

Hukma

Vs

State of Rajasthan

Criminal Appeal No. 152 of 1962

(M. Hidayatullah, K. C. Das Gupta JJ)

29.08.1963

JUDGMENT

DAS GUPTA J. –

This appeal by special leave is against a conviction and sentenced under s. 167(81) of the Sea Customs Act 1878. The appellant was acquitted by the trial court, but on appeal by the State of Rajasthan, the Rajasthan High Court set aside the order of acquittal and convicted the appellant under s. 167(81) of the Sea Customs Act, and sentenced him to rigorous imprisonment for one year. The prosecution case was that on receipt of some information that gold smuggled from Pakistan was being carried, Lal Singh, Sub-Inspector of the Check-post of Barmer, followed the appellant into a railway train at Luni railway station, and in the running train between the stations of Kerala and Pali, searched appellant's person and found that he was carrying 286 tolas of gold in a pouli under his trousers. In the reasonable belief that these were smuggled goods, Lal Singh seized the gold. The gold that was seized consisted of six blocks bearing marks "999", N. M. Rothschild & Sons, 22 bars bearing marks '999', 3 small pieces of gold and one pair of murkies. Lal Singh seized the gold after preparing a seizure list in the presence of witnesses and later produced the appellant along with the gold before the Superintendent, Land Customs, Barmer. By an order of the Collector of Customs, New Delhi, dated July 19, 1957, this gold was confiscated and a fine of Rs. 10,000 was imposed on the appellant. Criminal proceedings were afterwards instituted against the appellant on the allegation that he had committed an offence under s. 167(81) of the Sea Customs Act. The prosecution claimed that under s. 178-A of the Sea Customs Act the burden of proving that gold was not smuggled lay on the accused. Even apart from that, the prosecution claimed, it was clear that the gold had been smuggled. It was alleged that he appellant had carried the gold knowingly with intent to evade the regulations prohibiting the import of gold into India.

The main defence of the accused, who pleaded not guilty was that no gold was recovered from him. The trial court held that prosecution had failed to establish the recovery of gold from the accused. It further accepted the defence contention that Lal Singh had not authority to search the appellant and seize the gold at the place where the seizure was alleged to have been made. According to the learned Magistrate, the seizure, if any, had not been made under the Land Customs Act and so had not been made under "the Act" within the meaning of s. 178-A, and there was no question of the accused having to prove that the gold was not smuggled. On the evidence adduced by the prosecution, he was not convinced that it was smuggled gold. Accordingly, he acquitted the accused. The High Court came to contrary findings on all these points. It held that the evidence of Lal Singh as regards the seizure should be believed and that the seizure of the gold from the accused had been proved satisfactorily. It was also of the opinion that Lal Singh had authority to seize the gold at the place where the seizure was made, and that s. 178-A of the Sea Customs Act applied. In the opinion

of the High Court, the accused had failed to prove that the gold was not smuggled and that under the provisions of s. 178-A as also on the evidence in the case, there gold had been established to be smuggled gold. All the ingredients of the offence, according to the High Court, had been proved, and therefore, the accused was convicted and sentenced as mentioned above.

Three points were raised before us by Mr. S. K. Kapur in support of the appeal. The first was that the High Court was not justified in disturbing the trial courts' finding that the seizure of the gold from the accused had not been proved. The second point urged was that the High Court had fallen into an error in thinking that Lal Singh had authority to seize the gold at the place where the seizure was made. The third contention was that in any case even if s. 178-A applied and it was found that the gold was smuggled, the prosecution had failed to prove that necessary mens rea in the accused that was necessary to constitute the offence.

