

BOMBAY HIGH COURT

State

Vs.

Kumari Drupati Sahijisingh Bhawnani

Criminal Revn. Appln. No. 834 of 1963

(Abhyankar, J.)

17.12.1963

JUDGMENT

Abhyankar, J.

1. This is an application by the State for enhancement of sentence. Opponent Kumari Drupati Sahijisingh Bhawanani whose age, as stated by her counsel, is about 35 years was tried before the Chief Presidency Magistrate, Esplanade, Bombay, on two charges. The first charge was that on 8-6-1962 the accused knowingly and with intent to defraud the Government of duty amounting to Rs. 2,460/- payable on wrist watches, watch straps and rings and Rs. 2,241.22 nP. on other dutiable articles and/or with a view to evade prohibition and/or restriction for the time being in force by virtue of the Sea Customs Act on import thereof, acquired possession or the same and was concerned in carrying, keeping, removing, concealing and otherwise dealing with the same and thereby committed an offence under Section 167(81) at the Sea Customs Act, 1878. The second charge was that on the same day she imported the said wrist watches, watch straps, rings and other dutiable articles in contravention of the Import Control Order 1955, read with Section 3(2) of the Imports and Exports (Control) Act, 1947 and thus committed an offence under Section 5 of the Imports and Exports (Control) Act 1947.

2. The complaint filed before the learned Chief Presidency Magistrate by the Assistant Collector of Customs discloses that the accused arrived at Santa Cruz Air Port at Bombay on 8-6-1962 at 4 A.M. by the United Arab Air-lines' flight from Hong Kong. Prior to her arrival by this flight two suit cases bearing the name of Bhawnani had arrived from Hong Kong by a British Overseas Airways Corporation plane on 7-6-1962 at 8-30 P.M. These suit cases had not been manifested and were found in excess of the passenger's accompanying baggage in that flight. The suit cases were detained pending arrival of the owner. When the accused arrived by the next flight on 8-6-1962, she appeared to be in hurry to leave the Air Port without examination of the baggage by the Customs authorities. She was therefore searched by a lady Customs Officer in the presence of

two lady panchas. When questioned whether she had anything to declare, she replied in the negative. But when a search of her person was taken, it was found that she had one gold sheathe (sic) set in her brassiers cleverly concealed under it. She had also worn a white cotton pad between her legs, and inside the said and were found concealed 35 coloured watch straps. She also had a white cotton cloth belt tied round tier waist, and inside the said belt were small compartments in which were found 55 wrist watches and 59 loose watch, rings. These were taken, charge of under a panchanama. The accused had also imported other dutiable articles in large quantities without any permit as per inventory attached. The accused was then arrested and produced before the Magistrate who released her on bail.

3. The wrist watches, watch straps and rings were collectively valued at Rs. 2,450/- being its import value, but the market value of these articles was Rs. 7,380/- and the customs duly payable thereon was Rs. 2,241.28 nP. The other dutiable articles brought in advance, in two bags were collectively valued at Rs. 2,772/- for import value and the market value thereof was Rs. 8,000/-. The customs duty payable on these articles was Rs. 2,241.22 nP. The accused admitted that she was unable to produce any import licence as she had not obtained any. She had also made false declaration and concealed the goods with intent to defraud the Government of the duty payable thereon. The prosecution examined one Putli Mansukhani, who was a Customs Officer, and she had deposed to the search of the person of the accused and the find of 55 wrist watches and 59 loose watch rings and 35 changeable straps found round the waist band.

4. When the accused was examined by the learned Magistrate as to the evidence and the record against her, she stated as follows :

"I plead guilty to the charges framed against me. I did brine the articles and watches concealed on my person as alleged. I had no permission to bring them, I pray for a lenient sentence."

5. The accused also filed a written statement in this written statement she alleged that she was a lady coming from a respectable family, that she had committed the offence in weak moment of life and due to this unfortunate incident, she lost her reputation and her name was tarnished. She also stated that all the goods and articles were confiscated by the Customs Officials and very heavy penalty was imposed on her by the department. She therefore prayed for leniency as she had accepted the plea of guilty.

6. The learned Chief Presidency Magistrate on these facts passed the following order;

"Accused pleads guilty. I convict the accused. The accused is a woman, and' states she is to be married shortly and prays for mercy. I sentence her to a fine of Rs. 2000/- or 3 months' rigorous imprisonment on each count.

Goods to Customs,

Bail Bond Cancelled."

7. In view of the fact that the sentence of fine alone is imposed on the accused, the State has come up in revision and prays for a deterrent sentence being imposed on the accused. It has been pointed that besides the articles concealed on her person, the accused had also illegally imported 77 varieties of articles such as Hair dryer, corsets, laces, handbags, ice trays, suit length cloth, woollen and silk blanket, lady's handkerchief, gents metal watch bands, film rolls, nylon saris, petty coats, nylon brocades, silk wear, ronson lighter, perfume bottles, powder, cosmetic articles, combs, key chains, neck-laces, pearl necklaces, brushes, fancy frames etc. It is thus clear according to the State, that this was not a case of a person smuggling any articles for personal use or use of friends or members of the family. The accused was carrying concealed round her waist valuable wrist watches, watch, rings and straps which show that the accused could not be unaware that she could not bring these articles into this country either without a license or without payment of duty. Such offences are becoming too common and have in a certain sense transcended the limit. Unless deferent sentences are given, it is urged, persons who indulge in this type of activity are not deterred from carrying on such large scales flouting of Customs and import and export regulations, as the economic gain made is on a very large scale compared to the sentence of fine and the penalty that may be levied under the Customs Act.

