
(1992) 07 BOM CK 0004
In the Bombay High Court
Case No : Criminal Appeal No. 505 of 1982

State of Maharashtra

APPELLANT

Vs

Narendra Amritlal Luhar

RESPONDENT

Date of Decision : 07-07-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 390
Customs Act, 1962 — Section 138A
Imports and Exports (Control) Act, 1947 — Section 5

Citation : (1992) 43 ECR 351

Hon'ble Judges : M.G. Chaudhari, J

Bench : Single Bench

Judgement

M.G. Chaudhari, J.—This appeal is filed by the State against the order of acquittal of the respondent of the offences under Sections 135(1)(a)(i) and 135(1)(b)(i) of the Customs Act passed by the learned Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Bombay dated 29.3.1982. It may be mentioned that by the very same order the respondent was convicted u/s 5 of the Imports & Exports (Control) Act and was sentenced for that offence. That part of the order is the subject matter of companion appeal No. 964 of 1984 and that shall be dealt with separately.

2. Briefly stated the prosecution case was as under:

The respondent Narendra Amritlal Luhar arrived at Santacruz Airport, Bombay from Dubai by a plane under Indian passport on 11.12.1979. He came through the red channel of the Customs. Gaikwad (P.W. 1) was the Preventive Officer on duty at the said channel. According to the prosecution although the respondent declared some of the articles brought by him with him and a gold chain which was on his person, he did not declare all the contents of the suitcases. Gaikwad (P.W. 1) got suspicious and therefore examined the baggage in the presence of panchas. He found goods worth Rs. 15,7957-and jewellery worth Rs. 70,1807- in the baggage which was not declared by the respondent. According to the

prosecution the respondent had no licence or permit to import the above jewellery or the gold and he had thus committed the offences under Sections 135(1)(a)(i) and 135(1)(b)(i) and Section 5 of Imports and Exports (Control) Act. The goods were seized. Statement of the respondent was recorded u/s 108 of the Customs Act. Sanction for the prosecution of the respondent was then obtained and he was prosecuted before the trial Magistrate.

3. The defence of the appellant was that he was having a briefcase and a baggage of blanket with him when he arrived and that he had declared textiles, sarees, radio cassette recorder and also jewellery and had gone in red channel. According to him he had told the officer that he had brought a packet containing jewellery. According to him it was not true that he had merely declared one gold chain. He agreed that he was carrying gold jewellery weighing 580 grams. According to him he had come as a tourist for about a month and was not having any import document for the jewellery. Hence, he had asked the Customs Officers to permit him to bring whatever jewellery that was permissible and allow him to take back the rest of the jewellery and had requested them to enter that jewellery in his passport so that he can take it back but according to him the officers did not do so but instead assaulted him and forced him to sign a statement which was not explained to him also. According to him he was in the red channel and had a return ticket Thus according to the respondent he had not committed any of the offences which were alleged against him.

4. The prosecution examined seven witnesses and relied upon documentary evidence. The respondent did not adduce any evidence.

5. The learned Additional Chief Metropolitan Magistrate found that the respondent had brought jewellery for the purpose of bringing it into India and had not shown any desire for re-export by bringing into India. However, according to the learned Magistrate since the accused had gone in the red channel which was meant for thorough examination it could not be said that he had fraudulent intention of depriving the Customs of the duty because admittedly his baggage would have been thoroughly searched. He further held that there was no concealment of jewellery. He also held that looking to the circumstances and the fact that the luggage could have been checked thoroughly and there was no concealment of jewellery the accused has not shown to have fraudulent intention to evade or attempt evasion of customs duty or prohibition and that rebutted the presumption arising u/s 138A of the Customs Act. He further held that it was not shown that the respondent had reason to believe that the jewellery was liable to confiscation. According to the learned Magistrate in that case also culpable mental state has to be inferred and that since the respondent was not shown to have concealed the jewellery or that he knew that it was liable to be confiscated in which event he would not have brought all this jewellery and therefore the charge u/s 135(1)(a) and Section 135(1)(b) was not proved against the respondent beyond reasonable doubt. He, therefore, acquitted the respondent of the said charge. The aforesaid findings and the consequent order

of acquittal have been challenged by the State in this appeal.

