
(1983) 08 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 752 of 1981

Sampat Lal and Another	Vs	APPELLANT
Shri O.P. Vaid, Assistant Collector, Customs and Another		RESPONDENT

Date of Decision : 03-08-1983

Acts Referred:

Gold (Control) Act, 1968 — Section 85

Citation : (1985) 5 ECC 116 : (1983) 2 RCR(Criminal) 430

Hon'ble Judges : S.S. Dewan, J

Bench : Single Bench

Judgement

S.S. Dewan, J.—Sampat Lal and Chhagan Lal, the petitioners, were brought to trial before the Sub-Divisional Judicial Magistrate, Bahadurgarh, on a charge u/s 85 of the Gold (Control) Act, 1968, and they were convicted thereunder and each of them was sentenced to two years" rigorous imprisonment and a fine of Rs. 2,000; in default to undergo rigorous imprisonment for one year. On appeal, the learned Additional Sessions Judge, Rohtak, in a lucid and elaborate judgment, upheld their conviction, but reduced their sentence of imprisonment to six months, but while doing so, enhanced the fine to Rs. 5,000 each. They have now come up by way of revision.

2. According to the prosecution, on 31st May, 1974, the C.I.A. staff party consisting of Beli Ram, Head Constable, Suraj Bhan, Ratti Ram Sob Raj and Kishan Lal, Constables, apprehended the petitioners who are residents of Sardarpura, Jodhpur (Rajasthan), at the sales tax barrier, Bahadurgarh in the presence of Chandar Singh and Dhani Ram, P.Ws., and recovered from them 3 large and 4 small ingots of primary gold weighing 1107 grams. Later on, the gold recovered from the petitioners was seized by L.C. Kohli, Superintendent (R), S.C. Leekha, IPO (R), and K.L. Khanna, IPO (R), from the custody of the police. The petitioners were served with show cause notices for having been found in possession, custody and control of primary gold in contravention of the provisions of Section 9(2)(i) of the Gold (Control) Act, 1968, and the Rules

framed thereunder. It transpired that Sampat Lal, petitioner, was not a certified goldsmith on the alleged date of recovery of gold and Chhagan Lal, petitioner, who was a certified goldsmith, could not keep in his possession more than 300 grams of primary gold. The petitioners admitted the purity of the gold which was found as 23 carats. They were found in joint possession of the gold while travelling from Delhi to Sirsa. It is alleged that on 17th June, 1974 the petitioners approached the Superintendent (P), Central Excise and Customs, Rohtak, before whom they made statements in which they admitted their possession, custody and control of the primary gold of 23 carat weighing 1107 grams. Consequently, a complaint was lodged against them u/s 85 of the Gold (Control) Act, 1968.

3. The prosecution case rests primarily on the unimpeached testimony of Lal Chand Kohli, P.W. 1, Chaman Lal, P.W. 4, and Om Prakash Vaid, P. W. 5. The petitioners took rather vasclating pleas in defence and examined Manohar Lal, Pern Raj, Dhanpat Raj, Ram Jiwan and Babu Lal in defence. The trial Court unhesitatingly found that the plea taken by the petitioners was merely a cock and bull story and rejected it out of hand and the appellate Court affirmed the said finding. Mr. Jain, appearing for the petitioners, has raised the identical arguments which were earlier urged before the appellate Court and which have been elaborately repelled. To my mind it would be totally wasteful to traverse the same ground over again. I would rather endorse in toto the reasoning and finding of the appellate Court.

4. The learned Counsel for the petitioners frankly conceded that in view of the facts found by the Courts below it is not possible for him to raise any contention on the merits of the case but he contended that in view of the fact that the petitioners had already suffered about 20 days imprisonment and they have also been fined Rs. 5,000 each and the gold recovered from them has been confiscated, the question of sentence should be reconsidered. The learned Counsel contended that in the situation as the present one, the sentence already undergone would meet the ends of justice. The learned Counsel appearing for the respondents contended that in these cases pertaining to fiscal offences, no leniency should be shown as according to him, their Lordships of the Supreme Court in Balkrishna Chhaganlal Soni Vs. State of West Bengal, have made observations to indicate that a deterrent view of sentence should be taken in these cases. The learned Counsel for the petitioners contended that in the same year in Arvind Mohan Sinha Vs. Amulya Kumar Biswas and Others, , the view taken by their Lordships was that even these cases can be considered sympathetically under the Probation of Offenders Act.

5. Apparently, therefore, as no questions on merits have been seriously raised, it is not necessary for me to go into those questions. The only question raised in this petition is the question of sentence. It is not disputed that the petitioners have been fined Rs. 5,000 each. It is also not disputed that the gold recovered from them, which was of the value of Rs. 60,000 at the time of seizure, has been

confiscated and a few thousand of rupees as fine has been imposed by the department in the departmental proceedings. The counsel appearing for the respondents has frankly conceded that there is no material to show that the petitioners were regular offenders. Keeping in view these facts, the sentence of imprisonment already undergone by them would meet the ends of justice.

6. The revision petition is, therefore, partly allowed. The conviction of the petitioners is maintained but the sentence of imprisonment is altered to the term already undergone in addition to the fine imposed by the appellate Court.