

Balumal Jamnadas Batra

Vs

State of Maharashtra

Criminal Appeal No. 74 of 1971

(M.H. Beg, P.N. Bhagwati, R.S. Sarkaria JJ)

29.08.1975

JUDGMENT

BEG J. -

1. The appellant before us by special leave to appeal was convicted under Section 135(b)(ii) of the Customs Act, 1962 (hereinafter referred to as 'the Act'), and sentenced to six months' rigorous imprisonment and a fine of Rs. 2,000, and in default, to three months' further rigorous imprisonment. Goods in respect of which this offence was found to have been committed were also confiscated.

2. On April 21, 1967 police officers of the Anti-Corruption and Prohibition Bureau, Greater Bombay, acting on information received, had searched room No. 10 at 56, Sheriff Deoji Street, Bombay. This room was divided by partitions into three parts. In the central portion the police found the appellant and three other persons. This portion was against sub-divided with a locked connecting door fixed in the passage to the sub-divided part. This was opened by one of the two Godrej lock keys produced by the appellant from a side pocket of his trousers. Eleven wooden boxes covered with jute cloth and secured by iron strips were found there. On opening them six of them were found to contain cigarette lighters of "Imco Triplex Junior" brand "Made in Austria". Each of six boxes was tightly packed with 1200 lighters. The remaining five boxes contained fifty sealed tins of flints for cigarette lighters which bore the following writing : "Tego Lighter Flints of Superior Quality Made in Germany". On the wooden boxes containing the lighters were found written "Dubai" and "Made in West Germany" inscribed on them. A panchnama was prepared before panchas. A rent receipt in the name of the appellant in respect of room No. 10, in this house, of which as portion was occupied by the appellant and a bill for the consumption of electricity were also seized from the custody of the appellant together with the Godrej lock and the keys produced by the appellant. Subsequently, the seized articles were made over to the Inspector of Central Excise and Customs Marine and Prevention Division, Bombay, on April 24, 1967, under Section 110 of the Customs Act.

3. The value of 7200 cigarette lighters was stated as Rs. 14,400 and of 250 tins of flints as Rs. 15,000 on which customs duty of RS. 15,840 and Rs. 10,500 respectively was alleged to be payable. In the complaint filed on October 30, 1968 by the Assistant Collector of Central Excise Marine and Prevention Division, Bombay, it is alleged that the cigarette lighters and flints were imported into India without an import licence and in contravention of provisions of Government of India, Ministry of Commerce & Industry Import Control Order No. 17/55 dated December 7, 1955 (as amended) issued under Section 3(2) of the Import & Export (Control) Act, 1947, which was to be deemed to be an order passed under Section 11 of the Act. It was submitted that the accused, having been

concerned in a fraudulent evasion of payment of Rs. 26,340 as customs duty to the Government had committed offences punishable under Section 135(a) and (b) of the Act. The goods were also, as a necessary consequence, said to be liable to confiscation under Section 111(d) of the Act.

4. The appellant had denied being in possession of the offending goods although he had admitted the production of keys from his possession. He alleged that the portion of the room from which the goods were recovered was sublet to Dwarumal and Kishen who had kept the goods there. The appellant's explanation had been disbelieved by the trying Magistrate as well as by the High Court. The production of the key which according to the prosecution evidence, the appellant had at first refused to produce proved that the portion in which the boxes were kept was in appellant's exclusive possession with all that was contained in it. It is possible that he may have sublet other portions of the partitioned room to other persons but there is no reason to doubt that the appellant was not only in possession of the boxes but knew something about the incriminating nature of their contents. Otherwise, why should he, at first, have refused to produce the key he had? Furthermore, the appellant had not given any evidence to show that his sub-tenants had placed the boxes there or that there was any reason why he should allow them to use the portion reserved by him for himself. His case rested on his bare assertions is a written statement. Of course, no one had come forward to state or allege that the goods found in the circumstances stated above, had been imported without (sic) payment of duty. The only question argued before us was whether the presumption contained in Section 123 of the Act, corresponding to Section 128(A) of the Sea Customs Act, 1878, or, any other provisions of law would place the onus of proving innocent possession of these goods upon the appellant. Section 123 of the Act reads as follows :

123. Burden of proof in certain cases. - (1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be on the person from whose possession the goods were seized.

