

Assistant Collector of Customs (Prevention) Bombay

Vs

Babu Miya Sheikh Imam and Others

Criminal Appeals Nos. 416-18 of 1974

(P. N. Bhagwati, R. B. Misra JJ)

28.07.1983

JUDGMENT

BHAGWATI, J. –

1. These appeals by special leave are directed against a common judgment dated 27th August, 1973 passed by a single Justice of the High Court of Bombay in so far as it acquitted the first respondent in Criminal Appeal No. 146 of 1973, respondent No. 1 and 2 in Criminal Appeal No. 147 of 1974 and the first respondent in Criminal Appeal No. 418 of 1974 (hereinafter referred to as the accused) of the offence under Section 135(1) (a) (ii) of the Customs Act, 1962. The entire controversy between the parties in these appeals turn on the true interpretations of Section 135(1) (a) (ii) and it is therefore not necessary to set out the facts in detail, but in order to appreciate how the question arises for consideration we may briefly reproduce a few relevant facts.

2. On 9th June 1968 at about 2 p.m. Shri Mugve, the Assistant Collector of Customs, who was then Principal Appraiser in the Directorate of Revenue Intelligence, Bombay, received information that a fishing vessel was going to load silver at Ghas Bunder after 9 p.m. on that day and it was going to take the silver to a spot near Khanderi island in order to put it on an Arab Dhow for despatching it to Dubai. On receipt of this information, Shri Mugve kept a watch in a privately owned motor launch in the stream near Ballard Pier about four miles away from the shore. At about 11 p.m. on Shri Mugve and the other customs officers accompanying him noted that a heavily loaded fishing vessel was proceeding towards the Khanderi island without navigational lights. They immediately chased the fishing vessel and asked the crew to stop it but instead of stopping the crew increased the speed and tried to run away. The fishing vessel was chased and eventually it was intercepted by Shri Mugve and the other customs officers. On being questioned the Tindal of the fishing vessel made a statement that 194 ingots of silver of the value of Rs. 92 lakhs were being taken towards Khanderi island for being loaded on an Arab Dhow which was going to Dubai. The fishing vessel was thereupon towed to Ballard Pier and 194 ingots of silver found in it were seized under a Panchnama in the reasonable belief that they were being smuggled out of India. The accused who were in the fishing vessel were also prosecuted in the Court of Additional Chief Presidency Magistrate 5th Court Dadar for offences under Section 120B of the Indian Penal Code, Section 135(1) (a) (ii) of the Customs Act, 1962, Section 5 of the Imports and Exports (Control) Act, 1947 and Section 23 (1A) of the Foreign Exchange Regulation Act, 1973. The Additional Chief Presidency Magistrate found the accused guilty of all the offences charged against them and sentenced them to various terms of imprisonment including fine. The accused thereupon preferred three appeals in the High Court of Bombay against the order of conviction and sentence passed against them by the Additional Chief Presidency Magistrate. These appeals were heard by a Single Judge of the High Court and by a common judgment dated 27th August 1973 learned single Judge

confirmed the conviction of the accused under Section 120B of the Indian Penal Code and Section 5 of the Imports and Exports (Control) Act, 1947 but set aside the conviction under Section 135 (1) (a) (ii) of the Customs Act, 1962 and Section 23(1A) of the Foreign Exchange Regulation Act 1973. The Assistant Collector of Customs accepted the judgment of the learned Single Judge in so far as it acquitted the accused of the offence under Section 23(1A) of the Foreign Exchange Regulation Act, 1973 but he was aggrieved by that part of the judgment which set aside the conviction under Section 135(1) (a) (ii) of the Customs Act, 1962 and he accordingly preferred the present three appeals with special leave obtained from this Court.

3. Before we set out the rival arguments addressed before us, it would be convenient to reproduce Section 135(1) (a) (ii) of the Customs Act, 1962. That section reads as follows :

135. Evasion of duty or prohibitions.- (1) Without prejudice to any action that may be taken under this Act, if any person -

(a) is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

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he shall be punishable, -

* *

(ii) in any other case, with imprisonment for a term which may extend to (three years) or with fine, or with both.

