

Girdhari Lal Gupta and Another

Vs

D. N. Mehta, Assistant Collector of Customs and Another

Criminal Appeals Nos. 211 and 212 of 1969

(S. M. Sikri, I. D. Dua JJ)

18.08.1969

JUDGMENT

SIKRI, J. -

1. These appeals, by special leave, are directed against the judgment of the High Court at Calcutta whereby the High Court (A. K. Das and K. K. Mitra, JJ.) set aside the order of acquittal and convicted the appellants before us under Section 23(I-A) of the Foreign Exchange Regulation Act (VII of 1947)-hereinafter referred to as the Act. The appellant, Girdharilal Gupta, and the appellant Puranmall Jain, were sentenced to rigorous imprisonment for six months each and to pay a fine of Rs. 2,000/- each, in default, to rigorous imprisonment for a further period of three months each. The appellant, Bhagwandeo Tiwari was sentenced to rigorous imprisonment for three months and to pay a fine of Rs. 1,000/-, in default, to rigorous imprisonment for two months. The firm was sentenced to pay a fine of Rs. 2,000/-. It does not appear that any special leave was obtained on behalf of the firm.

2. In order to appreciate the contentions made before us it is necessary to state the relevant facts. On October 25, 1958, Customs Preventive Officer B. Roy examined a parcel (wooden case) which purported to contain Rasogolla, Achar, Paper and dried vegetable, booked for Hongkong, to be taken by the Swiss Air of which the Indian Airlines Corporation had been the cargo handling agent. The articles were declared to be worth Rs. 20/- but the freight which had been paid came to Rs. 127.73 P. This excited the suspicion of the Customs Preventive Officer, B. Roy, and on opening the parcel and breaking down the case five hundred ten currency notes of the denomination of hundred rupees each, valuing Rs. 51,000/- were found. The name of the consignor was Ramghawan Singh at Karnani Mansion, Park Street, Calcutta, but on enquiry no trace could be found of this Ramghawan Singh at Karnani Mansion. In the course of further investigation suspicion fell on M/s. Agarwala Trading Corporation of which the appellants Girdharilal Gupta and Puranmall Jain were the partners and the appellant Bhagwandeo Tiwari was an employee. On January 22, 1959, the office of the firm at 191, Mahatma Gandhi Road and the alleged residence of the partners at 11-B Jatindra Mohan Avenue were searched. The appellant, Bhagwandeo Tiwari, on being identified by the Traffic Assistant of the Indian Airlines Corporation, Ambar Nath Sen, P.W. 4, and one loader of Thai Airways, S. K. Battu, P.W. 26, was arrested. Certain incriminating documents, including account slips and cash books of the firm were seized.

3. On June 3, 1959, a complaint was lodged at the instance of the Assistant Collector of Customs, Calcutta. After stating the above facts it was alleged in the complaint that sending out money in Indian Currency was prohibited under Section 8(2) of the Act and any attempt to do the same was punishable under Section 23-B of the Act.

4. At the trial a number of witnesses were examined. B. Roy, Customs Preventive Officer, gave evidence regarding the discovery of Rs. 51,000/- in Indian currency notes, apart from Rasogollas, pickles, etc. on October 25, 1958. No cross-examination was directed to show that this did not happen on October 25, 1958.
5. S. A. D. Moira, Traffic Assistant of the Indian Airlines Corporation, P.W. 2, who checks freight and does other transshipment work in course of his at Dum Dum airport, deposed that he received the relevant documents on October 25, 1958, from Calcutta office. He said that the documents were in the handwriting of N. Sen of the Freight Section of the Calcutta Office. Armed with the letter of authority, he took the parcel to the Customs Officer and P.W. 1, B. Roy, asked him to open the parcel and currency notes of the value of Rs. 51,000/- along with other things were discovered.
6. R. R. Mukherjee, Traffic Officer of the Indian Airlines Corporation, P.W. 3, is another witness to the recovery of the currency notes. P.W. 4, Ambar Nath Sen, was the Traffic Assistant in the Indian Airlines Corporation, who had typed out the consignment not in respect of this parcel after seeing the shipping bill (Ext. 1). He identified the appellant, Bhagwandeo Tiwari, as the person who had handed over the shipping bill to him and the letter of authority, Ext. 11. He said that he calculated the freight and received the freight from this appellant. He further said that this appellant signed the consignment notes in Hindi in his presence and he remembered having seen this appellant writing a postcard on the adjoining table while he was preparing the consignment notes. He further stated that this immediate superior officer, Mr. P. K. Chatterjee, was also present at the time this consignment was being booked. Apparently this is not first time that this appellant had gone to the Indian Airlines Corporation because P.W. 4 says that seven days ahead of October 24, 1958, this appellant had called on him with another shipment although that consignment was booked by P. K. Chatterji.
7. Some days after October 25, 1958, this witness, P.W. 4, was taken by the Customs Officer to some place to find the man who is alleged to have booked the parcel. Two or three months thereafter he was again taken by the Customs Officers to another place in Burrabazar area, which was the place of Agarwala Trading Corporation, and he said that he pointed out the appellant, Bhagwandeo Tiwari, as the one who had taken the parcel to him on October 24, 1958. He was cross-examined in order to show that he could not remember customers. He admitted that it was not always possible for him to remember all the men who came in contact with him in the course of his work, but he said that he had told C. R. Basu who was investigating the case that the person who brought the parcel was an oldish man and lean one, and had also described his nose. He further admitted that at the place he identified appellant Bhagwandeo Tiwari, he was the only oldish man there. He said that he did not think that he committed a mistake unless the man he identified had a double in the shape of a twin brother and the like. He further admitted that he had been trying to recollect the appearance of the man to reconstruct in his mind the outline of his appearance as far as he could.
8. The evidence of P.W. 4 impresses us and there is no reason why we should not place reliance on his evidence.
9. P. K. Chatterjee, P.W. 5, speaks of the earlier visit of the appellant Bhagwandeo Tiwari as the person who called on him with the shipping bill on October 17, 1958.
10. C. R. Basu, P.W. 6, Officer of the Customs who investigated the case, said that after making enquiries he applied for the issue of search warrant to search the premises No. 191, Mahatma Gandhi Road. He also applied for a search warrant to search the premises of the partners of the firm

