

Assistant Collector of Central Excise, Calicut

Vs

V. P. Sayed Mohammad

Criminal Appeal No. 44 of 1976

(E.S. Venkataramiah R.B. Misra JJ)

12.01.1983

JUDGMENT

VENKATARAMIAH, J. –

1. The Assistant Collector of Central Excise, Calicut has filed this appeal obtaining the special leave of this Court against the judgment and order dated January 5, 1973 of the High Court of Kerala in Criminal Revision Petition No. 426 of 1972.

2. Briefly stated, the facts of the case are these : In the early hours of August 9, 1969 the respondent alighted from the Kerala Express at the Trichur Railway Station with a steel trunk in his hand. C. C. Mathan, Inspector of Central Excise Special Customs, Preventive, Trichur (PW 1) who was on patrol duty at the railway station suspected that the respondent was carrying contraband goods and on coming to know from the Ticket Examiner that the respondent had arrived from Bombay he asked the respondent to hand over the steel trunk which he was carrying. When C. C. Mathan (PW 1) opened and searched the steel trunk, he found in it 28 gold bars with foreign markings. The respondent was arrested by C. C. Mathan (PW 1) and when questioned by PW 1, the respondent did not produce any authorisation entitling him to keep the 28 gold bars in question which were valued at Rs. 56,000. A mahazar (Ex. P-1) was prepared for having seized the 28 gold bars. A sum of Rs. 1380 which was found in the steel trunk was also seized. Later, on it is stated, that the 28 gold bars in question were confiscated in a proceeding under Section 111 (d) of the Customs Act, 1962 read with Section 23-A of the Foreign Exchange Regulation Act, 1947 before the Additional Collector of Customs, Cochin. The steel trunk also was confiscated under Section 119 of the Customs Act, 1962. A penalty of Rs. 500 was imposed on the respondent under Section 112 (b) of the Customs Act, 1962. The amount of Rs. 1380 which had been seized from the respondent was, however, ordered to be returned to him. Thereafter the Assistant Collector of Customs and Central Excise, Kozhikode after obtaining the required sanction under Section 137 (1) of the Customs Act and Section 97 (1) of the Gold (Control) Act, 1968 from the Additional Collector of Customs, Cochin and the Collector of Customs Central Excise, Cochin respectively filed a complaint before the District Magistrate (Judicial), Tellicherry against the respondent for offences punishable under Section 135 (b) of the Customs Act read with Section 85 (ii) of the Gold (Control) Act, 1968. In support of the said prosecution four witnesses were examined by the complainant, C. C. Mathan, PW 1 gave evidence about the seizure of the 28 gold bars with foreign markings from the respondent at the Trichur Railway Station on August 9, 1969 under the mahazar (Ex. P-1). He also produced Ex. P-3 which contained the statement made by the respondent before the Special Customs Preventive Circle Superintendent, Kozhikode in which he had admitted that 28 gold bars with foreign markings had been seized from him under a mahazar and that the said 28 gold bars had not been legally imported to India. C. C. Mathan (PW 1) stated that he was present before the