(2) This section shall apply to gold, diamonds, manufacturers of gold or diamonds, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

5. It is true that lighters and flints were notified as provided in Section 123(2) in the Official Gazette of August 26, 1967. Nevertheless, as the provisions of Section 123(1) of the Act only lay down a procedural rule, they could be applied when the case came up for trial before the Presidency Magistrate who actually decided it on July 15, 1969. Indeed, the complaint itself was filed on October 30, 1968. It is immaterial that the appellant was found in possession of the goods on April 21, 1967. There is, however, another objection to the applicability of Section 123(1) of the Act. It is that it would apply only to goods seized under the Act. It is contended that the goods in respect of which the appellant was prosecuted were not seized under the Act. Reliance was placed for this contention upon *Gian Chand v. State of Punjab* (1962 Supp 1 SCR 364 : AIR 1962 SC 496 : (1962) 1 Cri LJ 485).

6. Even if the goods with which we are concerned here were not seized under the Act as provided by Section 11 of the Act, it is contended on behalf of the State that Section 106, read with Section 114 of the Evidence Act, was sufficient to enable the prosecution to ask the Court to presume that the appellant knew that the goods have been smuggled or imported in contravention of the law. The appellant had not produced evidence to show that the goods were legally brought into India. Reliance was placed on behalf of the prosecution on : *Collector of Customs, Madras v. D. Bhoomull* ((1974) 2 SCC 544 : 1974 SCC (Cri) 784); *M/s. Kanungo & Co. v. Collector of Customs*

Calcutta ((1973) 2 SCC 438 : 1973 SCC (Cri) 846); Issardas Daulat Ram v. Union of India (1962 Supp 1 SCR 358 : AIR 1966 SC 1867 : 1966 Cri LJ 1507); Anant Gopal Sheorey v. State of Bombay (1959 SCR 919 : AIR 1958 SC 915 : 1958 Cri LJ 1429).

7. Learned Counsel for the appellant had, in his turn relied upon State of Punjab v. Gian Chand (Cri. Appeal No. 195 of 1962, decided by the Supreme Court on 2-4-1968). He contended that it was necessary for the prosecution to prove : (1) that, the goods in question were actually smuggled or brought into the country without payment of customs duty at a time when payment of such duty had become obligatory; and (2) that the appellant was dealing with them knowing them to be smuggled goods. It was contended that mere possession by the accused of such goods could not enable the prosecution to apply Section 106 of the Evidence Act when the appellant could not know where the goods came from. It was urged that there was no evidence which could enable the appellant to know where the goods came from or when the goods were imported or that duty, if leviable was not paid on them. The admissibility and sufficiency of the inscriptions on the goods and the writing on boxes in which they were found for proving the place from where they came or when they were imported were questioned. The contention was that even if the appellant is deemed to be in possession with full knowledge of what the goods actually were the Court could not go further and assume them to be smuggled or imported into the country from another country of their assumed origin after a time when the restrictions on their import had been imposed. Unfortunately, the appellant did not admit the possession of the goods at all. If he could have succeeded in explaining satisfactorily how he was an innocent receiver of such goods without knowing that they were illegally imported or smuggled he may have had a chance of getting the benefit of doubt. The very appearance of the goods and the manner in which they were packed indicated that they were newly manufactured and brought into this country very recently from another country. The inscriptions on them and writing on the boxes were parts of the state in which the goods in unopened boxes were found from which inferences about their origin and recent import could arise. The appellant's conduct, including his untruthful denial of their possession, indicated consciousness of their smuggled character or mens rea. In any case, there was some evidence to enable the courts to come to the conclusion that the goods must have been known to the appellant to be smuggled even if he was not a party to a fraudulent evasion of duty. Consequently, the appellant had been convicted only under Section 135(1) (ii) of the Act. We do not find sufficient reasons to interfere with this finding of fact or the sentence imposed. It would also follow that the goods were rightly confiscated.

8. Accordingly, this appeal is dismissed.

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