

Hiralal Vallabhbhai Patel

Vs

State of Maharashtra

Criminal Appeal No. 91 Of 1969

(H. R. Khanna, P. Jagmohan Reddy, J, M Shelat JJ)

07.03.1972

JUDGMENT

SHELAT, J. -

1. The appellant, on a trial by the Presidency Magistrate, 23rd Court, Bombay, was convicted under Rules 126-P(ii) and 126-P(2)(iv) of the Defence of India Rules, 1962 and Section 135(b)(i) and (ii) of the Customs Act, 1962, and was sentenced to nine months' rigorous imprisonment on each of the two counts. The sentences were directed to run concurrently. On a appeal the said order of conviction and sentence, the High Court rejected the appellant's appeal and upheld the Trial Magistrate's order of conviction and sentence. Hence this appeal by special leave.

2. The relevant facts leading to the appellant's prosecution may be stated as follows :

"On information that a certain room in the occupation of one Kolvekar, situate in a building known as 'Suryamahal' on Girgaum Road, Bombay, was being used as a base for smuggled gold, Superintendent Wagh of the Central Excise organized on October 24, 1963, a raiding party. The party consisted of Deputy Superintendent Rane, Inspectors Salgonkar and Hiremath and certain officers. Rane had with him the requisite warrant to enter and search the said room. The raiding party took along with them two panchas. At about 2.50 p.m. the raiding party entered Suryamahal to go to Kolvekar's room, being room No. 19, on the first floor, from Girgaum Road side of the building. Inspector Hiremath was left in the open passage on the ground floor to watch the comings and goings of anyone from the said room, while Rane, Salgaonkar and the panchas went up to the first floor, Rane left the search to the other members of the staff who had accompanied him and he and Salgaonkar remained in the common passage outside the room watching the search. In the meantime the two officers saw the appellant and another person coming up the staircase, each of them having a bag in his hand. On their reaching room No. 19 and peeping inside to see what was happening, Rane inquired to them as to what they wanted. Instead of replying to such a simple question, the appellant and his companion stated running down the staircase. Both Rane and Salgaonkar thereupon ran after them, the former shouting 'Pakado Pakado' (catch-catch). The appellant, according to the prosecution, ran out of the eastern side of the building dropping the bag which was with him, Rane, who chased him, saw him discarding that bag on the landing. He picked it up and resumed his pursuit of the appellant. The other man, who was with the appellant, ran on the western side of the building, also dropping the bag which he had with him, and though chased by Salgonkar, managed to make good his escape. By the time

Salgaonkar, who as aforesaid was trying to catch the other man, reached the gate of the building on the western side, that is on the side of Thakurdwar Road, the appellant probably finding that Hiremath had stationed himself on the Girgaum Road side, turned towards Thakurdwar Road side, where Salgaonkar caught him near a workshop belonging to witness Pilankar and known as the Thakurdwar Brass Works. In the meantime Rane, as also Hiremath, arrived at the spot and apprehended the appellant. While the appellant was being secured as aforesaid, Pilankar noticed a plastic bag lying in front of building on the western side. It was the bag which the appellant's companion had with him and which he had discarded on the way while he was making good his escape. The appellant was then taken to Kolvekar's room where the search had by then been completed. The bag discarded by him on the landing while he was running away and which Rane had picked up was then opened in the presence of the panchas. The bag had in it a jacket which on being unstitched revealed hundred slabs of gold with foreign markings. Each slab weighed ten tolas. The other bag which the appellant's companion had discarded also contained a jacket which on being unstitched disclosed another lot of hundred slabs of gold, each of ten tolas, with foreign markings. The search of Kolvekar's room brought out in all eleven similar slabs of gold. After the panchnama and the statements of the appellant and the witnesses were recorded, the gold secured by these officers was as taken charged of by the customs authorities. A sample of the said gold was sent to the Mint Master, Bombay for his examination and was found to be foreign gold. On these allegations, the appellant was, as aforesaid, tried before the Presidency Magistrate, 23rd Court, Bombay.

