

(2003) 09 CAL CK 0064
In the Calcutta High Court
Case No : C.R.R. No. 1021 of 1992

Subhas Chandra Kamilya alias Kamila	APPELLANT
Vs	
S.C. Mukhopadhyay and Another	RESPONDENT

Date of Decision : 23-09-2003

Acts Referred:

Gold (Control) Act, 1968 — Section 55, 87

Citation : (2004) 1 CALLT 82

Hon'ble Judges : Debi Prasad Sengupta, J

Bench : Single Bench

Advocate : Balai Chandra Roy, Ashim Kumar Roy and Ashraf Ali, for the Appellant; Ranjan Kumar Roy, for the Respondent

Judgement

D.P. Sengupta, J.—The present revisional application has been directed against the judgment and order dated 4.2.92 passed by the learned Additional Sessions Judge, 4th Court, Midnapore in Criminal Appeal No. 38 of 1991 thereby dismissing the appeal and affirming the judgment and order of conviction and sentence dated 30.3.91 passed by the learned SDJM, Contai in C.R. case No. 336 of 1975 convicting the accused petitioner u/s 87 of the Gold Control Act, 1968 and sentencing him to suffer R.I. for one year and to pay a fine of Rs. 1000/- in default to suffer R.I. for 3 months.

2. The prosecution case in brief is that the shop of the accused under the name and style "M/s. Gangamoni Jewellery House", the residence of the accused and the Locker of the accused Subhas Kamila were searched on 19.2.74, 20.2.74 and 28.2.74 by the officers of the Gold Cell, Central Excise and there was recovery of gold ornaments and articles from all the three places. Thereafter, the Gold Control Act filed a complaint. After considering the evidence before charge and the documents filed a charge u/s 87 of the Gold Control Act, 1968. was framed against the accused for contravention of Section 55 of the said Act:

3. The charge as framed against the accused was as follows:

"That in between 19.2.1974 and 28.2.1974 gold and gold ornaments to the tune of 3938.550 grams were found in your possession and control in your shop name and style M/s. Gangamoni Jewellery House, Contai, in your Kumarpur residence at Contai and in the locker No. 22 at the Contai Cooperative Bank Ltd., standing in your name and were seized by the Officer, Gold Cell, Central Excise and you being a certified gold smith at Contai failed without any reasonable cause to keep a true and complete account of the said gold and gold ornaments in contravention of Section 55 of the Gold Control Act, 1968."

4. So, from the charge aforesaid it is evident that the accused was put up on trial to meet a charge u/s 87 of the Gold Control Act for violation of Section 55 of the said Act. The learned Magistrate on conclusion of the trial convicted the accused petitioner u/s 87 of the said Act for contravention of Section 55 of the Act.

5. Section 55 of the Gold Control Act provides as follows:

"55. Accounts--(1) Every licensed dealer, every licensed refiner and every certified goldsmith shall keep, in such form and in such manner as may be prescribed, a true and complete account of the gold owned, possessed, held, controlled, bought or otherwise acquired, or accepted or otherwise received, or sold, delivered, transferred or otherwise disposal of, by him in his capacity as such licensed dealer or refiner or certified goldsmith, as the case may be, and different forms of accounts may be prescribed for different classes of licensed dealers, refiners or certified goldsmiths.

(2).....

(3)....."

6. Section 55 of the Act requires a certified goldsmith to maintain a true correct account of gold owned and possessed by him. Section 55 only speaks about maintenance of accounts by a certified goldsmith and it does not require a goldsmith to furnish any return in Form G.S.-13. But the learned Judge all through his judgment has mentioned that the violation committed by the accused was no furnishing of return in Form G.S.-13. In his judgment the learned Judge observed that there was absolutely no evidence to show that the accused had submitted Return in Form G.S.-13 and as such accused had committed an offence punishable u/s 87 of the Act. But I am constrained to say that in view of the evidence on record the finding of the learned Judge is totally misconceived, because u/s 55 of the Act the accused is not at all required to submit any Return in Form G.S.-13.

7. What the accused is required to do u/s 55 of the Act is to maintain a true and correct account of the gold owned and possessed by him. It appears from Exhibit-15 (seizure list) that on the very date of search and seizure, i.e., on 20.2.74 such Account Book (khata) as seized by the concerned officer. In the petition of complaint also it has been stated that account book was submitted before the concerned authority. PW 2 and PW 5 also in their deposition stated

that such account book was seized at the time of search on 20.2.74. Such Account Book is marked as Exhibit-17 and it is already on record. The learned trial Magistrate failed to take into consideration such Exhibit-17 and came to a finding that the accused on demand failed to produce and books of accounts and thus committed an offence for contravention of Section 55 of the Gold Control Act, 1968.

