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In the Calcutta High Court

Case No : Criminal Revision No. 2092 of 1977

Subhas Chandra Kamalia — APPELLANT

Vs

The State of West Bengal — RESPONDENT

Date of Decision : 08-09-1978

Acts Referred:
Gold (Control) Act, 1968 — Section 27(1), 41(b)

Citation : (1979) CENCUS 120

Hon'ble Judges : Jyotirmoyee Nag, J

Bench : Single Bench

Judgement

Jyotirmoyee Nag, J.—This Rule is directed against a proceeding under Gold Control Act, 1968 pending before the learned Sub-divisional Judical Magistrate, Contai, being Case No. 3360 of 1975 against the petitioner Under Sections 27(1) and 41(b) of the Gold Control Act, 1968 punishable u/s 85(1) of the said Act and also for violation of Section 55 of the Gold Control Act punishable u/s 87 of the said Act.

2. The facts of the case leading to the framing of the charges are as follows:- On 19th of February, 1974, there was a search of the petitioner''s shop named and styled ''Messrs. Gangamoni Jewellers'' and certain gold articles were seized by the Officer conducting the search. On 20.2.74 the residence, of the petitioner was searched and some gold articles were seized. On 28.2.74 the petitioner''s locker at Contai Co-operative Bank Ltd. was searched and some ornaments were seized. After the seizure, the petitioner was asked to show cause and an adjudication proceeding was started against the petitioner u/s 78 of the Gold Control Act. An opportunity was given to the petitioner to explain away the incriminating circumstances appearing against him. He was asked to produce documents in support of his lawful ownership, possession and custody/control of the ornaments and gold materials seized but he failed to produce the same. Thereafter, on completion of investigation the authorities under the Gold Control Act, filed a complaint be-fore the learned Sub-divisional Magistrate at Contai who

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after considering the materials before him viz., the evidence of witnesses and documentary evidence framed the impugned charges. Several points have been taken by the learned Advocate for the petitioner for quashing the entire proceeding. The learned Advocate for the petitioner has drawn my attention to the charges which appear to be not consistent with the statements made in the body of the charges. The contravention alleged is u/s 27(1) and u/s 41(b) of the Gold Control Act and yet in the body of the charges under the first head it appears as follows: "That on or about the 19th, 20th and 28th day of February, 1974 at Contai town Sri S.K. Singha Roy, Inspector, Central Excise, Gold Cell, Calcutta, Sri D.N. Chakraborty, Inspector, Central Excise, Gold Cell, Calcutta and Sri B.N. Mukherjee, Inspector, Central Excise, Gold Cell, Calcutta and their team searched the shop styled as "Gangamoni Jewellers" at Contai town, residence at Contai town (Kumarpore) and the locker No. 22 at the Contai Co-operative Bank Limited, Contai respectively and found primary gold and gold ornaments in total 3938.00 grams approximately of value Rs. 108072-00 p. in your control, custody and possession which exceeding the limit of stock permitted to you as a certified goldsmith and as such the limit of stock permitted Under Sections 22(1) and 41(b) of the Gold Control Act. 1968". It will be found from the seizure lists which have been made Exhibits in the case that so far as primary gold is concerned 39,800 and 11,800 was found from the petitioner''s jewellery shop at Contai and 157.00 grams of primary gold in the form of bars and balls were seized from the residence of the petitioner. So the total quantity of primary gold seized is less than 300.00 grams, upto quantity to which a certified goldsmith is entitled to keep u/s 42(2) of the Gold Control Act. In framing the first charge the learned Magistrate took all the gold found at different places viz., the residence, the locker and the jewellery shop of the petitioner lumping up the primary gold along with gold materials gold ornaments and broken gold ornaments together with bronze based gold ornaments and as such the charge is defective for the following reasons. First there is no limit under the Act to the petitioner as a certified goldsmith of keeping gold ornaments given to him by customer, of any quantity provided he keeps account of the same in the proper form prescribed under the Act and the Rules framed thereunder. Section 27(1) of the Gold Control Act refers to a dealer. It reads thus:

No person shall commence, or carry on, business as a dealer unless he holds a valid licence issued in this behalf by the Administrator." The petitioner does not claim to be a dealer but he is a certified goldsmith as already stated above. Therefore, there can be no question of being charged for doing business as a dealer without a valid licence.

3. The learned Advocate appearing for the opposite party No. 2 representing the C.E. Calcutta and Orissa has submitted that the quantity of new gold ornaments seized being altogether (1588 grams+90.00 grams+ 160.450 grams and 1315.500 grams) the total being 3143.950 gr. would go to show that all that huge quantity of new ornaments of the said petitioner were made for sale and that can only be by a dealer with the requisite valid licence. As he did not have

