
(1989) 06 BOM CK 0018
In the Bombay High Court
Case No : Criminal Appeal No. 803 of 1987

Sunder Lal

APPELLANT

Vs

Ambagalage Ajith Fernando

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Customs Act, 1962 — Section 135(1)

Citation : (1989) 24 ECR 751 : (1989) 43 ELT 634

Hon'ble Judges : G.D. Kamat, J;A.A. Desai, J

Bench : Division Bench

Judgement

Desai, Member J.

1. It is obvious to us that the Respondents to this Appeal, which is a proper Appeal, will never be served. However, a few facts may be stated.

2. Accused Nos. 1 and 2 in Criminal Case No. 66/CW/87 tried by the Addl. Chief Metropolitan Magistrate, 32nd Court, Bombay, who are holding Sri Lankan Passport were, according to the information received by Directorate of Revenue Intelligence, to bring to India large quantities of VCRs and gold. They arrived by Cathay Pacific flight from Dubai at 4.30 a.m. on 25th May 1987 and examination of their baggage resulted in the recovery of 36 VCRs, six in each suitcase as well as five gold bangles of the market value of over Rs. 4,64,000/-. At that time accused No. 3 who is also a Sri Lankan National, entered the Customs baggage hall and took possession of one of the trolleys. He thereby it is alleged was a party to and actively assisted the accused Nos. 1 and 2 in their attempt to smuggle goods into India.

3. The charges against the accused were under Sections 135(1)(a)(i) and 135(1)(b)(i) of the Customs Act, 1962 and bearing in mind the value of the contraband involved a minimum sentence of one year's imprisonment is prescribed. We have gone through paras 21 onwards. The Addl. Chief Metropolitan Magistrate has stated that the accused had no intention to evade duty. We find this a startling

statement not borne out by the record. Ultimately, the Addl. Chief Metropolitan Magistrate imposed an unduly lenient sentence viz., imprisonment for the period the accused were already in custody. Of course by such sentence he was only emulating similar sentences imposed in other matters by him and even the CMM. Hence the State was more than justified in preferring this appeal for enhancement but even at the time of admission the Bench must have been convinced that these accused persons must have fled the country since their passport must have been returned by the obliging Customs Department on the immediate conclusion of the Criminal case. In our opinion, the sentence is ridiculous. We also feel that the reasons given by the Addl. Chief Metropolitan Magistrate are specious. However, no useful purpose will be served by keeping this Appeal on Board to effect service which cannot be effected. These accused persons must have gone away outside the country.

4. Accordingly we dismiss the Appeal for want of prosecution. We direct that of this order be sent to the concerned Addl. Chief Metropolitan Magistrate and the Chief Metropolitan Magistrate.