Vallabhdas Liladhar and Ors

Vs

Assistant Collector of Customs

Criminal Appeals Nos. 48 and 80 of 1960

(P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo JJ)

27.01.1964

JUDGMENT

WANCHOO, J. –

The two appeals by special leave arise out of the same criminal trial before a magistrate at Porbunder and will be dealt with together. The three appellants along with one more person, namely, Keshavlal Nagjibhai were prosecuted under s. 167(81) of the Sea Customs Act. No. 8 of 1878, (hereinafter referred to as the Act.) The prosecution case briefly was that Vallabhdas Liladhar, who is now dead, came in contact with an Arab from whom he purchased smuggled gold weighing a little more than 84 tolas on December 1, 1956. Before this, Vallabhdas Liladhar had borrowed Rs. 3,600/- from the other two appellants and Keshavlal about November 28, 1956, in order to make the purchase. After making the purchase, Vallabhdas Liladhar came to Porbunder to the house of the other two appellants and Keshavlal and informed them of the purchase and wanted their help in the disposal of the gold. The other two appellants namely, Narandas Nagjibhai and Vallabhdas Nagjibhai are brothers. Keshavlal was also the brother of these two appellants. The prosecution case further was that Narandas Nagjibhai asked Vallabhdas Nagjibhai to take the gold to Bantwa and sell it at the rate of Rs. 103/- or so per tola. Vallabhdas Nagjibhai was also instructed that in case he could not sell the gold at that rate he should contact Vallabhdas Liladhar and Narandas Nagjibhai at Bantwa bus stand from where they were to go to Junagadh to dispose of the gold if no suitable buyer could be found in Bantwa. Consequently Vallabhdas Nagjibhai proceeded to Bantwa by bus on December 2, 1956 in the afternoon. In the meantime information was received by Mehta who was Inspector of Customs about the smuggling of this gold. He consequently followed the bus in which Vallabhadas Nagjibhai was travelling and intercepted him at Kutiyana bus stand at about 3 p.m. The Deputy Superintendent of Customs was also with Inspector Mehta and Vallabhdas Nagjibhai was taken down from the bus at Kutiyana. On search in the presence of witnesses, five bars of gold weighing about 84 tolas were recovered from his possession. All these five bars bore marks of foreign origin and were taken in possession by the customs authorities after preparing a recovery list. Further investigation was made in the matter and eventually on October 7, 1957, the Collector of Central Excise Baroda confiscated the gold bars under s. 167(8) of the Act read with s. 23 of the Foreign Exchange Regulation Act, 1947 and also imposed a penalty of Rs. 1,000/- each on the three appellants an a penalty of Rs. 500/- on Keshavlal. Thereafter a complaint was filed by the Assistant Collector of Customs under s. 167(81) of the Act before the magistrate at Porbunder on June 27, 1958. The case of Vallabhdas Liladhar was that he had not purchased the gold from any Arab but had brought it with him from Karachi in the year 1946. Vallabhdas Nagjibhai admitted the recovery of gold from him but said that it belonged to Vallabhdas Liladhar and he was carrying it at the request of the latter and that he did not know that it was smuggled gold. Narandas Nagjibhai also admitted that Vallabhdas Liladhar had come to their house with the gold but added that it was not

smuggled gold and that Vallabhdas Liladhar had told him that it belonged to him and was for sale. Keshavlal, the fourth person, who has been acquitted, said that the did not know anything about the matter and had no connection with it.

It may be added that the three appellants had made statements before the customs authorities and those statements were also put in evidence in support of the prosecution case. In those statements, they practically admitted the prosecution case that the gold was smuggled gold and they were trying to dispose it of. The magistrate convicted all the four persons under s. 167(81) of the Act and sentenced them to rigorous imprisonment for six months and a fine of Rs. 500/- He relied on the statements made by the appellants and Keshavlal before the customs authorities and also on the evidence produced before him, which was mainly about the recovery of gold.

