

Suraj Mal Saraf and Another

Vs

Assistant Collector of Customs, Amritsar

Criminal Appeal Nos. 231-32 of 1978

(S. Natarajan, V. B. Eradi JJ)

18.02.1987

JUDGMENT

S. NATARAJAN, J. -

1. These two appeals by special leave are connected and arise out of the judgment of the High Court of Punjab and Harayana in Criminal Appeal No. 269 of 1974. The said appeal preferred by the State against the acquittal of accused 1 and 2, who are the appellants herein, by the Appellate Judge was allowed and the High Court restored the conviction entered against them by the Chief Judicial Magistrate, of an offence under Section 161(81) of the Sea Customs Act and the sentence of 2 years' RI awarded therefor.

2. Learned counsel for the appellant took us through the judgments of the Appellate Court and the High Court and relevant portions of the evidence and strenuously argued that the appellants had not committed any offence under the Sea Customs Act and that the gold seized from them had been lawfully acquired by them from customers for making gold ornaments and they had been fully accounted for and as such the High Court ought not to have set aside their acquittal and restored the conviction entered by the trial magistrate.

3. On bestowing our earnest consideration to the arguments of the learned counsel we find that the High Court has not exceeded its powers or acted erroneously in any manner in allowing the appeal against acquittal and restoring the conviction awarded to the appellants by the trial magistrate. The conviction awarded to the appellants must, therefore, stand and we accordingly confirm the same.

4. In so far as the sentence is concerned the learned counsel for the appellants made fervent submission for modifying the sentence to the period of imprisonment already undergone by the appellants. It was brought to our notice that appellant Suraj Mal Saraf is aged about 80 years and appellant Raj Kumar Mehra is aged about 65 years, that both of them are of indifferent health, that they have undergone the ordeal of the trial and subsequent proceedings for nearly 25 years and as such the appellants may not be sent back to jail. In the facts and circumstances of the case we feel persuaded to accept the plea of the appellants and modify the sentence suitably so as to serve the ends of justice. Accordingly, we modify the sentence awarded to the appellants to the period of imprisonment already undergone by them and in addition to pay a fine of Rs. 5,000 each in default to undergo RI for four months, One week's time is given for payment of fine. The appeals will stand partly allowed to the extent indicated above.

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