On the question of seizure of gold from the accused, the prosecution relied on the testimony of Lal Singh himself. Lal Singh gave a detailed account as to how he followed the accused into the train at Luni station and in the running train conducted the search of his person in the presence of witnesses and recovered from his possession from a pouli tied beneath his trousers the gold identified in courts as Ex.P.M. 1-32. The seizure of Memo. which he claimed to have prepared at the time of the seizure was marked Exh.P. 3. This document mentions the names of three persons as search witnesses. None of these was examined by the prosecution. The third name mentioned in Exh.P.3 is Pukh Raj son of Awasthi Mal, aged about 22 years, resident of Ajit. The defence examined a Pukh Raj who gave his father's name as Basti Mal and who was resident of Ajit, and stated that he was the only Pukh Raj in that village. The High Court seems to have doubted the identity of Pukh Raj examined as defence witness as the Pukh Raj mentioned in the seizure list. This finding has been attacked by Mr. Kapur as unjustified. Whether or not the Pukh Raj examined as defence witness is the same as the person whose name is mentioned in the seizure list, is not, however, of much consequence; for the fact remains that the prosecution has not got the evidence of any of the witnesses in whose presence the search and seizure are said to have been made, to support Lal Singh's evidence. The learned Magistrate gave this failure of the prosecution to examine the witnesses as the main reason for this inability to accept Lal Singh's testimony. The High Court has accepted Lal Singh's testimony, but unfortunately the judgment does not indicate that the learned Judges of the High Court took into consideration this fact that the search witnesses had not been examined. We have, therefore, thought it necessary to examine the evidence for ourselves to see whether the seizure as alleged by the prosecution has been proved. Lal Singh's evidence on the point has already been mentioned. It has to be noticed that the defence witness No. 2, Poonam Chand, had also spoken about the search. His evidence is that police conducted search in the compartment when the train was enroute from Luni to Pali, and that "the police took search of the accused Hukma present before the court and of two or three more persons named Kesrimal and Tarachand". The witness added no gold was recovered from the possession of the accused Hukma Ram, but admitted that in the same compartment a purse was recovered. It has to be noticed that when Lal Singh was examined, no suggestion was made to him in cross-examination that any other person had been searched in the compartment. It is not unreasonable to think, therefore that when Poonam Chand is speaking of search in the compartment of Hukma and the find of a purse there though stopping short of saying what was recovered from it, his evidence unwittingly supports the story given by Lal Singh about the search and the recovery of the gold. It does not stand to reason that if two other persons had been searched and gold had been found within one of them, this appellants, a pointsman in the Railway, should be falsely implicated and the person from whom the recovery of gold was made, should have been allowed to escape. The accused suggested in his statement that Lal Singh was inimically disposed towards him because on one occasion Lal Singh had asked him to serve

water and he had not done it at once. There was no suggestion about this incident to Lal Singh in his cross-examination, and we are convinced that this is entirely false. On a consideration of Lal Singh's evidence along with the evidence of appellant's own witness, Poonam Chand we are convinced that the story of recovery of gold from the accused is true. The reason why the three witnesses mentioned in the seizure list have not come forward to support the prosecution case is, in our opinion, not that the story of search and seizure as given by Lal Singh is not true, but that these witnesses have been gained over.

This brings us to Mr. Kapur's main contention, namely, that Lal Singh was not a Customs Officer for the place where the seizure was made, and so the seizure was not under the land Customs Act, taken with the provision of the Sea Customs Act. The answer to this contention depends on the construction of the notification appointing Customs Officers for the areas adjoining the frontier between West Pakistan and India. The notification as it stands after an amendment in 1956, runs as follows :-

"1. In exercise of the powers conferred by Sub-section (19) of section 3 of the Land Customs Act 1924 (19 of 1924) read with the notification of the Government of India in the late Finance Deptt. (Central revenues) No. 5444, dated 1st December 1924, the Central Board of Revenue hereby appoints for the areas adjoining the Land Customs Frontiers separating West Pakistan from India, the officers of the Government of Rajasthan specified in the schedule hereto annexed, to be Land Customs Officers within the jurisdiction of the Collector of Land Customs Delhi."

"The Schedule."

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"All officers of the Rajasthan Civil Police and the Rajasthan Armed Constabulary of and above the rank of Head Constable posted in the Districts of Barmer, Bikaner, Ganganagar, Jaisalmer and Jalore in the State of Rajasthan."

Asking us to give a restricted meaning to the word "adjoining" in the notification, Mr. Kapur has suggested that this notification gave authority to the Customs Officers only for the areas within a few miles from the border. He contended next that even if this be not accepted, the notification on a reasonable interpretation gave authority only to the officers of the Districts mentioned in the Schedule to function as Customs Officers in those Districts and nowhere else. The trial court appears to have accepted this construction, and as admittedly the place of seizure was not in any of the District mentioned in the Schedule, it held that Lal Singh was not authorized to search the accused or to seize the gold. The High Court, on the contrary, has taken the view that each of the officers mentioned in the Schedule has been appointed a Customs Officer for the entire area which has "jurisdiction of the Collector of Land Customs, Delhi."

In our opinion, this is the correct and only possible construction. Section 3 of the Land Customs Act authorizes the Central Government to appoint by notification in the official gazette one person to be the Collector of Land Customs for any area adjoining a foreign frontier and specified in the notification. The section also authorizes the Central Government to appoint by a similar notification such other persons as it thinks fit to be Customs Officer for the same area. "Foreign frontier" has been defined in s. 2, cl. (e) of the Act as the frontier separating any foreign territory from any part of India. "Land Customs area" has been defined in cl. (g) of the same section as any area adjoining a