Special Customs Preventive Circle Superintendent, Kozhikode when Ex. P-2 was recorded and that the said statement contained the signatures of the respondent and of the Superintendent who had recorded it. K. Subramonian (PW 2) who was working as a Ticket Collector at Trichur Railway Station stated that the 28 gold bars in question were seized on August 9, 1969 at the Trichur Railway Station under the mahazar (Ex. P-1) which he had signed. V. M. Valayudhan (PW 2) who was a resident of Trichur and a goldsmith by profession stated that the 29 gold bars in question had been examined and weighed by him at the Trichur Railway Station at the request of C. C. Mathan (PW 1). He further stated that he tested the purity of the said 28 gold bars by rubbing them on the touchstone and found that they were gold bars of 24 carats quality. He gave a certificate (Ex. P-3) regarding the purity and the weight of the 28 gold bars. V. M. Velayudhah (PW 3) who was a certified goldsmith further stated that he could by experience assess the purity of gold by rubbing it on a touchstone. He, however, stated that he had no technical knowledge about gold and he did not know the 'specific gravity' method by which the purity of gold could be determined. The Assistant Collector of Central Excise (PW 4) was examined to prove the sanctions given by the competent authorities to file the case. In his examination under Section 342 of the Criminal Procedure Code in answer to the following question put by the Court : "What have you to say about the deposition of PW 1 that you on August 9, 1969 at 7 o'clock in the morning alighted from train at Trichur Railway Station with a steel trunk and that PW 1 on searching the box due to suspicion, found out 28 gold bars having foreign marks ?" the respondent stated, "It is true that gold was recovered from my box. It was not mine. It was handed over to me by the person called Mammu asking me to give it in his house. I had no knowledge that it was gold." The learned District Magistrate found that the prosecution had established that the respondent had committed an offence under Section 135 (b) of the Customs Act and an offence under Section 85 (ii) of the Gold (Control) Act, 1968 and convicted him of those offences. The respondent was sentenced to pay a fine of Rs. 500 for the offence under Section 135 (b) of the Customs Act and in default of payment of fine to undergo simple imprisonment for six months. No separate sentence was, however, awarded for the offence under Section 85 (ii) of the Gold (Control) Act. The respondent preferred an appeal against the judgment of the learned District Magistrate before the Sessions Judge, Trichur and that appeal was dismissed. The respondent filed a revision petition before the High Court of Kerala against the decision of the learned Sessions Judge. The learned Judge of the High Court who heard the revision petition allowed it and set aside the conviction of the respondent and the sentence imposed on him on the ground that the prosecution had not established that the metallic bars which were seized from the respondent under Ex. P-1 were gold bars and, therefore, the conviction of the appellant could not be sustained. The learned Judge found that evidence of V. M. Valayudhan (PW 3) who was examined in the case, the statement Ex. P-2 made by the respondent before the Special Customs Preventive Circle Superintendent, Kozhikode and the answer given by the respondent under Section 342 of the Criminal Procedure Code taken together were not sufficient to hold that the gold bars had been seized from the respondent under Ex. P-1. He rejected the evidence of V. M. Valayudhan (PW 3) on the ground that he had not the training or the qualification in the art of testing gold and that he had not conducted either the furnace test or the specific gravity test to determine the character of the metallic bars. He was of the opinion that V. M. Valayudhan (PW 3) had miserably failed in the witness-box to give the impression that he was a competent person to certify that what were seized from the respondent were gold bars and that in the absence of any training or qualification to the credit of V. M. Valayudhan (PW 3), it would be unsafe to rely on his evidence and conclude that what was seized from the respondent was gold. So far as Ex. P-2 was concerned the learned Judge was of the opinion that as the said statement had not been specifically put to the respondent under Section 342 of the Criminal Procedure Code and as the person who had recorded it had not been examined, no importance could be given to it. Insofar as the answer given by the respondent to the

question put by the court under Section 342 of the Code of Criminal Procedure which is set out above is concerned, the learned Judge observed that even assuming that it would have some value the prosecution could not seek to split that statement into various parts and rely on what it considered to be advantageous to establish its case. Accordingly the learned Judge acquitted the accused.

