

Assistant Collector, Central Excise, Bangalore

Vs

C. Fernandes and Others

Criminal Appeals Nos. 298 of 1974

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

22.07.1981

JUDGMENT

CHINNAPPA REDDY, J. -

1. On October 13, 1970 a motor car bearing No. MSQ 2520 driven by Mohamed Iqbal and in which C. Fernandes was also seated was stopped by the Superintendent of Central Excise near Bangalore on the Mysore-Bangalore Road. On a search of the vehicle, it was found that there were two cavities with plates screwed up below the rear seat of the car. When the plates were unscrewed, one of the cavities was found to contain 660 gold pieces with foreign markings. In the other cavity 300 gold pieces with similar markings were found. Mohamed Iqbal and C. Fernandes were produced before the Magistrate on October 14, 1970 and were remanded into the custody of the Customs authorities. On October 15, 1970 Mohamed Iqbal made a statement, Ex. P-2, and on October 16, 1970 C. Fernandes also made statement, Ex. P-3. The gold pieces which were seized from the car were found to be of 100 per cent purity and it was the opinion of the expert, PW 4, that they were of foreign origin.

2. Mohamed Iqbal and C. Fernandes were tried for offences under the Customs Act and the Gold Control Order. Both were convicted under Section 135 of the Customs Act and Section 85 of the Gold Control Order and on each count such of them was sentenced to rigorous imprisonment for one year and a fine of Rs 1000. Appeals preferred by them to the Sessions Judge, Bangalore were dismissed. Revision petitions filed before the High Court of Karnataka were allowed and Mohamed Iqbal and C. Fernandes were acquitted of the charges against them. The learned Single Judge of the High Court who heard and allowed the revision petitions excluded Ex. P-2 and Ex. P-3 from consideration on the ground that they were hit by Sections 24 and 25 of the Evidence Act. He observed that the remaining evidence was not sufficient to establish the guilt of the two respondents.

3. The Assistant Collector of Customs has preferred these two appeals after obtaining special leave from this Court under Article 136 of the Constitution.

4. Mr Hardy, learned counsel for the appellant, has taken us through the judgment of the High Court and the relevant evidence. The appeals have to be allowed. We are unable to find any justification for the conclusion of the learned Single Judge of the High Court that Ex. P-2 and Ex. P-3 are hit by Sections 24 and 25 of the Evidence Act. The learned Judge thought that the mere circumstance that the respondents were in the custody of the Customs officials when they made the statements Ex. P-2 and Ex. P-3 was sufficient to lead to the conclusion that Ex. P-2 and Ex. P-3 were hit by Sections 24 and 25 of the Evidence Act. It is impossible to agree with the opinion of the learned Single Judge. The two respondents were produced before the Magistrate on October 14, 1970 and it was pursuant

to the orders of the Magistrate that the respondents came to be in the custody of the Customs officials. Merely because they were in such custody for the purpose of the enquiry conducted by the Customs officials, we do not see how Sections 24 and 25 of the Evidence Act are attracted. The learned Magistrate also observed that the 1st respondent was conversant with Tamil only and not English and that his statement was recorded not in Tamil but in English. At the very beginning of the statement Ex. P-2, it has been mentioned that what was being recorded in English was read over, translated and explained to the person making the statement. We are unable to see any infirmity in the recording of either P-2 or P-3. We are of the view that they were wrongly excluded from consideration by the High Court. If Ex. P-2 and Ex. P-3 are taken into consideration, there cannot be the slightest doubt about the complicity of both the respondents. We have therefore no option but to set aside the judgment of the High Court and restore the order of conviction and sentence passed by the trial court which was confirmed by the appellate court.

5. While going through the record, we noticed that though a report was made against Ibrahim Kannapillai, owner of the car and gold, no sanction for prosecution was given against him. We are not a little surprised that this was so.

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