
(1991) 07 KL CK 0026
In the High Court Of Kerala
Case No : Criminal R.P. No. 323 of 1988

Venilal Mehta

APPELLANT

Vs

Asst. Collector of Central Excise

RESPONDENT

Date of Decision : 06-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Customs Act, 1962 — Section 135(1)
Gold (Control) Act, 1968 — Section 85(1)

Citation : (1991) 37 ECR 385 : (1992) 57 ELT 46

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pareed Pillay, J.—Revision Petitioners are A1 and A2 in C.C. 123 of 1985 of the Addl. Chief Judicial Magistrate Court (Economic Offences), Ernakulam. They stood charged u/s 135(1)(i) of the Customs Act and Section 85(1)(a) of the Gold (Control) Act. They were found guilty by the trial Court and were convicted and sentenced to suffer rigorous imprisonment for one year for each of the two offences besides a fine of Rs. 25,000/- and in default of payment of fine there is direction to suffer simple imprisonment for six months more. They filed Crl. A. 69 of 1987 before the Sessions Court, Ernakulam. The IVth Addl. Sessions Judge heard the appeal and dismissed the same confirming the conviction and sentence.

2. The prosecution case is that on receipt of information that revision petitioners had secreted contraband gold in Room No. 316 of the Dwaraka Hotel, Ernakulam. PW1 is the Superintendent of Customs II, Cochin visited the room on 2-5-1984 at about 9.20 a.m. and on search he found that 60 gold biscuits weighing 6990 grams were concealed in M.O. 3 suit case. Prosecution examined P.Ws. 1 to 8 and marked Exts. P1 to P47. 1 to 3 were also marked.

3. Learned Counsel for the Revision Petitioners did not address any arguments on the factual findings of the Courts below. His only contention is that the revision

petitioners are entitled to set off u/s 428 of the CrI. P.C. for the period during which they were detained under the COFEPOSA. The only question to be considered in this revision is as to whether the revision petitioners are entitled to set off during 19-6-1984 to 19-6-1985. It is admitted that during this period revision petitioners were detained in the Central Prison, Trivandrum under COFEPOSA. Counsel for the Revision Petitioners submitted that pending investigation of the customs case (O.R. 5 of 1984 which has been refiled as O.R. 14 of 1985) revision petitioners were detained in the Central Prison and that being the position they are entitled to set off. Counsel further pointed out that though second revision petitioner (A2) was granted bail on 31-5-1984 it was cancelled by the Chief Judicial Magistrate and since then she was also undergoing detention in the Central Prison.

4. Counsel for the revision petitioners invited my attention to a letter sent by the Addl. Chief Judicial Magistrate, Ernakulam to the Superintendent, Central Prison, Trivandrum dated 18-6-1985 wherein it is stated that the revision petitioners against whom O.R. 14 of 1985 has been registered are undertrial prisoners before his Court. The Addl. Chief Judicial Magistrate wrote to the Superintendent of the Central Prison that as their release from the jail under COFEPOSA falls on 19-6-1985 the bail bonds may be got executed by them and the bonds be returned to his Court. Counsel relied on this communication to show that the revision petitioners were undertrial prisoners during the time when they were detained under COFEPOSA. Counsel further relied on the decision of this Court in *Juanhaniff v. State of Kerala* [1987 (1) KLT 437] and contended that even without the preventive detention revision petitioners were actually in jail suffering imprisonment and therefore they are entitled to set off u/s 428 Cr. P.C. In the above case this Court allowed the request of the accused and directed to reckon the period of their detention under the COFEPOSA for the purpose of allowing set off u/s 428 of the Cr. P.C. Learned Central Govt. Pleader submitted that the period during which the revision petitioners were under detention under COFEPOSA cannot be set off u/s 428 Cr. P.C. against the term of imprisonment imposed on them.

5. Admittedly the revision petitioners were detained under COFEPOSA during 19-6-1984 to 19-6-1985. It was during this period that the investigation of the customs case (O.R. 5 of 1984 which has been refiled as O.R. 14 of 1985) was being conducted. Section 428 of the Cr. P.C. provides that where an accused person has on conviction been sentenced to imprisonment for a term (not being imprisonment in default of payment of fine) the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to the remainder, if any, of the term of imprisonment imposed on him. As the revision petitioners were arrested on 5-5-1984 and as admittedly they were under detention during 19-6-1984 to 19-6-1985 during which period the investigation of the customs case was going on, the plea of the revision

petitioners that they are entitled to set off during the aforesaid period cannot be rejected.

6. It is hereby held that the revision petitioners are entitled to set-off for the period 19-6-1984 to 19-6-1985.

With the above observation the Criminal Revision Petition is dismissed.