

Remo Paul Altoe

Vs

Union of India

Criminal Appeal No. 191 of 1977

(A. C. Gupta, Syed M. Fazal Ali JJ)

13.10.1977

JUDGMENT

GUPTA, J. -

1. This appeal is by special leave from a judgment of the Calcutta High Court; this Court in granting special leave limited the appeal; to only one ground, whether the trial Court had power to order confiscation of the goods found in appellant's possession while convicting him under Section 135 of the Customs Act.

2. The facts relevant for the purpose of the appeal are these. The appellant is a foreigner who arrived at Calcutta by air from Bangkok on June 28, 1975. On a search of his room in the hotel where he was staying in Calcutta, the Customs authorities found in his possession 1701 U.S. dollars and 4400 Canadian dollars which they seized as smuggled goods. On September 23, 1975 an Assistant Collector of Customs filed a petition of complaint in the Court of the Chief Metropolitan Magistrate, Calcutta, alleging, inter alia, that the appellant had brought in the foreign currency seized from his possession in violation of Section 13(1) of the Foreign Exchange Regulation Act, 1973 and was therefore liable to be convicted under Section 135 of the Customs Act, 1962. Section 13(1) of the Foreign Exchange Regulation Act, 1973 imposes restrictions on bringing or sending into India any gold or silver or any foreign exchange or any Indian currency. Section 67 of that Act provides :

Application of the Customs Act, 1962. - The restrictions imposed by or under Section 13, clause (a) of sub-section (1) of Section 18 and clause (a) of sub-section (1) of Section 19 shall be deemed to have been imposed under Section 11 of the Customs Act, 1962, and all the provisions of that Act shall have effect accordingly.

Section 11 of the Customs Act, 1962, to which Section 67 of the Foreign Exchange Regulation Act, 1973 refers, authorises the Central Government to prohibit the import or export or export of goods of specified description for purposes mentioned in the section; one of the purposes mentioned in clause (u) of Section 11(2) is the prevention of the contravention of any law for the time being in force. Section 111 of the Customs Act lists the various goods brought in from any place outside India which "shall be liable to confiscation"; clause (d) of the section mentions inter alia goods which are imported contrary to any prohibition imposed by or under the Customs Act or any other law for the time being in force. Section 135 of the Customs Act provides the punishment for fraudulent evasion of duty or prohibition imposed in relation to any goods under the Customs Act or any other law for the time being in force, and also for acquiring possession or in any way dealing with goods which the person concerned knows are liable to confiscation under Section 111.

3. The Metropolitan Magistrate convicted the appellant under Section 135 of the Customs Act and sentenced him to pay a fine of Rs. 2000, in default to suffer rigorous imprisonment for six months. The Magistrate further ordered that the "goods involved in this case are confiscated to the State if not already confiscated". The Calcutta High Court in revision affirmed the appellant's conviction but reduced the sentence of fine to Rs. 500 and affirmed the order of confiscation of the dollars. It is contended that the Magistrate had no power to order confiscation of the currency and the High Court was in error in affirming that order.

4. The order of confiscation was presumably made under Section 452(1) of the Code of Criminal procedure, 1973. Section 452(1) provides :

Order for disposal of property at conclusion of trial. - When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been committed, or which has been used for the commission of any offence.

Confiscation under Section 452(1) is one of the modes of disposal; of property after an inquiry or trial in a criminal court is concluded. The contention of the appellant is that operation of this general provision is excluded by the special provisions for confiscation of goods contained in Chapter XIV of the Customs Act, 1962. Chapter XIV of the Customs Act which includes Section 111 to Section 127 deals with confiscation of goods and conveyances and imposition of penalties. We have already referred to Section 111 under which goods improperly imported shall be liable to confiscation. Section 112 provides for penalty for improper importation of goods. Such confiscation or penalty is adjudged under Section 122. Section 124 states that no order confiscating any goods or imposing any penalty on any person shall be made except on notice to the person concerned and only after giving him an opportunity of making a representation and also an opportunity of being heard in the matter. Under Section 125 the officer adjudging a case of importation or exportation of any goods which is prohibited under the Customs Act or any other law, has a discretion to give to the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. Section 126 lays down that on confiscation the goods shall vest in the Central Government and that the officer adjudging confiscation shall take and hold possession of the confiscated goods. Section 127 makes it clear that the award of any confiscation or penalty under the Customs Act does not prevent the infliction of any punishment to which the person concerned is liable under Chapter XVI of the Customs Act or under any other law. Section 135 is in Chapter XVI.

5. The Customs Act thus provides that contraband goods "shall be liable to confiscation" and also lays down a detailed procedure for the confiscation of such goods. The appellant contends that the special provisions of the Customs Act regarding the confiscation of goods seized under that Act make the general law as to disposal of property contained in Section 452(1) of the Code of Criminal Procedure inapplicable in respect of such goods. According to the respondent Union of India, Customs authorities and the criminal court have concurrent jurisdictions in the matter. However, we do not find it necessary to answer the question in this appeal which, in our opinion, should succeed on a short point. An order for the disposal of any property under Section 452(1) of the Code of Criminal procedure is necessary where the property remains to be disposed of by the Court after the inquiry or trial is over. In the present case it appears that the foreign currency seized from the appellant was not produced before the Magistrate and was not in the custody or control of the Court

when the order of confiscation was made. There was thus no necessity or occasion for the Court to make an order for disposal of any property; the order of the Magistrate that the goods involved in the case are confiscated "if not already confiscated" clearly shows that he was not aware what had happened to the goods which were in the control of the Customs authorities. It is true that the foreign currency seized from the appellant's possession was property in respect of which an offence was committed, but this fact alone did not call for an order under Section 452(1) in the circumstances of the case, and the order passed, besides being unwarranted, is likely to create complications if in respect of the foreign currency a proceeding under the Customs Act is pending or the Customs authorities have made any order with which the Magistrate's order is inconsistent. We therefore allow the appeal and set aside the order of confiscation passed by the Magistrate and affirmed by the High Court.

6. Mr. Kohli, learned Counsel for the appellant, prays that the Customs authorities should be directed to return to appellant the currency seized from his possession. How the Customs authorities have dealt with the property, whether the appellant is entitled to have the foreign currency seized from his possession returned to him under any provision of the Customs Act, are not questions that arise for consideration in this appeal. The record of the case also does not contain any material upon which we could give any direction in the matter even if we wanted to. However, as this is an old case, we hope that the Customs authorities will take a decision in this matter according to law as early as possible.

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