3. The principle point which arises for consideration in this case is whether the prosecution had established that smuggled gold bars had been seized from the respondent on August 9, 1969 at the Trichur Railway Station under Ex. P-1. It is true that the onus of proving the facts essential to the establishment of the charge against an accused lies upon the prosecution and the evidence must be such as to exclude every reasonable doubt about the guilt of the accused. An accused cannot be convicted of an offence on the basis of conjectures or suspicions. If a reasonable doubt arises in the mind of the court after taking into consideration the entire material before it regarding the complicity of the accused the benefit of such doubt should be given to the accused but the reasonable doubt should be a real and substantial one and a 'well founded actual doubt arising out of the evidence existing after consideration of all the evidenced."Hence a mere whim or a surmise or suspicion furnishes an insufficient foundation upon which to raise a reasonable doubt, and so a vague conjecture, whimsical or vague doubt, a capricious and speculative doubt, an arbitrary, imaginary, fanciful, uncertain, chimerical, trivial, indefinite or a mere possible doubt is not a reasonable doubt. Neither is a desire for more evidence of guilt, a capricious doubt or misgiving suggested by an ingenious counsel or arising from a merciful disposition or kindly feeling towards a prisoner, or from sympathy for him or his family." (See Woodroffe & Ameer Ali's Law of Evidence, 13th Edn., Vol. 1, pp. 203-04).

4. On a reading of the evidence of C. C. Mathan (PW 1), V. M. Valayudhan (PW 3) and the statement of the respondent under Section 342 of the Criminal Procedure Code which is referred to above, we are of the view that the doubt which the learned Judge of the High Court entertained about the nature of the metallic bars which were seized from the respondent under Ex. P-1 cannot be considered to be a reasonable doubt. It is well known that persons who are goldsmiths by profession are able to find out whether a piece of metal is gold or not by the colour of the streak produced by rubbing it on a touchtone used by them even though their assessment of its purity may not be exact. It may not be a scientific way of proving that the metallic bars were gold bars. In the instant case, however, the respondent did not dispute that gold had been recovered from his box under Ex. P-1. His plea was that it was true that gold was recovered from him box but that it did not belong to him; that it had been handed over by a person called Mammu asking him to give it in his house and that he had no knowledge that it was gold when the packet containing it was handed over to him. Reading the answer of the caused as a whole it means that he knew that when his steel trunk was opened and searched, there was gold in it but he had no knowledge that the packet contained gold when it was handed over to him by Mammu asking hi to hand it over in his house. The answer consists of two parts and they refer to two distinct matters. The first part relates to seizure of gold from him and the later part relates to what had happened earlier when the packet was handed over to him. The case might have been different if he had said that no gold was recovered from his box. The High Court, therefore, erred in holding that the statement of the respondent that the gold was seized from him could not be used against him on the ground that it would result in the splitting up of the statement which was on the whole exculpatory. Even without the aid of the statement made by the respondent before the Special Customs Preventive Circle Superintendent Ex. P-2, it is possible to hold in this case that the metallic bars seized from the respondent under Ex. P-1 were gold bars in view of the evidence of PWs 1, 2 and 3 and the statement of the respondent before the court. The High Court was in error in coming to the conclusion that gold had not been seized from the

respondent by PW 1 as per Ex. P-1 at the Trichur Railway Station. These gold bars were seized by PW 1 in the reasonable belief that they were smuggled goods. Under Section 123 of the Customs Act, in such circumstances, the burden of proving that they were not smuggled goods would be on the respondent from whose possession they were seized. In the instance case, the respondent had not discharged the burden which lay on him. PW 1 has stated that the said gold bars had foreign markings on them and Ex. P-1, the mahazar corroborated his statement. The respondent had no authorisation to keep the said gold with him. It is in evidence that the said gold bars were found packed in paper and kept in the inside folds of a blanket underneath some clothes in the trunk seized from the respondent. He had taken care to secrete them. He had brought them from Bombay which was a customs area. In the circumstances his explanation that he had no knowledge that he was in possession of or carrying smuggled gold bars cannot be believed, as rightly held by the learned Sessions Judge. The prosecution clearly established the guilt of the respondent. The judgment of the High Court is, therefore, liable to be set aside and it is accordingly set aside. The conviction of the respondent and the sentence imposed on him by the learned District Magistrate which were affirmed on appeal by the learned Sessions Judge are restored. The appeal is accordingly allowed.

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