foreign frontier for which a Collector of Land Customs has been appointed under s. 3. From the definition of foreign frontier in cl. (e), it is clear that an area adjoining the frontiers separating any foreign territory from any part of India, is within these words. What, then is meant by the word 'adjoining'? According to Mr. Kapur, only a few miles near the frontier can be considered to be adjoining the frontier. We can see no justification for such a restricted construction of the words "adjoining". It is true that the village next to the frontier adjoins the frontier. It is equally correct, however, to describe the entire District nearest the frontier as adjoining the frontier; and we can see nothing wrong in the entire State of Rajasthan adjoining the West Pakistan Frontier. It appears to us that the Central Government treated the whole compact block consisting of the State of Punjab State of Jammu & Kashmir and State of Rajasthan and Himachal Pradesh and Delhi as one area adjoining the West Pakistan frontier, and for this one area it appointed a Collector of Land Customs. This appears clear from the order appointing the Collector of Central Excise, Delhi, to be the Collector of Land Customs (Notification No. 2L Customs dated 25th January, 1958), taken with Rule 2 (ii) a (i) of the Central Excise Rules, according to which Collector means "in the State of Punjab, Jammu and Kashmir and Rajasthan and in the Union territories of Himachal Pradesh and Delhi, the Collector of Central Excise, Delhi." In other words, the jurisdiction of the Collector of Central Excise, Delhi, is not only over Delhi, but also it extends to the States of Punjab, Jammu & Kashmir and Rajasthan and the Union territories of Himachal Pradesh and Delhi. It was for this entire area that the collector of Central Excise, Delhi was appointed Collector of Land Customs. The resultant position, therefore, is that for this entire area of Punjab, Jammu and Kashmir Rajasthan, Himachal and Delhi, one person has been appointed Collector of Customs. When, therefore, the Central Government proceeded next to appoint Land Customs Officers and stated that certain officers as specified in the schedule were appointed Land Customs Officers "for the areas adjoining the land customs frontiers separating West Pakistan from India", and added the words that they were to be Land Customs Officers "within the jurisdiction of the Collector of Land Customs, Delhi," it appears to us to be quite clear that every officer mentioned in the Schedule would be a Customs Officer - not for any particular District mentioned in the Schedule but for the whole areas which forms the jurisdiction of the Collector of Land Customs, Delhi and is the area adjoining the West Pakistan frontier for which a Collector of Land Customs has already been appointed under s. 3. We find no justification for reading into the Schedule any indication of the area where the officers will operate. The Schedule purports to mention the different officers of different districts who are appointed Land customs Officers - not for those particular Districts but for the entire area. Any other reading of the words used in the main body of the notification would be not only against the plain meaning of the words used but is likely to defeat the object for which Land Customs Officers are appointed.

We have, therefore, come to the conclusion that the construction put by the High Court on the notification is right, and Lal Singh, being an officer in the District of Barmer which is mentioned in the Schedule, was an officer for the entire area which formed the jurisdiction of the Collector of Land Customs, Delhi, including the place where the seizure was made, and was therefore competent to make the seizure.

There remains for consideration the last point raised by the learned counsel, namely, that even if Lal Singh had authority to seize at the place where the seizure was made and s. 178-A of the Sea Customs Act applied, the prosecution had still to prove by further evidence that the accused had the mens rea necessary to constitute the offence. Learned counsel rightly pointed that while s. 178-A has the result of placing the burden of proof that the gold was not smuggled on the accused, it is of no assistance to the prosecution to prove that the accused was carrying the gold knowingly to evade the prohibition which was for the time being in force with respect to the import of gold into India. Once however, it is found, as it must be found in this case, in consequence of the provisions of s.

178-A (the accused has not tried to discharge the burden that lay on him that the gold was not smuggled) that he was carrying smuggled gold, the circumstances under which the gold was discovered, the manner in which he was carrying the gold, the considerable quantity of the gold that was being carried and the form in which gold was being carried, namely, blocks and bars in which the major portion of the gold was found, all these circumstances establish beyond a shadow of doubt that accused was carrying the gold knowingly and with the intention of evading the prohibition that was in force with respect to the import of gold into the country. Mr. Kapur tried to argue that when gold is carried by person, they often carry it in this manner in a pouli concealed under trousers. That may well be so. Here, however, there is an additional circumstance that a pointsman of the Railway, not expected to have so much gold in his possession, was carrying the gold which was, as already mentioned in six blocks and 22 bars apart from some small pieces and one pair of murkees. The total quantity was as much as 286 totals and 11 annas, that is, about three kilograms. When all these circumstances are taken together, it is not possible to accept learned counsel's suggestion that he might be carrying the gold innocently having purchased it from somebody. In our opinion, the High Court has rightly held that all the ingredients of the offence under s. 167(81) of the Sea Customs Act have been established. It may be mentioned that it has not been disputed before us that if we believe that story of the recovery of the gold from the appellant, the circumstances are sufficient to establish that Lal Singh seized the gold in the reasonable belief that these were smuggled goods.

In the view we have taken in this matter, it is unnecessary to consider the further argument raised by Mr. H. R. Khanna, who appeared for the State, that even apart from s. 178-A, the guilt of accused could be held to be proved by the confession made by him before the Deputy Superintendent, Land Customs corroborated as it is by the recovery of the gold from him.

All the points raised in the appeal on behalf of the appellant fail, and the appeal is, accordingly, dismissed.

Appeal dismissed.

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