All the four convicted persons appealed to the Sessions Judge. The appeal was heard by the Additional Sessions Judge, Porbunder who acquitted Keshavlal. The appeal of the other three (namely, the three appellants now before us) was dismissed and their convictions and sentences were upheld. The three appellants then went in revision to the High Court. The High Court rejected the revisions of Vallabhdas Liladhar and Vallabhdas Nagjibhai summarily. The revision application of Narandas Nagjibhai was admitted but was eventually dismissed. The three appellants then applied for leave to appeal to this Court which was refused. They then prayed for special leave from this Court, which was granted, and that is how the matter has come up before us.

Vallabhdas Liladhar, one of the appellants in Cr. A 48 of 1960, is dead. So far therefore as he is concerned, his appeal abates. It only remains to consider the appeal of Vallabhdas Nagjibhai (Cr. A. 48) and Narandas Nagjibhai (Cr. A. 80). Before however we consider the points raised before us on behalf of the appellants we may refer to the circumstances which have been found established by all the courts and on the basis of which the conviction of the appellants has been upheld. These circumstances are -

> (1) Though the price of gold at the relevant time was over Rs. 105/- per tola, the appellant were intending to sell these gold bars at a lower price of about Rs. 103/- per tola.
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> (2) The two appellants were working as goldsmiths at Porbunder and there was no reason why the gold had to be sent elsewhere for disposal. As Porbunder is a fairly large town, there was no reason why the gold could not be sold in the market at Porbunder.
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> (3) The two appellants displayed undue haste in the disposal of gold.
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> (4) The surreptitious manner in which the gold bars were kept by Vallabhdas Nagjibhai as shown at the time of recovery shows that the appellants knew that they were dealing with smuggled gold.
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> (5) The amount of Rs. 3,600/- was advanced to Vallabhdas Liladhar but the entries in the account book of the appellants were made in the name of the brother of Vallabhdas Liladhar who is the brother-in-law of the two appellants.
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> (6) The markings on the gold made it quite clear that it was of foreign origin and the two appellants could not be unaware of this, particularly as they work as goldsmiths.

In addition to the above circumstances, all the courts relied on the statements made by the two appellants before the customs authorities and the presumption under s. 178-A of the Act was raised and on that basis convicted the appellants, though the High Court held that even without the presumption under s. 178-A the evidence was sufficient to convict the appellants.

Learned counsel for the appellants has very properly not challenged the concurrent findings of fact by all the courts. He has raised four points for our consideration, which are these -

> (1) The statements made to the customs authorities were inadmissible in evidence as they were not properly proved.
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> (2) The statement made before the Collector of Customs were inadmissible in evidence under ss. 24 and 25 of the Indian Evidence Act.
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> (3) As the gold had already been confiscated and penalty had been imposed under s. 167(8) of the Act, there could be no further trial in a criminal court in view of s. 186 of the Act.
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> (4) The ingredients of s. 167(81) are not satisfied in this case.

So far as the first point is concerned, the only argument is that the lawyer who signed the statements made before the customs authorities was not produced to prove them, and therefore the statements cannot be held to have been properly proved. It is however clear that the statements were not only signed by the lawyer of the appellants but also by the appellants. In their statements in court, the appellants admitted that they had signed the statements, though they said that they did not know what the statements contained and they signed it on being asked by their lawyer. This part of the statements of the appellants has not been believed by the courts below and in our opinion rightly. As the statements bore the signature of the appellants which are admitted, they must be held to be proved by this admission and it was not further necessary to examine the lawyer who signed the statements along with appellants. The contention on this head must therefore fail.

Re. (2).

As to the second point, we are of opinion that s. 25 of the Indian Evidence Act has no application on the facts of the present case which are on all fours with the facts in The State of Punjab v. Barkat Ram [[1962] 3 S.C.R. 338]. In similar circumstances it was held by this Court in that case that customs officers are not police officers and statements made to them were not inadmissible under s. 25. Section 24 would however apply, for customs authorities must be taken to be persons in authority and statements would be inadmissible in a criminal trail if it is proved that they were caused by inducement, threat or promise. But the finding of all the courts is that the statements were not made on account of any inducement, threat or promise as required by s. 24 of the Indian Evidence Act. In the face of this finding, therefore. it cannot be said that the statements are inadmissible under s. 24 of the Indian Evidence Act.