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The argument of the prosecution was that on the facts proved in the case the accused were knowingly concerned in fraudulent evasion or attempt at evasion of the prohibition on the export of silver without a licence imposed under the Export Trade Control Order 1968 issued by the Central Government under section 3 of the Imports and Exports (Control) Act, 1947 and they were therefore guilty of the offence falling under section 135(1) (a) (ii) which makes it penal if any person "is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any prohibition for the time being imposed under any other law for the time being in force with respect to such goods". This argument was sought to be met on behalf of the accused by contending that the words "with respect to such goods" occurring at the end of Section 135(1) (a) (ii) referred to goods on which duty was chargeable as contemplated in the first part of that section and since no duty was chargeable on export of silver, it did not fall within the words "with respect to such goods" and hence fraudulent evasion or attempt at evasion of the prohibition on export of silver without a licence imposed under the Trade Control Order, 1968 issued under section 3 of the Imports and Exports (Control) Act, 1947 was not punishable under section 135(1) (a) (ii). It was this contention urged on behalf of the accused which appealed to the learned Single Judge of the High Court of Bombay and resulted in the acquittal of the accused. The sole question which therefore arises for consideration on these rival arguments is as to what is the true meaning of the expression "with respect to such goods". Is it limited only to goods falling within the first part of section 135(1) (a) (ii), that is goods on which duty is chargeable or does it refer to any goods in

respect of which prohibition is imposed under the Customs Act, 1962 or any other law for the time being in force. The answer to this question does not in our opinion admit of any doubt, because the language of section 135(1) (a) (ii) is clear and explicit and one has merely to read the words of the section according to their plain grammatical construction to come to the conclusion that the view taken by the learned single Judge of the High Court is plainly erroneous. We proceed to give our reasons for saying so, but we may point out straightaway that this view taken by the learned Single Judge of the High Court has been subsequently over-ruled by a Division Bench of the same High Court in the State of Maharashtra v. Kassam.

4. If we analyse and break up the provision enacted in section 135(1) (a) (ii), it will be clear that structurally it is divisible into three parts, namely :

1. If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

2. If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any prohibition for the time being imposed under the Customs Act, 1962 with respect to such goods, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

3. If any person is in relation to any goods in any way knowingly concerned in any fraudulent evasion or attempt at evasion of any prohibition for the time being imposed under any other law for the time being in force with respect to such goods, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

The ingredient of the offence under section 135(1) (a) (ii) would clearly be satisfied if the case falls within any one of these three parts. Each of these three parts is distinct and independent of the other two and whether a case falls within any one part or not has to be judged by reference to the ingredients of that part and not of any other part. The ingredients of one part cannot be projected in the other two parts. The first part deals with a case where in relation to any goods a person is knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable on such goods. Obviously, therefore, the first part postulates that the goods in respect of which the offence is committed must be goods chargeable with duty. But the second and third parts are not concerned with the question whether any duty is chargeable on the goods or not. These two parts speak only of fraudulent evasion or attempt at evasion of any prohibition for the time being imposed under the Customs Act, 1962 or any other law for the time being in force in respect of any goods. What these two parts contemplate is that in respect of the goods in question there must be a prohibition imposed under the Customs Act 1962 or any other law for the time being in force it being totally irrelevant whether duty is chargeable on such goods or not, and the accused must be knowingly concerned in any fraudulent evasion or attempt at evasion of such prohibition. The prohibition fraudulently evaded or sought to be evaded may with respect to "any goods" and it is not necessary that it should be with respect to goods on which duty is chargeable. The expression "with respect of such goods" had obviously to be used at the end of the section because the second and third parts of the section start with the words "if any person is in relation to any goods..... knowingly concerned in any fraudulent evasion or attempt at evasion". The words "such goods"

have clearly reference to "any goods" at the commencement of the section. These words are not descriptive of the kind of goods to which the first part of the section is applicable. It is totally impermissible, on a plain words as importing the requirement that the goods must be chargeable with duty in order to fall within the second or third part of the section.

5. We are therefore of the view that the where goods are chargeable to duty and any person in knowingly concerned in any fraudulent evasion or attempt at evasion such duty, the case would fall within the first part of the section, but where there is a prohibition imposed with respect of any goods under the Customs Act, 1962 or any other law for the time being in force, then, irrespective of whether duty it chargeable on such goods or not, any person knowingly concerned in any fraudulent evasion or attempt at evasion of such prohibition, would clearly be covered by the second or third part as the case may be. Here there was clearly a prohibition on export of silver without a licence, imposed by the Export Trade Control Order, 1968 issued under section 3 of the Imports and Exports (Control) Act, 1947 and on the facts established by the prosecution - facts which could not be and were not disputed - the accused were knowingly concerned in fraudulent evasion or attempt at evasion of such prohibition on export of silver and their case was therefore plainly and indubitably covered by the third part of section 135(1) (a) (ii). The learned single Judge of the High Court was consequently in error in taking the view that the accused were not guilty of the offence charged under section 135(1) (a) (ii).

6. We accordingly allow these appeals preferred by the Assistant Collector of Customs, set aside the Order of acquittal passed by the learned single Judge of the High Court and restore the Order passed by the Additional Chief Presidency Magistrate convicting the accused under section 135(1) (a) (ii) of the Customs Act, 1962 and sentencing them to various terms of imprisonment and fine.

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