or a family is required to declare such a primary Hold, has nothing to do with the requirement of Section 16 as such and in that view of the matter, the decision of this Court in the case of Jay Krishna Saha and Another Vs. D.N. Lal and Others, and the decision of the Division Bench of this Court in the case of Collector of Customs v. Jaykrishna Saha (1977) 81 Cal WN 908 on which reliance was placed have no relevance to

the controversy before me.

4. The next contention that has to be considered in this case, is, whether the authorities committed any error in passing the impugned orders. It is necessary in this connection to refer to the definition provided in this Act. Section 2 (p) defines "article" as follows:

"Article means anything (other than ornament) in a finished form, made of, or manufactured from or containing, gold and includes-

(i) any gold coin;

(ii) broken pieces of an article but does not include primary gold." Ornament is defined u/s 2 (p) as follows :

"Ornament means a thing in a finished form, meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of or manufactured from gold, whether or not set with stones or gems (real or artificial) or with pearls (real, cultured or imitation) or with all or any of them, and includes parts, pendants or broken pieces of ornament."

Primary gold is defined u/s 2 (r) as follows:

"Primary gold means gold in any unfinished or semi-finished form and includes, ingots, bars, blocks, slabs, billets, shots, pellets, rods, sheets, foils and wires."

In order, therefore, to find out whether a particular item is an ornament or not, it is necessary to find out whether it is in the finished form meant for personal adornment. The broken piece of an ornament would be an ornament but an item in semi-finished and unfinished form would not be an ornament in terms of Section 2 (p) of the definition. In this case, the authorities have found that the item in question was in semi-finished form. They have further referred to the fact that there is no evidence of user or adornment. The said findings had been arrived at after giving the petitioner due opportunity and after considering all the evidence adduced by the petitioner. It is true that whether an object is a matter of adornment or not is a matter on which evidence on custom and usage is relevant and if in the situation of this nature a decision has to be arrived at, though the administrative authorities may rely on their own experience, it is perhaps advisable in a case of this nature to try to seek the assistance of such jewellers and persons who are conversant with the trade and usage. But the petitioner himself had made a statement that the item seized was primary gold. The petitioner contends that the petitioner made that statement at the suggestion of the seizing officers and the petitioner was unaware of the meaning of primary gold. At one point of time, I was inclined to accept this version of the petitioner. But on a closer examination of the records of this case, I find there is one factor which has not been emphasised that the petitioner is a partner of M/s. M. P. Jeweller & Co. dealing in gems. In that background it is unlikely that he should not know the meaning of "primary gold" under the Gold (Control) Act. It is in this background that the petitioner's failure to adduce any evidence of

usage, whether this kind of item is used as an object of adornment, in my opinion, is also a factor which the authorities below were entitled to take into consideration. In that view of the matter and having regard to all the facts it cannot be said that the authorities had applied any wrong test or they had followed a procedure not in consonance with the principles of natural justice. Therefore it is not possible to interfere with their conclusion that the object is not an article meant for personal adornment though on this view of the matter there is a possibility of doubt. But, as I have said before, because of the failure to adduce any proper or cogent evidence by the petitioner, which the petitioner had the opportunity to do so, and in view of the fact that the said decision was arrived at in consonance with the principles of natural justice and by applying the relevant test, I cannot interfere with the findings.

5. In the premises, this application must fail and is, accordingly, dismissed. The Rule Nisi is discharged. Interim order, if any is vacated. In the facts and circumstances of this case, there will, however, be no order as to costs.