

C. D. George

Vs

Asstt. Commissioner of Central Excise, Trichur

Criminal Appeal No. 453 of 1989

(S. R. Pandian, K. Jayachandra Reddy JJ)

02.03.1990

JUDGMENT

REDDY J. -

1. The Gold (Control) Act was enacted in the year 1968 with the object of control of the production, supply, use and possession of and business in gold ornaments and articles of gold in the interest of economic and financial interests of the community. Section 27 of the Act lays down that no person shall commence, or carry on, business as a dealer unless he holds a valid licence issued under the provisions of the Act and the said licence should be in the prescribed form. Section 27(7)(b) lays down that a licensed dealer shall not carry on the business as such dealer in any premises other than the premises specified in his licence. Section 4(h) defines "dealer" as one who carries on the business of making, preparing, polishing, buying, selling, supplying, processing or converting gold, whether for cash or for deferred payment or for commission, remuneration or other consideration.

2. The appellant before us was one such licensed dealer having a shop in a building, which is four-storeyed, bearing Municipal No. 25/A. 1479 on the Municipal Road, Trichur (Kerala). The showroom where the actual day-to-day business is conducted is in the ground floor. On September 23, 1981, the Superintendent of Central Excise, examined as PW-1, raided the shop of the appellant and conducted a search. Books of accounts maintained by the appellant were verified and it was found that there was a stock of 1372 pieces of gold ornaments. The search party found 169 pieces of new gold ornaments in the third floor of the building weighing 667.850 grams kept in a card-board box. They were seized. On further investigation conducted by the officer, it was also revealed that the appellant's brother, his business associate, had purchased some items of jewellery from another dealer and had also kept the same in the said licensed premises. A complaint was preferred against the appellant alleging that he has unaccounted jewellery and that he was carrying on the business in the third floor which is not a licensed premises.

3. The trial court framed charges under section 27(7)(b) read with section 85(1)(a) and section 55(3) of the Gold (Control) Act and necessary evidence was adduced. Failure to maintain the necessary accounts as a dealer is punishable under section 55(3) and carrying on business in a premises other than the premises specified in the licence is punishable under section 27(7)(b). The appellant, inter alia, took the plea that he is carrying on the business of gold only in the ground floor and the items therein have been accounted for including the items that were found in the third floor. He also took the plea that he sold these items to a customer and separated them and kept them in the third floor for the purpose of delivering the same to the purchaser and that the third floor also formed part of the licensed premises.

4. The trial court, on an appreciation of the evidence, acquitted the accused holding that the prosecution has failed to prove that the accused had unaccounted jewellery and that he was carrying on business in unlicensed premises. An appeal against acquittal was filed in the High Court of Kerala and the learned judge confirmed the finding of the trial court in respect of the charge under Section 55(b). He, however, held that the third floor does not form part of the licensed premises. Therefore an offence punishable under section 27(7)(b) was proved and accordingly, convicted the appellant and the appellant was sentenced to three months' simple imprisonment and to pay a fine of Rs. 5000 in default to suffer imprisonment for a further period of two months. Questioning the same, the present appeal by way of special leave has been filed.

5. The learned counsel for the appellant submits that the High Court has misconstrued the provisions of section 27(7)(b) and at any rate in the instant case the High Court erred in interfering in an appeal against acquittal. It is also submitted that even if the prosecution case is to be accepted in this context what at the most can be said is that two views are possible and, in such an event the interference in an order of acquittal is uncalled for.

6. It is not in dispute that the appellant obtained a licence for carrying on the business. In the licence that was granted in the year 1975 and which was also renewed in the subsequent years upto to 1977, the address of the premises is mentioned as No. 25/A/1479. The Inspector in his cross-examination, admitted that the entire building bears only one municipal number and the licence was given for conducting the business in that building. The prosecution has not led any other evidence to show that the third floor does not form part of the licensed premises. That apart admittedly on each storey there is only a small room and the entire building is bearing only one municipal number and that is the premises bearing that number which is mentioned in the licence. The question is whether the mere fact that the showroom is in the ground floor does necessarily lead to an inference that the gold ornaments which are accounted for cannot be stored in any other room in that building ?  
Section 27 reads as under :

"27. (1) Save as otherwise provided in this Act, no person shall commence, or carry on, business as a dealer unless he holds a valid licence issued in this behalf by the Administrator.

(2) A licence issued under this section -

(a) shall be in such form as may be prescribed;

(b) shall be valid for such period as may be specified therein;

(c) may be renewed, from time to time; and

(d) shall be subject to such conditions and restrictions as may be prescribed.

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(7)(a) The Administrator shall specify, in each licence granted to a dealer, the premises in which such dealer shall carry on business and no other person shall carry on business as a dealer in the said premises.

(b) A licensed dealer shall not carry on business as such dealer in any premises other than the premises specified in his licence."

7. The above principal question has to be examined in the light of this provision and seen as to whether the appellant was carrying on business in any premises other than the premises specified in the licence. As already mentioned, the entire building is given one municipal number and there is no other evidence in support of the prosecution case that the third floor of the building does not form part of the licensed premises. In any event, under the facts and circumstances of the case one can at the most go to the extent of saying that two views are possible. In *Bhagwati v. State of Uttar Pradesh* ((1976) 3 SCC 235 : 1976 SCC (Cri) 388) it is held : (SCC p. 238, para 6)

"Thus if the finding reached by the trial judge cannot be said to be unreasonable, the appellate court should not disturb it even if it were possible to reach a different conclusion on the basis of the material on the record. This has been held to be so because the trial judge has the advantage of seeing and hearing the witnesses and the initial presumption of innocence in favour of the accused is not weakened by his acquittal. The appellate court therefore should be slow in disturbing the finding of fact of the trial court, and if two views are reasonably possible of the evidence on the record, it is not expected to interfere simply because it feels that it would have taken a different view if the case had been tried by it."

We are convinced that the view taken by the trial court is quite reasonable. Therefore, viewed from any angle, we are firmly of the view that there were no grounds for the High Court to interfere with the findings of the trial court acquitting the accused.

8. Counsel for the State, however, pointed out that the High Court has observed at one place in the judgment that the counsel for the accused has not raised any contention that the room in the third floor also formed part of the licensed premises. Except making this bare observation, the High Court has not considered the plea taken by the accused and the finding of the trial court in this regard. In the same paragraph, the learned judge has, however, mentioned that the accused raised a contention in the trial court that the room in the third floor also formed part of the licensed premises and this plea found favour with the trial court. That apart, the case of the accused has throughout been that the room in the third floor formed part of the licensed premises. Therefore, this observation of the appellate court that counsel did not contend that the third floor formed part of the licensed premises does not appear to be correct. At any rate, there is no such admission by the accused nor can it be said that there was such a concession by the counsel for the accused. For all the aforesaid reasons, the conviction and sentence awarded by the High Court are set aside. Accordingly, the appeal is allowed.

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