

(1976) 03 GUJ CK 0002
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Shri Ravindra Thakiya Keny and Others

RESPONDENT

Date of Decision : 25-03-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 246(3)
Customs Act, 1962 — Section 135, 135

Citation : (1977) 18 GLR 346

Hon'ble Judges : M.P. Thakkar, J

Bench : Single Bench

Judgement

M.P. Thakkar, J.—A country craft named "Jaywanti Prasad", bearing Registration No UMR 232 was intercepted at 15-30 hours on April 24, 1974 by Customs Officers of Bulsar Division who were patrolling the sea-coast pursuant to intelligence received by them. The Customs Officers boarded the vessel and brought it to Bulsar Jetty. On enquiry from respondent No. 1 who was the owner of the vessel and the Tindel it was realised that the vessel was coming from Dubai and was bound for Bombay with contraband goods. The respondents did not possess any customs manifest, port clearance etc. or any documents of authorization entitling them to import the contraband goods. A search of the vessel revealed that it was carrying 51 packages of contraband goods valued at Rs. 1,64,450/- as on April 27, 1974. The search further revealed that it was also carrying foreign make fabrics manufactured in Japan which were also contraband articles valued at Rs. 4,50,000/- on April 27, 1974. Thus, in all contraband goods valued at Rs. 6,14,450/- (Rs. 1,64,450/- + Rs. 4,50,000/- = Rs. 6,14,450/-) were seized from the vessel. Respondent No. 1 the Tindel of the vessel who was also the son of the owner of the vessel along with 9 members of the crew and the owner of the vessel (accused No. 10) and his son (accused No. 11) were prosecuted in the Court of the Judicial Magistrate, First Class, Umbergaon in Criminal Case No. 572/72. Respondents Nos. 1 to 9 (original accused Nos. 1 to 9) pleaded guilty to the charge. Accused Nos. 10 and 11 claimed to be tried and their case was separated. Accused. No. 12 was absconding and the case against

him was kept on the dormant file. So far as accused Nos. 1 to 9 (respondents Nos. 1 to 9) were concerned, as they pleaded guilty, the learned trial Magistrate having considered the record of the case accepted the plea of guilty and convicted them u/s 246(3) of the Code of Criminal Procedure for an offence u/s 135 of the Customs Act, 1962. Each of them was sentenced to suffer rigorous imprisonment for one year. The Union of India has preferred the present appeal on the ground that the sentence imposed by the learned Magistrate is altogether inadequate and extremely lenient.

2. Learned Counsel for the respondent does not challenge the order of conviction for the very good reason that the respondents have pleaded guilty and the material on record shows that contraband goods were being imported into India by the respondents. The deposition of P.W. 1, P.W. 2 and P.W. 3 establishes the guilt of the respondents beyond any reasonable doubt. The requisite order of sanction is also on record. Though there is a plea of guilty and the order of conviction is not challenged, I have satisfied myself that there is sufficient evidence on record to justify the acceptance of plea of guilty and to record conviction against the respondents.

3. So far as the sentence is concerned, in my opinion the sentence is unduly lenient and grossly inadequate. An offence has been committed in relation to contraband goods which at the time of seizure in April 1974 were valued at Rs. 6,14,450/-. If a sentence of only one year's imprisonment is awarded in such cases, the offenders would not be deterred from committing such offences in future. So also persons who are like-minded will also not be deterred from committing such offences. In the first place they may not be caught at all. They would take the chance of succeeding in their smuggling operations with impunity. In case they are apprehended, then they can escape with a sentence of one year which in practice would turn out to be for a smaller period taking into account the deductions to which they would be entitled under the relevant rules. "Smuggling offences deserve to be dealt with due degree of seriousness and gravity having regard to their detrimental effect on the economy of the nation as also the morale of the society. If a lenient view is taken of such offences, it would be difficult to maintain ethical standards and it would be difficult to maintain respect of the people for the judicial administration. Parliament has exhibited its anxiety in regard to these matters by amending the Customs Act from time to time by enhancing the maximum sentence which could be imposed for such offences.

4. For petty offences it is not unknown that Courts very often impose sentence of the order of a couple of years. In these circumstances it is but right to view these offences with gravity and to impose a sentence without being carried away by considerations of misplaced sympathy or charity at the cost of the society and at the cost of the detrimental effect on the social structure and the national economy. These are offences where the deterrent theory of punishment has its justification and the sentence imposed must be made sufficiently deterrent." In

my view therefore, the sentence imposed by the learned trial Magistrate which is perse extremely lenient and grossly inadequate must be revised upwards. Under the circumstances the appeal must be allowed and the sentences must be enhanced.

5. So far as respondent No. 1 original accused No. 1 is concerned, he is the son of the owner of the vessel. Therefore, he must be sentenced to suffer rigorous imprisonment for four years. The sentence of one year's R.I. imposed on him is enhanced to one of four years" R.I. So far as respondents Nos. 2 to 9 are concerned, they are members of the crew. The sentence of one year's R.I. imposed on them is enhanced to one of two years" R.I. It must be realised that unless the sentence has a deterrent effect on the members of the crew, they would be tempted to repeat the offence. So also others who are similarly placed would be induced to under take such smuggling expeditions unless a deterrent sentence is imposed. Therefore, the sentence imposed on the members of the crew must also be enhanced from one year's R.I. to two years" R.I.

6. In the result, the appeal is allowed. The sentence imposed on respondent No. 1 original accused No. 1 is enhanced from one of one years" R.I. to one of four years" R.I. The sentence imposed on respondents Nos. 2 to 9-original accused Nos. 2 to 9 is enhanced from one of one year's R.I. to one of two years" R.I. Warrants for arrest to issue in case of such respondents whose term of imprisonment has already expired and Who are out of jail at present.