6. This being an appeal against acquittal to the extent of the offence under the Customs Act and inasmuch as the learned Additional Chief Metropolitan Magistrate has given cogent reasons on an appreciation of evidence to hold that the charge was not proved beyond reasonable doubt this Court would be loathsome to interfere in the said order. That apart on going through the evidence of the material witnesses through which I was taken by the learned Additional Public Prosecutor Mr. Patil, I am satisfied that the conclusions drawn and the findings recorded by the trial Magistrate cannot be held to be perverse or erroneous and do not call for any interference. The most crucial circumstance in the case is that it is admitted by Gaikwad (P.W. 1) who was the concerned Customs Officer that he had not taken any written declaration from the respondent-accused and they used to ask for only verbal declaration. Coupled with those statements made by him when the statement of the respondent is taken into account it becomes doubtful as to whether the respondent had made only a partial declaration and had attempted to conceal information about the remaining goods. It would not be safe to rely only on the oral word of Gaikwad (P.W.1) without corroboration and there is none to look upon the explanation of the respondent accused as necessarily false particularly having regard to the circumstances namely that he was in red channel, he was merely a tourist visiting India on a return ticket and would have no reason to imagine that the customs officer may not inspect his baggage. All these circumstances have been duly examined by the learned trial Magistrate and I do not find any reason to take any different view.

7. In the result, as I find no merit in this appeal against acquittal the same is dismissed and the acquittal of the respondent of the offences under Sections 135(1)(a)(i) and 135(1)(b)(i) of the Customs Act is confirmed.

8. Action u/s 390 of the Criminal Procedure Code was taken pursuant to the order passed on this appeal at the time of its admission on 17.8.1982. From the record of the trial Court it appears that the respondent was released on bail in the sum of Rs. 25,000/- with one surety in the like amount on 25.10.1982 (vide letter No. 365/82 dated 2.11.1982) of the Addl. Chief Metropolitan Magistrate, 8th Court, Esplanade, Bombay addressed to the Addl. Registrar, High Court, Appellate Side, Bombay). It appears that in the companion Appeal No. 964 of 1982 which was transferred to this Court by order dated 9.7.1984 and was directed to be heard along with the present appeal a notice was issued to the respondent on Court's Service (after he was arrested and released on bail u/s 390 Cr. P.C.) to appear in person or engage an advocate in place of his advocate then on record Shri G.A. Merchant having expired. The said notice, however, was returned unserved with the remark that the respondent was not found residing at the given address since long time and his whereabouts were not known. Thereafter on 17th June 1988 notice was directed to be issued to the surety (Smt. Savitaben Babulal Zagda) as to why the surety bond should not be

forfeited and the entire amount be recovered from her by way of penalty. Even that notice also could not be served on the surety so far. It will thus be noticed that although bail was granted in the instant appeal i.e. Appeal No. 505 of 1982 and although in this appeal Mr. Rizwan G. Merchant has filed his vakalatnama for the respondent accused, the notice to the surety was ordered to be issued because the Court Service Notice in the companion Appeal No. 964 of 1984 was not served on the respondent accused. When the matter was placed before me for further orders in respect of service upon the surety I directed the present appeal to be placed for final hearing as the respondent was being represented by Mr. R.G. Merchant, advocate and the appeal could thus be disposed of. Since I have now dismissed the appeal, the bail bond of the respondent accused-and the surety bond given by the surety for that purpose in pursuance of action taken u/s 390 Cr.P.C. in this appeal (Appeal No. 505 of 1982) are formally cancelled. Suitable directions will also be given in the companion appeal separately.