
(1973) 10 KL CK 0013
In the High Court Of Kerala
Case No : Writ Appeal No. 131 of 1972

Thankappan Achari

APPELLANT

Vs

Union Government

RESPONDENT

Date of Decision : 26-10-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Defence of India Rules, 1962 — Rule 126B, 126H, 126M
Gold (Control) Act, 1968 — Section 71

Citation : AIR 1974 Ker 169

Hon'ble Judges : P. Govindan Nair, C.J;K. Sadasivan, J

Bench : Division Bench

Advocate : S. Easwara Iyer, for the Appellant; T.V. Prabhakaran, for the Respondent

Final Decision : Dismissed

Judgement

Sadasivan, J.—Appellant, Than-kappan Achari, is a licensed gold dealer. On 9-10-1964 his residential house at Atingal Municipality was searched by the officers of the Central Divisional Office Trivandrum, on authorisation issued by the Assistant Collector, Central Excise and recovered from his house 28 articles of gold weighing in all 4029.25 grams. The gold was seized in the presence of witnesses for investigation under Rule 126-L (2) of the Defence of India Rules, 1962 (for short the Rules). Necessary search mahazar was also prepared as required by the Rules. The gold so seized is above 14 carret in purity. In his statement to the Assistant Collector on 9-10-1964. the appellant admitted that about 2000 grams belonged to his family and the remaining were ornaments brought to his house from his shop at the time of the introduction of the Gold Control Rules. He also admitted that some of the ornaments seized were ornaments received by him from his customers for repairing and polishing. A show cause notice was accordingly issued to the petitioner under Rules 126-B (1) (1) (a), 126-C (1) (a) (ii), 126-F (1), 126-G (1) and 126-H (1) of the Rules to show cause why it should not be confiscated under Rule 126-M. The appellant's

defence was that these articles were acquired by him before 19-10-1960 and that the statement dated 9-10-1964 made to the Assistant Collector was extracted by coercion and undue influence and as such it should not be acted upon. At the enquiry one Napoloon and Nanu who were attestors to the seizure maha-zar were examined. They were cited to prove that ornaments were entrusted to the petitioner for repairing and polishing. One Nohu Kannu Asan, Proprietor, Hameediya Motor Service Alancode was also proved to have entrusted ornaments to the appellant for repairing. The Collector of Customs and Central Excise passed Ex. P-I order on. 9-10-1964 holding that the statement given by the petitioner was voluntary and that he used to receive ornaments for repairing and polishing and that the articles seized were part of the petitioner's stock-in-trade kept in the house as dealer without giving the statement and declaration and without accounting for them in the statutory registers. He accordingly held that the petitioner had contravened the provisions of Rules 126-B (1-A), 126-C, 126-F, 126-G and 126-H of the Rules and ordered confiscation. Appeal preferred was dismissed by Ex. P-8 order. It was to quash Exs. P-I and P-8 orders that the O. P. was filed. The learned Single Judge has dismissed the O. P.

2. We see no reason to interfere. At the enquiry the petitioner was not able to supply the names of persons from whom ornaments were received. He was also not able to point out which of the ornaments seized were those kept for the family use. The pattern of the seized ornaments and their weight and quantity negative the appellant's case that they were his family ornaments. Many of the ornaments were of the type and pattern usually used by Christians and Muslims women. It is also significant that the appellant had no accounts to show that part of the ornaments were intended for his family use. Learned Counsel contended rather vehemently that repairing and polishing will come under the mischief of the Rules only after the 4th of July, 1964, on which date the 9th amendment of the Rules came into operation and in the present case there is no evidence to show that repairing and polishing were undertaken by him after the said date. The burden, we think, was on the appellant to show that these were received after the 4th July, 1964. His accounts, if any, maintained by him could have easily shown the date on which these ornaments were received for repairing or polishing.

3. Rule 126-F of the Rules requires every dealer to make a return as to the quantity, description and other prescribed particulars of the gold under his control on the date of the commencement of the Gold Control Rules. Rule 126-G requires every dealer to keep an account of the gold bought or sold or otherwise received or disposed of by him at each transaction, and Rule 126-H prohibits the dealer from having under his control any gold which has not been included in the return. None of the requirements of these rules was complied with by the petitioner.

4. Learned Counsel contended rather ingeniously that the petitioner has a dual capacity, one as licensed dealer and the other as house-holder and that gold kept

in his house for his family use will not come within the purview of the Rules and he cannot be held liable under the Rules for such possession. In support of the position learned Counsel relied on *Rajmal Vs. Superintendent, Central Excise and Another*, wherein the court exempted a person from declaring his stock of gold articles pledged with him by various persons. The court held:

"We are, therefore, of opinion that Rule 126-F is concerned with the capacity of a person qua a dealer alone, and consequently the return that he is required to furnish is of his stock-in-trade qua a dealer only and not of the gold possessed by him in his various other capacities, if any. On this reasoning the pledged ornaments of which he is in possession as a pledgee or a money-lender have not to be declared because he is not in possession or control of them as a dealer as defined in the Rules."

5. The position here is entirely different. The stock found in his house was found on enquiry to be part of the stock-in-trade and from the mere circumstances that part of his stock-in-trade was removed by him to house, it cannot be held in the absence of the evidence to the contrary that those articles were his personal belongings intended for the use of the family. Dealer under the Gold Control Rules means:

"any person who carries on, directly or otherwise, the business of-

(i) making, manufacturing, buying, selling, supplying, distributing, melting, processing or converting ornaments,

(ii) buying, selling, supplying, distributing, melting, processing or converting, gold for the purpose of making or manufacturing ornaments,

whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

(i) an undivided Hindu family which carries on such business; and

(ii) a local authority, company, society registered"

6. On the enquiry it was found that the appellant is a dealer and further that the entire gold seized was his stock-in-trade. In these circumstances we see no force in the contention that he is a dealer only when he is sitting in his place of business and not a dealer when he is indulging himself in the above said activities in his house. Even though he stated that part of the ornaments (weighing about 2000 grams) were ornaments intended for his family use he was not able to supply the necessary details regarding those ornaments. The pattern of the ornaments, as already stated, did not tally with his case that they were ornaments intended for his family use. In the circumstances we are inclined to the conclusion that the appellant had no honest case to be placed before the enquiring authority or the court.

7. The order of the learned Single Judge is, in the circumstances, correct and the appeal is dismissed. We order no costs.