(1980) 01 MAD CK 0058

In the Madras High Court

The Assistant Collector of Central Excise, Preventive, Madras — APPELLANT

Vs

K.S. Chandrasekharan — RESPONDENT

Date of Decision : 01-01-1980

Acts Referred:
Gold (Control) Act, 1968 — Section 27(1), 85

Citation : (1980) CENCUS 467 : (1980) 6 ELT 346

Hon'ble Judges : A. Varadarajan, J

Bench : Single Bench

Judgement

A. Varadarajan, J.—This criminal appeal by the Assistant Collector of Central Excise, preventive, Madras, is against the acquittal of the

accused K. S. Chandrasekharan, residing at No. 19 Mathala Narayana Street, Mylapore, Madras 4 by the learned Chief Metropolitan

Magistrate, Madras in C C No. 19368 of 1975 in which the respondent Chandrasekharan was prosecuted for an offence u/s 27(1) read with

Section 85(viii) and (ix) of the Gold Control Act, 1968, Section 27(1) lays down that-

Save as otherwise provided in this Act, no person shall commence or carry on business as a dealer unless he holds a valid licence issued in this

behalf by the Administrator.

Sec, 85(viii) says that whoever in contravention of the provisions of this Act or any rule or order made thereunder owns or has in his possession,

custody or control any articles or ornament shall without prejudice to any other action that may be taken under the Act be punishable with

imprisonment. Section 85(ix) provides for punishment of such person who carries on any business or transaction in gold for which a licence or certificate is required to be obtained by or under the Act.

2. The case of the prosecution was that the respondent Chandrasekharan was an employee under Messrs. Radhakrishna Jewellers, Mylapore,

Madras, and that on information, PW 1, the Inspector of Central Excise. searched the house of the accused at No. 19 Mathala Narayana Street,

Mylapore, Madras 4, at about 12.50 p. m. on 26-8-1974 and recovered gold ornaments M O 3 series under the Mahazar Mx. P. 2, attested by

one Vedachalam and one Kuppuswami who have not been called as witness. M O 3 series consists of 7 gold chains, one muthumalai, 12 gold

rings, 21 small gold rings, 2 gold bangles, 2 smaller gold bangles, 4 pairs of gold studs, 8 gold dollars, 5 gold thalis, 4 gold gundus and one pair of

gold jimkies. The ornaments were all new and they weighed in all 287.400 gms. According to the prosecution the jewels were kept in the

cardboard boxes M Os 1 and 2 in a suitcase found below the cot in the bedroom of the accused''s house and some of the articles bore the letters

RKJ inscribed on them, while some other articles had the weight tags attached to them . On the same day PW 2 another Inspector of Central

Excise recorded the statement Ex. P. 3 from the accused. It is stated that in Ex. P.3 the accused has admitted that he has kept all the ornaments for

sale. Subsequently the department issued a show cause notice Ex. P. 4 on 23-12-1974 to the accused and he sent the reply Ex. P. 5, on saying

that he got some of the ornaments as presents from others and the rest of the ornaments as presents from his own employer and that Ex. P.3 had

been obtained from by coercion and threat.

3. The Assistant Collector, Central Excise, who adjudicated the case, imposed a penalty of rs. 1,000 and ordered confiscation of all the jewels.

Subsequently there was a revision which has been allowed by the Government of India on 21-8-1979, observing that the Government of India

carefully considered the submission made by the accused in his revision application at the time of the personal hearing and examined the records,

that the statement alleged to have been made by the accused before PW 2 has to be ignored, that Mr. R. Ananthapadmanabhan, the only witness

to the statement EX. P 3, was examined at the time of adjudication, that he has clearly deposed that the statement has taken under compulsion and

he was not cross-examined by the department and that in view of the infirmities in the case which were not explained by the department, the

accused is entitled to the benefit of doubt. The revision has been allowed and the order of confiscation and penalty imposed on the accused has

been set aside.

4. Before the learned Chief Metropolitan Magistrate, PW 3, the proprietor of Messrs. Radhakrishna Jewellers has stated that he used to give

jewels weighing three sovereigns to each of his employees as an incentive bonus and that he would have given about 12 to 13 sovereign of jewels

to the accused in about 3 or 4 years. However, he has stated that he would not be in a position to say whether the jewels MO 3 series were given

by him to the accused. Subsequently he stated that he gave some jewels as presents to the accused at the time of the marriage of the daughter of

the accused and that some other jewels might have been purchased by somebody from his shop and presented to the accused. The accused has

produced before the learned Chief Metropolitan Magistrate the invitation printed at the time of the marriage of his daughter along with his written

statement. PW 1 admitted before the learned Chief Metropolitan Magistrate that he did not find any treading equipment in the house of the

accused at the time of the search and that he also did not see the accused in the act of trading in gold ornaments that have been seized from his

house. In these circumstance, the learned Chief Metropolitan, Magistrate found that apart from the retracted confessional statement of the accused,

there is practically no evidence on the side of the prosecution to show that the accused was actually trading in gold ornaments. It was admitted

before the learned Chief Metropolitan Magistrate that the gold ornaments possessed by the accused were within the the limit of free allowance

granted under the gold Control Act. In these circumstances, the learned Magistrate found that the accused could not be stated to have contravened

the provisions of Section 27(1) read with Section 85(viii) and (ix) of the said Act and acquitted him.

5. The fact that the highest authorities under the Gold Control Act have found the accused not guilty and set aside the order of confiscation and the

penalty imposed on him by the Assistant Collector of Central Excise has to be taken note of in this case. In view of what has happened subsequent

to the acquittal of the accused by the learned Metropolitan Magistrate, it is not open to the Department to contend that the accused had

contravened the provisions of Section 27(1) read with Section 85(viii) and (ix) of the Gold Control Act. There is, therefore, no reason to interfere

with the judgment of the learned Metropolitan Magistrate acquitting the accused. The appeal is dismissed.