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the necessary licence he would come within the purview of Section 27(1) of the Gold Control Act and so he would also be liable u/s 41(b) which reads as follows:-"A certified goldsmith shall not, save as otherwise provided in this Act, buy or agree to buy or sell or agree to sell any primary gold, articles or ornament". The learned Advocate appearing for the opposite party No. 2 submits that the huge quantity of new gold ornaments for which he had no documents were made from primary gold for the purpose of sale and, therefore, although the statements made in the body of the charge is defective, he cannot escape the liability for contravention of the two sections already quoted viz., Section 27(1) and Section 41(b). He does not dispute that the charges framed by the learned Magistrate are certainly very unhappy but that is no reason for quashing the entire proceeding. The learned Magistrate may be directed to frame new charges on the basis of the observations made above. 1 am inclined to agree with the submissions made by Mr. Sanyal, learned Advocate for opposite party No. 2 in this behalf. So far as second charge is concerned, which is for violation of Section 55 of the Gold Control Act, 1968 and the Rules framed thereunder making the same punishable u/s 27 of the Gold Control Act, 1968, it is for not maintaining a true and complete account of possession of the primary gold ornaments. Mr. N.C. Banerjee learned Advocate for the petitioner submits that it is true that the petitioner could not produce the documents required to the kept under the Act but he gave an explain. for the same that due to death of his father his account books were mislaid and, therefore, he could not produce them at the time of the seizure nor even at the time of adjudication proceeding but subsequently an account in G.S. form was submitted by him. The learned Advocate Mr. Sanyal for opposite party No. 2 has drawn my attention to the private account book kept by the petitioner. That account book does not give a true picture of the gold ornaments as well as primary gold bars and balls seized from various places by the officer under the Gold Control Act and hence he argues that the account submitted in G.S. form 13 subsequently was false and fabricated document. It will be seen however that this document whether false or fabricated or genuine was not exhibited in the case, reason for not doing so does not appear to be very cogent. The next point taken by Mr. Benerjee appearing on be-half of the petitioner is that the search and seizure were not according to law as the same was in violation of the provisions of Sections 58 and 66 of the said Act.

4. Mr. N.C. Banerjee has contended that an Inspector under the Gold Control Act made the search in connection with the shop, the house and locker of the petitioner that the Inspector is not a Gold Control Officer u/s 58(1) of the Act and so the search and seizure were not in accordance with law. But I find from Ext. 1 which is an authority given to the Inspector concerned to search the said places was given by the Superintendent Central Excise, Gold cell, Calcutta and Orissa and this authority to search is u/s 58(2) of the Gold Control Act. Section 58(2) of the Gold Control Act reads as follows:

Any Gold Control Officer, not below the rank of a Superintendent of Central

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Excise, empowered in this behalf by the Central Government may, if he has any reason to suspect that any provision of this Act has been or is being or is about to be, contravened, authorise any officer of Government to enter and search any premises, vaults, lockers, or any other place, whether above or below ground, or may himself do so." Apart from this section Government notification No. F. 1/8/68 G.C. 11 dated 1.9.68 empowers the Superintendent of Central Excise Gold Cell Calcutta to authorise any other officer to make a search. Further it ''appears from the evidence of P.W.5 who conducted the search in the shop Ext. 1 the letter of authority and Ext. 14 the letter of authority for searching the house of the petitioner and the locker at Contai Co- operative Bank belonging to the petitioner that two Superintendents viz., S.R.. Dhar and P.N. Chatterjee accompanied them and were present when the said places viz., the house, shop and locker were searched. Therefore, if it is argued that the Inspector not being a Gold Control Officer, who conducted the searches and, as such, the searches were not in accordance with law, the presence of the Superintendents nullify that contention. Therefore, I overrule the submissions made by Mr. Banerjee that the searches were not in accordance with the provisions of the Gold Control Act. Next, it is contended by Mr. Banerjee that the search and the seizures are under different provisions of the Gold Control Act, the search is provided u/s 58 and seizure u/s 66 of the Act. Section 58 provides if the Gold Control Officer "has any reason to suspect that any provision of this Act has been or is being, or is about to be contravened", then he may search, whereas u/s 66 it is provided that if any Gold Control Officer has "reason to believe" that in respect of any gold any provision of this Act has been or is being or is attempted to be contravened, then he may seize Therefore, unless suspicion ripens into belief, the Gold Control Officer cannot seize the articles concerned but in the letter of authority Ext 1 is stated that there is "reasonable cause to suspect" that the provisions of the Gold Control Act, 1968 have been or about to be contravened, in respect of certain quantity of gold. Therefore, the authority to search the house, shop and the locker contains authority to seize the said gold. The words "reason to believe" do not appear in the letter of authority on the contrary it is stated that he is authorised to seize if he has "reasonable cause to suspect". There-fore the letter of authority to seize is not in accordance with law. There may be a difference in the expressions stated above, but that is difference without a distinction and for practical purposes also such a distinction would involve the duty upon the officer concerned to give a separate authority to seize upon a further consideration of ''reasonable belief. Such a construction would defeat the object of the Act. If the seizures do not follow the searches that would provide an opportunity to the accused to remove the offending gold. I am unable to give such a construction to the wordings of the two sections.

5. Accordingly I hold that there have been no contraventions of either provision of Section 58 or Section 66 as contended by Mr. Banerjee. The last point taken by Mr. Banerjee is regarding the sample taken of the primary gold, gold ornaments and broken gold ornaments. Mr. Banerjee contends that such a

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sample do not suffice to bring home the charges against the petitioner. Samples should have been taken from each of the gold articles, gold ornaments and particularly from each of the broken pieces of gold ornament. That contention relates to the merits of the case which will be decided by the learned trial Court at the time of the trial. This last point alone would not suffice for the purpose of quashing the instant proceedings. Accordingly, I quash the charges framed by the learned Magistrate against the petitioner and I direct him to reconsider the question of framing the charges in accordance with law in the light of the observations made by me above.

The Rule is accordingly disposed of.

Let the records go down immediately.

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