

(2002) 01 BOM CK 0083
In the Bombay High Court
Case No : Criminal Appeal No. 444 of 1986

State of Maharashtra

APPELLANT

Vs

Mollulla Purayil Pookoya Thangal

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Customs Act, 1962 — Section 135(1)
Imports and Exports (Control) Act, 1947 — Section 5

Citation : (2002) 1 BomCR 544 : (2002) 83 ECC 527

Hon'ble Judges : Vishnu Sahai, J;S.K. Shah, J

Bench : Division Bench

Advocate : Aruna Kamat, app, for the Appellant; Soniya Rankarpur, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Shah, J.—This is an appeal filed by the appellant State Government for enhancement of the sentence passed by the Chief Metropolitan Magistrate, Bombay in Criminal Case No. 18/CW/86 against the respondent.

2. The learned Chief Metropolitan Magistrate convicted the respondent, on the respondent pleading guilty to the charges levelled against him, of the offences punishable under 135(1)(a)(i) & 135(1)(b)(i) of the Customs Act and sections of the Imports and Exports (Control) Act and sentenced him to one days" simple imprisonment and to pay a fine of Rs. 25,000/- in default to undergo six months" rigorous imprisonment on each of these counts, making the substantive sentence to run concurrently with usual set of.

3. The respondent accused, had on 25-9-1985, illegally imported gold bars weighing 514.4 Grams, valued at Rs. 1,09,567.60 ps. by concealing them into Audio Cassette Tapes. The complainant, Assistant Collector of Customs intercepted respondent after he was cleared from the red channel, without making any declaration of the gold. The gold, therefore, was seized under panchanama

(Exhibit P/1). The respondent's statement came to be recorded u/s 108 of the Customs Act (Exhibit P/2). An adjudication proceeding was held against the respondent, in which entire gold was confiscated and a penalty of Rs. 11,000/- was imposed, which the respondent had paid.

4. After obtaining necessary sanction for the prosecution, respondent was prosecuted before the Chief Metropolitan Magistrate in Criminal Case No. 18/CW/1986. The respondent pleaded guilty to the charges levelled against him and on the said plea, the aforesaid sentence came to be passed against the respondent.

5. We have gone through the record of the case. Heard the learned A.P.P. and the Advocate appointed for the respondent.

The learned A.P.P. vehemently submitted that the minimum sentence which is provided under the law was one year R.I. and, therefore, submitted that the learned Chief Metropolitan Magistrate committed illegality in awarding lesser sentence. The learned A.P.P. also submits that the reasons which were taken into consideration by the learned Chief Metropolitan Magistrate, and that were assigned for awarding the lesser punishment, were not cogent.

The learned Chief Metropolitan Magistrate, took into consideration the submissions made on behalf of the respondent-accused while awarding punishment lesser than the minimum prescribed under the law. The reasons assigned were that the respondent-accused smuggled the gold for making profit, the gold was seized and the accused had fairly pleaded guilty to the charges levelled against him.

We have reflected over the submissions and carefully gone through the facts of the case as also the reasons assigned by the learned Chief Metropolitan Magistrate while using his discretion to award the punishment lesser than the minimum prescribed. We find that the respondent was young person. There were no criminal antecedents against him. He had paid the penalty of Rs. 11,000/- in adjudication proceeding. The entire gold smuggled by the respondent was seized. Therefore, we do not find any substance in the submissions made on behalf of the prosecution that the learned Chief Metropolitan Magistrate had committed any perversity or illegality in using his discretion in awarding lesser punishment than the one prescribed under the law. Moreover, we take into consideration the fact that the offence had taken place in the year 1985 and the sentence was awarded against the respondent in the year 1986. Now by passage of time, the respondent must have settled in his life and must have gained roots in the society. It not be just to uproot him from the society after lapse of more than 15 years. Consequently, we do not find any substance in the appeal, as such, the same is dismissed.