8. Before the lower Appellate Court such point was raised on behalf of the appellant and it was specifically urged the Exhibit-17 was not taken into consideration by the learned Magistrate. But the learned Judge also totally misconstrued the provision of Section 55 of the Act and held that the accused committed offence punishable u/s 87 of the Act as he failed to furnish return in Form G.S.-13. The learned Judge failed to consider that u/s 55 of the Act the accused is not at all required to furnish any return in Form G.S.-13 and what he is required to do is to maintain a true and correct account of gold owned and possessed by him, which he complied with, as it is evident from Exhibit-17.

9. It is also noticeable that the learned trial Magistrate convicted the accused only relying upon Exhibit-11, which were the statement of accused. The lower appellate Court excluded the said Exhibit-11 as the same was inadmissible in evidence. But inspite of that the learned Judge affirmed the order of conviction and sentence with a finding that since the accused failed to furnish Return in Form G.S.-13 the offence u/s 87 of the Act was complete for contravention of Section 55 of the Act.

10. The learned advocate for the appellant further pointing out that the manner in which the appeal was disposal of by the learned Judge is not at all desirable. The learned Judge has failed to deal with the evidence of the prosecution witnesses. This in my considered view, is not the proper way of disposing of an appeal.

11. Mr. Ranjan Roy, learned advocate appearing for the State submits that the jurisdiction of High Court in criminal revisional application is very much restricted and it cannot embark upon the re-appreciation of evidence. According to Mr. Roy where the learned Magistrate trying a case and the learned Additional Sessions Judge hearing an appeal arrived on assessment of evidence, at a concurrent finding of fact it will not be proper for this Court to re-appreciation the evidence for the purpose of determining whether concurrent finding of fact reached by both the Courts below is correct or not. But I am unable to accept such contention of the learned advocate of the State. The High Court can go into the facts when the lower Courts have totally misconceived the evidence and came to a wrong conclusion. High Court as a Court of revision has power to re-examine the evidence if there are prima facie good grounds for doing so; The revisional Court can go into the question of facts when it appears to such Court that there has been a gross failure of justice.

12. I have heard the learned advocates of the respective parties. I have also

gone through the judgment of both the Courts below. The learned trial Magistrate while convicting the accused mainly relied upon Exhibit-11, which are the statements of the accused/petitioner earlier recorded by the authority concerned. The learned Judge in appeal excluded the said Exhibit-11, as the same was inadmissible. From the petition of complaint, which was filed by PW 1, it appears that in paragraph 7 of the petition of complaint, it has..... that "the account books (G.S.-13) were submitted later after issuing of show cause notice and after obtaining copy of the seized private account book by him". The accused also explained the same in his answers to question Nos. 3 and 6 in his examination u/s 313 CrPC.

13. The main point for determination in the present case is whether the accused failed without any reasonable cause maintain a true and correct account of gold seized from his possession. As it has already been discussed above the account book (khata), which was marked as Exhibit-17, was seized by the raiding officers on the very date of seizure, i.e., on 20.2.74, which is evident from Exhibit-15 (seizure list). The seized account book is also on record. PW 2 and PW 5 also stated in their evidence that the account book now seized at the time of search on 20.2.74. The Exhibit-17 was not taken into consideration by the learned trial Magistrate. Although in the lower Appellate Court the said Exhibit-17 was brought to the notice of the learned Judge, the same was not considered and the learned Judge was of the view that since the accused failed to furnish Return in Form G.S.-13, contravention was complete and accused was liable for punishment u/s 87 of the Act. The learned Judge affirmed the order of conviction without considering the fact that the provision of Section 55 of the Act, under which the accused was charged, does not require a certified goldsmith to furnish any Return in Form G.S.-13. What the accused is required to do u/s 8 of the Act, is to keep a true and correct account of gold in his possession, which was duly complied with as it is evident from Exhibit-17.

14. In view of the discussion made above I am of the view that the impugned order dated 4.2.92 passed by the learned Additional Sessions Judge, 4th Court, Midnapore, affirming the judgment and order of conviction and sentence passed by the learned Magistrate, suffers from illegality. This, in my view, is a fit case for interference by this Court. The revisional application accordingly succeeds and the same is allowed. The order of conviction and sentence, as affirmed on appeal, is hereby set aside. The accused/petitioner be acquitted of the charge framed against him and be discharged from bail bonds.

Lower Court records may be sent down to the Court below immediately.