

Union of India

Vs

Shyamsunder and others

Criminal Appeal No. 204 of 1981

(S. R. Pandian, R. M. Sahai JJ)

23.07.1992

JUDGMENT

1. The Union of India on being aggrieved by the judgment of the High Court of Bombay, Nagpur Bench rendered in Criminal Application No. 120/79 allowing the revision and setting aside the conviction and sentence by disturbing the concurrent finding of facts on the basis of which the trial court convicted the accused Nos. 1 and 2 (respondents Nos. 1 and 2 in this criminal appeal) under S. 135 of the Customs Act and sentenced them to undergo imprisonment for two years and also imposed upon each of them a fine of Rs. 2,000/-, in default thereof to suffer rigorous imprisonment for six months, which conviction and sentence imposed by the trial court were confirmed by the appellate court.

2. The accusations on the basis of which the respondents Nos. 1 and 2 took their trial, are that on 13-9-73 at Nagpur Railway Station, they were found in possession of 26 wrist watches, and 11 wrist watches of foreign make respectively and carrying, removing, disposing, keeping and concealing the above wrist watches which both the respondents knew or had reason to believe that the said watches were liable for confiscation under the Customs Act and thereby they committed an offence punishable under S. 135 of the Customs Act. Both the trial court as well as the appellate court, on the evaluation of the evidence, found that both the respondents had committed the offence within the mischief of S. 135 of the Customs Act but the learned single Judge of the High Court for the reasons given in his judgment has found thus:

"I have already pointed out that the failure of the prosecution to prove that the wrist watches in question were smuggled goods and absence of presumption under S. 123 of the Customs Act prevents me from interfering incriminating knowledge or belief as required by S. 135 of the Customs Act, 1962 on the part of two applicants."

3. The learned Additional Solicitor General, Mr. KTS Tulsi took us very meticulously through recorded evidence and the impugned judgment as well as the judgments of the trial court and the appellate court and contended that the prosecution has satisfactorily established the charge by satisfactorily establishing all the necessary ingredients that are required to constitute an offence within the meaning of S. 135 of the Customs Act. In support of his contention he has relied upon three decisions of this Court which we presently refer to. In *State of Gujarat v. Mohanlal Jitmalji Porwal*, (1987)2SCC 364: (AIR 1987 SC 1321) this Court has laid down the law as follows (at p. 1323 of AIR):

".....Whether or not the official concerned had seized the article in the "reasonable belief" that the goods were smuggled goods is not a question on which the court can sit in appeal. The law to this effect has been declared in no ambiguous terms in Pukhraj v. D.R. Kohli, AIR 1962 SC 1559. This Court has administered caution to the courts not to sit in appeal in regard to this question and has observed that if prima facie there are grounds to justify the belief the courts have to accept the officer's belief regardless of the fact where the court of its own might or might not have entertained the same belief. The law declared by this Court is binding on the High Court and it was not open to the High Court to do exactly what it was cautioned against by this Court. S. 123 of the Act does not admit of any other construction. Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances....."

4. The above proposition of law was reiterated by this Court in Indru Ramchand Bharavani v. Union of India, (1988)4SCC 1 See also Assistant Collector of Customs v. Mohanlal Shankarlal Kansara, 1990 (Supp) SCC 793.

5. The evidence in the present ease discloses that all the wrist watches are having foreign marks. The customs officers taking into 'consideration the various impelling circumstances appearing in the case, have arrived at the conclusion on a reasonable belief that these goods are smuggled goods. As rightly pointed out by the learned Addl. Solicitor General, the respondents from whom these contrabands were seized have not satisfactorily discharged the burden of proof cast upon them as required by S. 123 of the Customs Act that they are not smuggled goods. When the facts of the case are examined in the light of the dictum laid down by this Court in the decisions above cited, we have no compunction in coming to the conclusion that the prosecution has established its case. Hence we are unable to agree with the reasons given by the High Court. In the result we set aside the judgment of the High Court and restore the judgment of the trial court as confirmed by the appellate court so far as the conviction is concerned. But coming to the question of sentence, the learned counsel appearing for the respondents after stating that the offence took place in 1973; that both the respondents have suffered the imprisonment for some period and that the value of the contrabands seized from the 1st respondent was at Rs. 2,590/-and the value of the wrist watches seized from the 2nd respondent was Rs. 925/-, prayed for lenient sentence. Having regard to the above submission we, while confirming the conviction under S. 135 of the Customs Act modify the sentence of imprisonment to the period already undergone but retain the fine amount of Rs. 2,000/- imposed on each of the respondents by the courts below. The appeal is allowed. Appeal allowed.

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