at 11-B, Jatindra Mohan Avenue. He did not himself search 11-B, Jatindra Mohan Avenue, but went to execute the search warrant at 191, Mahatma Gandhi Road, where on the identification of P.W. 4 he arrested the appellant Bhagwandeo Tiwari. He then conducted the search of the premises in the presence of the witnesses and took into possession one Rokar, one Khata Bahi, one Nakal Bahi, the attendance register and three account slips which he marked 8, 9 and 10 (Ext. 9 and 9/1 and 9/2 respectively). We may reproduce his evidence regarding the discovery of these account slips because a great deal of argument has been addressed to us on the recovery of these slips. He stated :

"The three slips, about which I have spoken just now, are in the same condition to-day as I found them on the day when they were seized. The witnesses to the search I conducted are Radheshyam Gupta and Lalit Kumar Chandu Lal Parekh. Here is the search list over my signature and the signature of the witnesses. (Ext. 10)."

In his cross-examination he states :

"You are right that Exhibits 9, 9/1 and 9/2 are included in Serial No. 38 of the search list, Ext. 10."

The search list does not mention the slips separately but only mentions loose sheets in a sealed parcel. It has been urged that there is no evidence to show when the seal was opened. It is suggested that these slips have been fabricated and planted. No such question was put to the witnesses and we are unable to presume that the investigating officer would go about fabricating account slips in order to rope in the appellants.

11. The prosecution produced two witnesses who had signed the recovery list. The evidence of Radheshyam Gupta, P.W. 7, must be discarded because although he was examined before the Chief Presidency Magistrate he was not made available for cross-examination. The learned counsel, Mr. Bhattacharya, suggested that if this witness had been produced for cross-examination he would have deposed against the prosecution. We are unable to draw any such presumption. The other witness was Lalit C. L. Parekh, P.W. 8. He had signed the search list but on cross-examination he stated that "Basu had taken slips of paper from the 'Agal Bagal' of the guddy, by which I mean from underneath the Takia on the bed". He further said that "bits of paper Basu found from a wooden case as well". He further stated as follows :

"You are right that Basu placed all these bits of papers at one and the same place. How many pieces ? I cannot say. I did not count. By guess I can say that the number of bits of paper would run to 50 or 60. I signed all the pieces of paper which were found so."

12. The learned counsel fastens on the last line and says that these slips do not bear the signature of Lalit. C. L. Parekh, and therefore it is clear that these have been fabricated later. We are unable to sustain this contention. The witness had signed a number of documents including the search list and he may well have thought that he had signed every piece of paper which was seized. No such question was put to the investigating officer.

13. P.W. 11, N. R. Paul, who was the assistant attached to the Appraising Department of the Calcutta Customs deposed regarding the preparation of the shipping bill. It appears that the shipping bill bore the words "Thai Airways Co." and these words were scored out and "Swiss Air" written in hand. He could not say who corrected the entry but nothing turns on this because it may be that the original

idea was to send the parcel by Thai Airways but later on for some reasons it was not possible to send that parcel through this airways. The prosecution led overdone to show that as a matter of fact appellant Bhagwandeo Tiwari had approached somebody in Thai airways but we need not dwell on this part of the case.

14. The prosecution also produced Shridhar Chatterjee, handwriting expert, who examined the signature reading as "Ram Chandra" written in Hindi and in pencil in the two way bills, Exts. 3 and 4, and the specimen writing. He was of the opinion that the writer of the specimen writing was the writer of the signature "Ram Chandra" appearing in the airway bill. We may mention that Bhagwandeo Tiwari is alleged to have signed as "Ram Chandra". The expert also gave the opinion that the type-written papers, Exts. II and IX had been typed on the same machine.