3. The defence of the appellant was that he had arrived on that day from Daman for purchasing certain materials, and that while he was in Thakurdwar Road locality he entered into this building with a view to answer the call of nature. As he entered the building from that side, a commotion was going on and on suspicion that he was the person whom the officers were chasing he has caught by them although he was there on an innocent errand. He denied that he had gone with any companion near Kolvekar's room or that they had peeped into that room, or that Rane had asked them as to what they wanted, or that thereupon he and his companion had started running, or that they were chased by Rane and Salgaonkar, or that he had dropped any bag which was with him, or that he was caught by Salgaonkar in the manner alleged by the prosecution.

4. As against the aforesaid denials of the appellant, the Trial Magistrate had before him the testimony of the three excise officers, namely, Rane, Salgaonkar and Hiremath, which was sought to be corroborated by the evidence of P.W. 7, Anant Pilankar, the proprietor of Thakurdwar Brass Works, situate at the western entrance of Suryamahal, and who claimed to have seen the appellant being caught by Salgaonkar and the other bag lying discarded by the appellant's companion whom Salgaonkar failed to catch during the chase of him. The prosecution case as unfolded by these witnesses was also to be corroborated to a certain extent by the panch witness, Pandurang Sapre.

5. The Trial Magistrate accepted the evidence of the three officers and also of Pilankar and Sapre which furnished corroboration and rejecting the defence of the appellant convicted him on both the counts, that is under Rule 126-P of the Defence of India Rules, 1962, as also under Section 135 of the Customs Act, 1962.

6. That conviction was sought to be challenged in the High Court on three grounds, (1) that the Gold Control Rules were ultra vires, and that therefore, the appellant's prosecution was

misconceived, (2) that the appellant was innocent and was apprehended by the said three officers, while he was entering into the building with a view to ease himself, on a mere suspicion that he was the person who had run out of the building and whom Rane was chasing, and (3) that the gold seized on that occasion was not proved to be smuggled gold. The High Court rejected the first ground as the question as to the vires of the said rule was concluded by its own previous judgment in *Amichand v. Kotak*. (67 Bom LR 234). That question was not canvassed before us, and therefore, we need not go into it. The second question was purely factual and the High Court on a fresh appraisal of the evidence gave its own finding, concurring with the Trial Magistrate. As regards the third question, the High Court agreed with the Trial Magistrate that the gold seized, as aforesaid, has been established to be foreign gold, smuggled into the country without any customs duty having been paid on it and which had not been declared as required by the Gold Control Order and the Rules framed thereunder. In the result, the High Court rejected the appellant's appeal.

7. There being thus an agreement between the Trial Magistrate and the High Court over the factual issues arising from the evidence, namely, the arrival of the appellant and his companion, each carrying a bag which ultimately was found to contain foreign marked gold and the seizure and arrest of the appellant when he tried to escape, we would have been reluctant to go into the evidence once more for a fresh appraisal of it, but for the point of mistaken identity raised by Counsel. Mr. Sen took us to the plan of the building Suryamahal, the two staircases shown therein by which the appellant and his companion ran out of the building into the open passage outside, the spots where they both discarded the bags carried by them when they came to Kolvekar's room on the first floor, the spot where Rane and Salgaonkar had stood when Rane first saw the appellant and his companion, the spot where Hiremath had stationed himself in the passage outside on the ground floor, and finally, the spot where the appellant was caught by Salgaonkar. He also took us through the evidence of the three officers, Rane, Hiremath and Salgaonkar, and sought to contend that if the appellant was the person whom Rane first saw with the bag climbing the staircase, then peeping into room No. 19 and on being questioned, running away from that place by the staircase on the eastern side, it would have been Inspector Hiremath, who had stationed himself just outside the opening there, who would have caught him and the appellant would not have been able to run up to the other end of the passage which opened on Thakurdwar Road near the Thakurdwar Brass Works owned by witness Pilankar. Mr. Sen argued that therefore this was a case of mistaken identity, Salgaonkar catching hold of the appellant when he entered into that passage in order to ease himself just at the critical moment when Rane and Salgaonkar were chasing the two persons whom they had seen near Kolvekar's room with the two bags and when Salgaonkar came out chasing the man who escaped through the gate on Thakurdwar Road side. The argument, thus, was that since Hiremath was standing in the open passage just outside the staircase on the eastern side, it was impossible that he would miss the appellant at that point when the appellant came out through that staircase into the passage where Hiremath was watching from that place Kolvekar's on the first floor as it was being searched.

