

(1985) 12 GAU CK 0003
In the Gauhati High Court
Case No : Criminal Appeal No. 9 of 1978

The State of Assam

APPELLANT

Vs

Satya Narayan Singhania

RESPONDENT

Date of Decision : 14-12-1985

Acts Referred:

Customs Act, 1962 — Section 111, 114, 115, 116, 117
Gold (Control) Act, 1968 — Section 85(1)

Citation : (1986) 1 GLR 411

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : A.S. Bhattacharjee, P.P, for the Appellant; T.S. Deka and K.L. Jain, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Saikia, J.—The State has appealed against the judgment dated 23.1.78, of the Sub-Divisional Judicial Magistrate, Nalbari acquitting the Respondent of the charges u/s 135(6)(ii) of the Customs Act; 1962 and Section 85(1)(ii) of the Gold (Control) Act, 1968.

2. On 22.6.76 the customs preventive officers of Shillong and Gauhati searched the premises of the Respondent, Shri Satya Narayan Singhania, of Nalbari and recovered 15 pieces of primary gold, one gold mohar, all weighing 327.664 gms. worth about Rs. 14,000/-, and three foreign silver coins from an almirah of the Respondent's bed room. The articles being seized along with some account books of the Respondent, the gold pieces and the mohar were tested by a registered goldsmith, After completion of the investigation the case was departmentally adjudicated by the Collector of Customs and Central Excise, Shillong which ended in absolute confiscation of the said primary gold and a penalty of Rs. 1,00,000/-. Adjudication proceeding under the Gold (Control) Act was also started by the Assistant Collector of Customs and Central Excise, Gauhati who imposed a penalty of Rs. 2000/- under the Gold (Control) Act. The

Respondent was also prosecuted, after obtaining sanction, under the aforesaid provisions of the Customs Act and the Gold (Control) Act on the offence report dated 18.4.77 whereupon the instant case was registered and after Investigation the Respondent was charge-sheeted under the aforesaid sections, namely, Section 135(6)(ii) of the Customs Act and Section 85(1)(ii) of the Gold Control Act.

3. At the trial the prosecution examined five witnesses while the defence examined no witness. P.W. 1, Shri P.K. Bordoloi, who is the Inspector of Customs, Preventive Unit, Shillong deposed that the 15 pieces of primary gold and the gold mohar and the three foreign silver coins were recovered from the steel almirah, seized as per Ext. 1 but admitted that they had no evidence to show that the pieces of gold were smuggled ones. He also admitted that a family was entitled to keep gold mohar upto 50 grams and that the gold mohar seized in the case weighed only 11 66 grams. He also admitted that there was no restriction as to keeping of silver. P.W. 4, Sri Tukan Ram Sonar, the registered goldsmith, who tested the seized gold, himself said the Respondent had given some of his wife's gold ornaments for melting and making new ornaments and that he entered those gold ornaments in his register and melted them but one day prior to the search he gave back the melted pieces to the Respondent's wife to keep those in safe custody as the Respondent was lying ill. P.W. 1 himself admitted what was stated by P.W. 4 about melting of old gold ornaments and giving the pieces to the Respondent's wife on the previous day. On that basis P.W. 1 also admitted that they had no evidence to show that the 15 pieces of gold were smuggled ones. P.W. 2, Sudhangsu Sekhar Chakravorty, Superintendent of Customs and Central Excise, Shillong stated that he checked the register, Ext. "A" maintained by P.W. 4 and found that the giving of gold ornaments weighing 304 gms, melting of the ornaments and the return of the melted pieces to the Respondent were recorded in that register. He also stated that the seized primary gold was in pieces and those appeared to have been melted ornaments.

4. On the basis of the above evidence on record the learned trial Court having held that the prosecution had failed to establish either of the charges against the accused Respondent and having acquitted him of the charges, the question before this Court is whether the view taken by the trial Court in favour of the accused-Respondent merits interference in this appeal against acquittal.

5. Mr. A.S. Bhattacharjee, the learned Public Prosecutor, Assam, submits that the trial Court wrongly placed the burden of proof on the prosecution contrary to the provisions of Section 123 of the Customs Act. As per that section where any goods to which that section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized. This section also applies to gold. The prosecution witnesses themselves in their evidence proved that the gold pieces were nothing else than melted ornaments of the Respondent's wife, that they bore no foreign markings, and

that they had no evidence to show that those were smuggled gold. The very initial burden of dispelling a reasonable belief that those were smuggled goods, was discharged, and under such circumstances the question of the burden being lodged on the Respondent did not arise. The prosecution also showed that the keeping of one gold mohar did not offend the provisions of the Gold (Control) Act. Besides, the learned Court also believed that the melted gold pieces were returned to the Respondent's wife only on the day previous to the date of search and seizure and there was no violation as regards declaration thereof within 30 days. As was held in Harbans Singh and Another Vs. State of Punjab, in an appeal against acquittal the High Court is to examine the evidence with particular care but should interfere only if the view taken by the trial Court is found to be unreasonable. It is true, as was ruled in Shankar Kerba Jadhav and Others Vs. The State of Maharashtra, that in an appeal against acquittal the matter is at large. However, if two of the views of the evidence are reasonably possible, one favouring acquittal and the other conviction, as was held in Dhan Kumar Vs. Municipal Corporation of Delhi, the High Court should not reverse the order of acquittal and that it is well settled that when the appellate-Court agrees with the view of the trial Court on the evidence-it is not necessary to repeat or reiterate the reasons given by the trial Court and the expression of general agreement should ordinarily suffice. In the instant case it cannot be said that the trial Court ignored any vital piece of evidence, Under the above circumstances, in so far as the acquittal of the Respondent is concerned, there is no justification for any interference in this-appeal.

6. Mr. Bhattacharjee points out and submits that the trial Court also ordered that the seized articles shall be returned to the accused-Respondent if not required in connection with any other proceeding against him and this may create some misunderstanding. This submission appears to be reasonable in view of the fact that in the earlier part of the judgment the trial Court stated that the departmental and judicial order of the Collector of Customs and Central Excise, Shillong ended in absolute confiscation of the aforesaid primary gold and penalty of Rs. 1,00,000/- and that a separate adjudication under the Gold (Control) Act ended in imposition of penalty of Rs. 2000/- under the Gold (Control) Act. If that was so, the confiscation and the remedy must be governed by the provisions of the Customs Act and the Gold (Control) Act, as the case may be. Chapter XIV of the Customs Act, 1962 deals with confiscation of goods and conveyances and imposition of penalties. Section 111 provides for confiscation of improperly imported goods, Section 113 provides for confiscation of goods attempted to be improperly exported. Sections 114 to 127 deal with the grounds and procedure for confiscation. Chapter XV of that Act deals with appeals and revision. Section 128 deals with appeals and Section 130 describes the powers of revision of Board. Section 131 provides for revision by the Central Government. In view of the above provisions if the gold pieces were confiscated in the departmental adjudication; the remedy was to be found in the provisions of the Customs Act. It would not have, therefore, been open for the trial Court to direct that the

seized articles should be returned to the accused-Respondent if not required in connection with any other proceedings against him. The seizure, even according to the trial Court itself, ended in confiscation, and on confiscation the property, under law, vested in the Central Government and the owner had his remedies by way of appeal or revision under the relevant provision of the Act. The seized and confiscated gold must, therefore, be dealt with in accordance with the relevant provisions of the Act and the impugned judgment is accordingly modified to that extent.

7. Subject to the above the appeal is dismissed.