15. Exhibit 9/2, one of the seized account slips, is a very important document. The official translation is printed in the records and reads :

#

"Translation of Ext. 9/2

dated 24-10-58

A/C 1

Rs. 2/8/- 4 cases-

Godown In cash -/8/- 3 "

opened below (Paper Torn) cases bound and goods brought. (Pettis) (?) -/4/- Case 'I' (Illegible) (Paper torn) Cases (Pettis) -/2/- Illegible (Illegible) 2 S.B. -/15/- for coming and going to I.A.C. ----- Rs. 223/8/- 4/5/- 127/73- Hongkong Shanghai (torn and illegible)"###

The High Court had to translate it again and the last line was translated into "Hongkong Lagaya" in place of "Hongkong Sanghai"

16. In the account books of M/s. - Agarwala Trading Corporation (Exts. 21 and 21/1) under the entries, dated October 24, 1958, on which date the booking is alleged by the prosecution to have been done, an entry appears follows :

# "Rs. 4/5/- Through Bhagwan Deo -/8/- colli (Janka) -/15/- Rickshaw fare 2/14/- Cart Charge Rs. 1/8/- through Ghanshyam and Pandey -/4/- Bus fair 1/4/- Bus Tram"###

It will be noticed that the same items appear in Ext. 9(2). The breakup in Ex. 9(2) is slightly different but in the account book the four annas and two annas entries have been added to Rs. 2/8/- to make Rs. 2/14/- as cart charge.

Again the entries in Ext. 9/1 are as follows :

# " -/1/- Bus hire for going home, 1/4/- Came from home to Thai (?) taxi -/13/-

Riksha-hire from Thai -/1/- Coolie -/4/- Thai office Coolie ----- 2/6/-  
Rs. 147/10- In cash" The corresponding entry in the account books are as follows :  
"Rs. 2/6/. (Bus fare -/1/- Taxi fare Rs. 1/4/- Rickshaw Rs. /12/- Coolie -/5/-"###

It is true that the entry of Rs. 127/73 which exists in Ext. 9/2 has not been carried over into the account books but perhaps that would have been even too much for an accountant to do. He never dreamt that these entries of Rs. 4/5/- and Rs. 2/6/- in the account books would be seized upon by the prosecution to complete the case against the appellants.

17. Be that as it may, the entries in the account books demolish the case of defence that these slips were fabricated and that they had nothing to do with the firm. Ex. 9/2, on the other hand, clearly shows that somebody had gone to the I.A.C. office and paid -/15/- for going and coming to the I.A.C. office and paid the incidental charges.

18. Mr. Bhattacharya, who followed. Mr. Chagla for the appellants, contends that a serious question of law is involved, the question being that if an investigating officer conducted a search his evidence cannot be relied on unless it is corroborated. It is a novel proposition and he has not been able to cite any authority or principle in support of it. It all depends of the facts in each case. At any rate, here we have the corroborative evidence of P.W. 8, who signed the search document and also the entries themselves in the account books and their tallying with the slips.

19. It was urged on behalf of the defence counsel that these slips could not be taken into consideration at all because they are not evidence. We are unable to appreciate why they are not evidence. These are part of the things discovered during search and if the entries therein are carried out into the account books there is no reason why these things could not be looked at.

20. The learned counsel has taken us through the judgments of Chief Presidency magistrate and the High Court. We are in agreement with the conclusions arrived at by the High Court. We have ourselves gone into the evidence as the High Court had reversed the order of acquittal and in one or two places made minor mistakes.

21. Mr. Chagla, while arguing on behalf of the partners, said that there was evidence that one partner was not in Calcutta on the 24th or 25th October, 1958, as he was in Japan. But even if we take this fact into consideration, which fact was not brought to the notice of the Chief Presidency Magistrate or the High Court, it does not help him at all. Entries were made in the account books and it was the firm's money which was spent and he being an active partner is clearly liable under Section 23-C(1) of the Act which reads :

"23-C(1) If the person committing a contravention is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention."  
(Editor's footnote :- Under the Explanation to this section a 'company ' means any body corporate and includes a firm or other association of individuals)

This sub-Section deems the appellant Girdhari Lal Gupta guilty. The question is : Has he proved that the contravention took place without his knowledge and he exercised due diligence to prevent such contravention ? What he said in his statement under Section 342, Cr.P.C., was that he alone looks after the affairs of the firm. There is also no evidence to show that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention. The entries were there in his account books and the only thing that he had to say about these entries in his account books is that they pertain to the routine work of the firm. Under the circumstances we are unable to exonerate him of the charge.

22. As far as the other partner, Puranmall Jain, is concerned, he stated that he does not look after the affairs of the firm and further that he stays all alone at Sriganganagar in Rajasthan and does not stay in Calcutta. The prosecution has not led any reliable evidence to prove that he took any active part in the conduct of the business of the firm. In these circumstances we are inclined to give him the benefit of doubt and acquit him.

23. In the result the appeal of Puranmall Jain is allowed and he is acquitted of the charge. His bail bond shall stand cancelled. The appeals of Girdhari Lal and Bhagwandeo Tiwari are dismissed.

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