8. We are unable to accept such rigid reading of the evidence of Hiremath and the other two officers concerned with the ultimate seizure and arrest of the appellant. The argument of Mr. Sen is based on an assumption that Hiremath was standing all throughout at point No. 10 in the plan in the open passage outside, and was stationary there all throughout. It is certain that from the place he was in that passage he must have heard the commotion coming from that staircase when Rane shouted 'catch-catch', and he and Salgaonkar started chasing the appellant and his companion. It appears from the evidence of Rane that Hiremath must have taken his position near the gate opening into Girgaum Road, which was nearer to the place where the appellant would come from the staircase on that side. The appellant must have seen him near that gate, and therefore, he, the appellant, ran

towards the gate on Thakurdwar Road side, where by the time he reached that spot Salgaonkar chasing the other man but losing sight of him came running from the staircase on the other side, that is, the western side. Had Hiremath been at point 10 in that open passage shown in the plan, there is no doubt that the appellant would have straight run into him and would have been caught by Hiremath at that spot. The fact that Hiremath did not catch him at that spot and the appellant could run up to the end of that passage on Thakurdwar Road side itself shows that Hiremath at that juncture was not at point 10 shown in the plan but was near the gate opening on Girgaum Road.

9. The other infirmity in the argument is that even though the appellant could escape Hiremath for one reason or the other, it does not take into account the fact that Rane was all along running immediately behind the appellant until he was caught by Salgaonkar at the other end of that passage and had not lost sight of him at any moment throughout that short chases which must have hardly lasted for about a minute. There was, therefore, no possibility of Rane being mistaken about the person whom he was chasing being the appellant as he had not lost sight of him throughout his pursuit. There was, no question of his committing any mistake about the appellant as he had first seen him climbing the staircase up to Kolvekar's room, then peeping into that room, then his having asked him as to what he wanted there, the appellant then running down the staircase, Rane chasing him at once and shouting 'catch-catch', the appellant then discarding on the staircase the beg which was with him and then Rane picking up that bag and resuming the chase of him until he was caught in the passage outside by Salgaonkar. The whole thing right from his first sighting the appellant on the landing of that staircase until he was caught could not have taken more than a minute, and therefore, so far as Rane, who had his eyes set upon the appellant all throughout was concerned, he could not possibly have made any mistake about the person whom he has hotly pursuing. Significantly, the defence never put a single question to Rane to show that he had lost sight of the appellant at any given point during his pursuit of him. Therefore, when Salgaonkar caught him and handed him over to Rane, Rane could not possibly have mistaken him for any other person, that is, the person whom he had been chasing. There is, thus, no substance in the contention that this was a case of the appellant having been mistakably caught for another person.

10. The bag which the appellant had when he came near Kolvekar's room did not contain gold. Obviously, therefore, the appellant was in possession of large quantity of gold in respect of which there was ample evidence to show that there was at any rate no declaration made as required by the said rules, nor a permission obtained from the Reserve Bank. The mere fact that he had discarded that bag which undoubtedly was not with him at the time when he was arrested makes no difference. He discarded that bag either because his carrying it with him would have impeded his escape or because he did not wish it to be with him when he would be caught. But the fact that he did not have that bag with him when he was apprehended would not mean that he was not in possession of the gold contained in it. For, it was when he was in possession of the gold that Rane and his companion tried to catch and arrest him. The case of the appellant, thus, fell squarely under Rule 126-P and the appellant was, therefore, rightly convicted and sentenced thereunder.

11. In this view it is not necessary to go into the question of his conviction under Section 135 of the Customs Act since the sentence imposed upon the appellant under that Act was directed to run concurrently with the sentence imposed under Rule 126-P of the Defence of Indian Rules, 1962. The appeal against his conviction and sentence under that rule fails and is consequently dismissed.

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