Re. (3).

Next the appellants rely on s. 186 of the Act, which reads as follows :-

> "The award of any confiscation, penalty or increased rate of duty under this Act by an officer of Custom shall not prevent the infliction of any punishment to which the

person affected thereby is liable under any other law."

It is urged that when s. 186 lays down that the award of any confiscation, penalty or increased rate of duty under the Sea Customs Act shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law, it necessarily forbids by implication infliction of any punishment to which the person affected thereby is liable under the Sea Customs Act itself. In this connection our attention is drawn to certain observations in Leo Roy Frey v. The Superintendent District Jail [[1958] S.C.R. 822, 827]. It is true that in that case this Court referred to s. 186 of the Act; but that case was not directly concerned with the question whether a prosecution under s. 167(81) of the Act is permissible after the award of confiscation, penalty or increased rate of duty under s. 167(8) of the Act in view of s. 186. Clause (81) in s. 167 was introduced by the Amending Act No. 21 of 1955. Before that there were 80 clauses in the section, and the scheme of those clauses was that a person could either be dealt with by the award of confiscation, penalty or increased rate of duty, or by a prosecution before a magistrate. It was in those circumstances that s. 186 provided that the award of confiscation, penalty or increased rate of duty would not bar infliction of any other punishment under any other law. The intention of the legislature by this provision in s. 186 was clearly to allow a prosecution under any other law even though there might be award of confiscation, penalty or increased rate of duty under the Act. Section 186 was thus meant for permitting prosecutions in addition to action under the Act in the shape of confiscation, penalty or increased rate of duty; it was never intended to act as a bar to any prosecution that might be permissible after the award of confiscation, penalty or increased rate of duty. It was merely an enabling section and not a barring section and seems to have been put in the Act ex abundanti cautela. When however, cl. (81) was introduced in s. 167, it became possible in some cases where goods had been confiscated and penalty inflicted under the Act by the customs authorities to prosecute persons also under cl. (81) of the Act. That however would not change the nature of the provision contained in s. 186 which was an enabling provision and not a barring provision. If the intention was to bar prosecutions in consequence of the award of confiscation, penalty or increased rate of duty, the words of s. 186 would have been very different. We cannot therefore read in s. 186 a bar by implication to a prosecution under the Act, simply because s. 186 enables prosecution under any other law. In this view of the matter, s. 186 is no bar to the prosecution for an offence under the Act in connection with a matter in which the award of confiscation, penalty or increased rate of duty has been made.

Re. (4).

Next it is contended that the ingredients of cl. (81) of s. 167 are not satisfied inasmuch as it is not proved that the intention of the appellants was to defraud the government of any duty payable on the gold which was the subject matter of the charge in this case or to evade any prohibition or restriction for the time being in force. It is true that before cl. (81) can apply it has to be proved inter alia that the person charged thereunder with possession of any dutiable or prohibited or restricted goods or concerned in carrying, removing, deposition, keeping or concealing such goods has the intention of defrauding the government of any duty payable thereon or of evading any prohibition or restriction thereon for the time being in force. So it is said that the prosecution has failed to prove by positive evidence that the intention was to defraud the government of the duty payable on the gold in this case or to evade the prohibition or restriction on the import thereon for the time being in force. We have not been able to understand this argument at all. Once it is proved that the gold is smuggled gold, it follows that it was brought into the country without payment of duty or in violation of the prohibition or restriction in force and whosoever brought it and whosoever dealt with it thereafter knowing it to be smuggled in the manner provided in the section

must be held to have the intention of evading the payment of duty or violating the prohibition or restriction. There is no force in this contention also.

Lastly it is urged that the substantive sentence of imprisonment in the case of the two appellants before us may be reduced to the period already undergone, particularly, as the appellants have been on bail since March 1960 and it would not be in the interest of justice to sent them back to jail for a short period after four years when about half the sentence has already been served out. We however see no reason to interfere with the sentence in cases of this nature. The appeals therefore fail and are hereby dismissed.

Appeal dismissed.

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