

**(1986) 04 BOM CK 0008**

**In the Bombay High Court**

**Case No :** Criminal Revision Petition No. 110 of 1986

Sadulla Mohamed Damad

APPELLANT

Vs

State of Maharashtra

RESPONDENT

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**Date of Decision :** 01-04-1986

**Acts Referred:**

Customs Act, 1962 — Section 135(1)

**Citation :** (1989) 25 ECR 241 : (1989) 44 ELT 435

**Hon'ble Judges :** S.M. Daud, J

**Bench :** Single Bench

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## **Judgement**

1. These revisions take exception to the conviction and sentence recorded against petitioners for the admitted commission of offences punishable under Sections 135(1)(i) of the Customs Act, 1962 and 85(ii), (iii) and (iv) of the Gold Control Act, 1968.

2. On 21-9-1969, police officers from Thane received information that truck bearing registration No. BMQ 6781 on the way to Bombay coming from Poona, was loaded with contraband. The police having fortified themselves with two panchas, posted themselves at the Thane Rest House on the Bombay-Poona Main Road. At 4.45 a.m. they noticed the truck and signaled it to stop. Instead of heeding the signal, the speed of the truck was increased indicating an attempt of escape. A chase was given and the truck grounded to a halt, near the Ashok Stambh at Thane. At the wheel was Ramchandra Narayan Virkud (accused No. 7). Ahmed Yusuf Adhikari (accused No. 8) was the cleaner of the truck. There were several others on the rear side and the truck was bulging with goods. The same was examined by officers of the Customs and Central Excise Department. A secret compartment was found below the driver's seat, and this on being opened, was found to contain 17 jackets, each containing 100 biscuits-like slabs of gold, each such slab weighing 100 biscuits-like slabs of gold, each such slab weighing 10 Tolas. The slabs bore foreign markings making it clear that the gold was of foreign origin and had been imported into India in contravention of the

law. The same was attached. In due course the investigation began, and culminated in the lodging of a complaint against various persons. These latter, included accused Nos. 7, 8 and Sadulla Mohamed Damad (accused No. 2). The last-named person was alleged to be the owner or manager of the truck, the registered owner, being his wife.

3. The complaint against the petitioners and several others who included Customs Officers, was moved in the year 1972. Effective hearings, before the Magistrate, began in 1977 and lasted till 1980. For a year or so, proceedings before the Magistrate were stayed by this Court, at the instance of the main accused viz., accused No. 1. After the case was resumed, there was a further hearing and the Magistrate delivered judgment on 15-10-1981. Insofar as accused Nos. 2, 7 and 8 are concerned, they were sentenced to 3 years' R.I. and a total fine of Rs. 14,000/- each. Non-payment of fine was to entail additional imprisonment.

4. Against the sentences imposed upon them, the petitioners preferred appeals to the Sessions Court of Greater Bombay. The appeals were heard by a learned Additional Sessions Judge who reduced the substantive sentences to 18 months and laid it down that the said sentences were to run concurrently. Subject to this variation, the verdict of the Magistrate, insofar as it related to the petitioners, was affirmed. The limited question argued before me is about the propriety of the sentence imposed on the petitioners. The submission is that, having regard to all the circumstances, the sentence should have been reduced to the period already undergone. Thus submission is refuted by Counsel representing the Customs who points out that there has been a reduction in the sentence by the Sessions Court, and that there is no scope for a further reduction. Thus the only point arising for determination is, whether the sentence imposed upon the petitioners should be reduced, and, if so, the extent thereof ?

5. Mr. Vakil, appearing for the petitioners has given precise particulars as to when the complaint was lodge, the case began, the duration of the effective hearings, the period during which the hearing of the case was stayed by the High Court, the date on which the Magistrate disposed of the matter, the date on which the appeal was filed, the period for which the appeal was pending and the other relevant circumstances. In effect, what began in September 1969 came to an end sometimes in October 1985. During the major part of this period of near about 16 years, the petitioners have been on bail. They have spent about four months in detention. The fines imposed have been paid and the truck which figured in the transport of contraband, has been confiscated. A reference was made to the alleged light sentence imposed on Customs Officers, who, in the process of attaching the contraband gold, pocketed a few slabs each. But that is of no relevance for petitioners as also the Customs are agreed that the sentence imposed on those officers was not adequate. The petitioners also point to the total exoneration of the kingpin viz., accused No. 1. That again is not of much relevance. The fact that the main offender is acquitted or given an insufficient

sentence, can surely be no reason for the visitation of a light sentence upon a confederate to the crime. The learned Additional Sessions Judge has referred to the various authorities cited by Mr. Vakil in support of his plea for a reductions in the sentence imposed on the petitioners. There cannot be a precedent in the matter of awarding sentences. What has to be taken into consideration is the situational background in each case. Insofar as the petitioners are concerned, they are the owner, driver and cleaner respectively of a truck used in the transport of contraband. It is no one's case that the contraband was owned or possessed, in that sense of the word, by the petitioners. Apart from freight and that, on the high side, none of the petitioners was going to get an extra reward for the transportation of the contraband. The occurrence took place in the year 1969, and the time spent by the petitioners in facing the prosecution in the Court of the Magistrate and awaiting for the verdict of the Sessions Court, must have been harrowing by any reckoning. A person who has undergone this agony is per se entitled to some indulgence. The trial and the prosecution of the appeal as also its revision could not but have left a large hole in the purses of the petitioners. Accused No. 2 has lost his truck, and accused Nos. 7 and 8 carry with them the brand of having abetted a smuggler. Justice will be done by limiting the imprisonment to the period undergone. There is however, the fact that the State has suffered by having to prosecute the accused and their confederates. Therefore, if the rest of the sentence is to be remitted, it is but proper that the petitioners are burdened with an addition to the fines payable by them. In my view accused No. 2 should pay Rs. 5,000/- and accused Nos. 7 & 8 Rs. 3,000/- each, in addition to the fines already paid by them. Non-payment of the additional fines imposed will entail six months" additional R.I. Hence the order.

#### ORDER

6. Criminal Revision Applications are partly allowed. The substantive sentence imposed upon the petitioners is reduced to the period, already undergone. In lieu of the period remitted, the petitioners shall pay additional fines as under :-

(i) Accused No. 2 - Rs. 5,000/- or in default six months" R.I.

(ii) Accused Nos. 7 and 8 - Rs. 3,000/- each or in default six months" R.I.

7. The petitioners are given a week's time as from today to pay, in the Magistrate's Court, the additional fines imposed upon them. Subject to these modifications, the Revision Applications are dismissed. Rule made absolute in the above terms.