8. The learned counsel for accused did not challenge the conviction of his client. But he has opposed the application mainly on the ground that the accused as a woman aged 35 and is to be married. This was the only trip that the accused had made abroad and it could not be said that she was a habitual offender in this respect. The accused has also suffered considerable financial loss and all the goods have been forfeited on confiscation and in addition the Customs authorities have imposed a personal penalty of Rs. 500/-. Besides, the sentence of fine imposed by the learned Chief Presidency Magistrate on each count is the maximum sentence of fine which he had the power to inflict and thus, according to the learned counsel, she has already suffered the maximum penalty under the law. Besides, it is urged, the ignominy and humility of the trial should be considered as an adequate punishment to a person like the accused who claims to belong to a respectful family, and has already suffered on account of the prosecution and conviction. Her prospects of life will be considerably marred if the State's application for further enhancement of sentence were to be accepted, and that would be disproportionate to the crime. The learned counsel has, therefore, prayed that there should be no interference with the sentence already imposed in view of the circumstances stated by him.

9. At one stage I considered the possibility of inflicting further sentence of fine on the accused by way of enhancement. Having considered the matter with the assistance of the learned Additional Government Pleader, I do not think that this Court sitting as a Court of revision and exercising its jurisdiction under Section 439 read with Section 439(3) of the Criminal Procedure Code will

have the power to enhance the sentence to an amount higher than the amount of maximum fine which is fixed by the law in the case of a Presidency Magistrate. The limitation that is put on the powers of this Court for enhancement of sentence will apply in this case also, it may not be possible to impose a fine higher than the maximum fine which has been imposed by the learned Chief Presidency Magistrate in exercise of his powers as provided in the Criminal Procedure Code.

10. There is no doubt that this is a case where sentence is required to be enhanced and the sentence imposed by the learned Chief Presidency Magistrate must be considered inadequate. All the submissions which have been made by the learned counsel on behalf of the accused for not interfering with the sentence imposed by the learned Chief Presidency Magistrate indicate a personal approach from the point of view of the accused. It is true that in anybody's case if the sentence is required to be enhanced the accused, who has to suffer under enhanced sentence, has to face greater hardship than what the trial Court imposed in the first instance. But the facts of this case reveal that there are larger questions involved and the fact that persons claiming to come from respectable families are freely indulging in this form of violation of the law shows that there is not enough abhorrence or fear or sanction against commission of such crimes with impunity. The laws of this country impose restrictions on import of certain articles and prohibit import of certain others after due consideration of National policies, especially in view of its own foreign trade, currency and exchange position. To permit wholesale violation of these restrictions and prohibitions exposes two national interests to avoidable risks which no citizen has a right to attempt. As rightly pointed out by the learned Additional Government Pleader, the Court may take a lenient view where the violation, is at the instance of a citizen, purely out of weakness or temptation to have a watch or a fancy article for personal use because it is not easily available in this country. The scale on which the law has been violated in the instant case clearly demonstrates that the accused is acting for her own benefit or possibly on behalf of other interests who are not ashamed to make use of this woman for their nefarious activities. It could not possibly be claimed that all these articles of value, which have been brought in by the accused, could be for her personal use or for the use of any member of her family. Obviously the goods in question are intended to be sold and this type of violation at the Imports and Exports (Control) Act and the provisions of the Sea Customs Act is on a commercial scale for purveying these goods at fancy prices in clandestine manner. Therefore, the mere fact that the person who is selected for committing such violations is a woman, will not be a very relevant circumstance. It is true that this middle aged woman has the misfortune of being found guilty on serious charges and, may have to suffer further indignity and her prospects in life may become bleak if she is sent to jail. But in view of the enormity of the offence and the deliberateness with which it was planned and committed, leaves no doubt that the accused was voluntarily participating and was fully conscious of what she was doing. She declared that she had no goods to declare and carried valuable articles on her person in the hope that she may slip through the customs cordon undetected, in which attempt she failed.

11. A serious view must therefore be taken of such offences which show a distressingly growing tendency. They argue that the accused comes from a respectable or high family rather emphasizes the seriousness of the malady. If members belonging to high status in life should show scant regard for the laws of this country which are for public good, for protecting our foreign trade or exchange position of currency difficulties, the consequential punishment for the violation of such laws must be equally deterrent. The offences against Export and Import restrictions and customs are of the species of "economic" crimes which must be curbed effectively.

12. In view of all these circumstances, therefore, with some reluctance, I have come to the conclusion that this is a fit case where, the sentence of fine imposed on the accused by the learned Chief Presidency Magistrate is not adequate and is required to be enhanced. It is also urged on behalf of the accused that six months' time has passed since the case was decided and now to send the accused to jail will be a great hardship. I do not think that this circumstance has any bearing in consideration of the question's of proper sentence, which should have been passed by the trying Magistrate.

13. I therefore accept the revision application and direct that in addition to the sentence of fine of Rs. 2,000/- on each count imposed by the learned Chief Presidency Magistrate on the accused, the accused shall further suffer rigorous imprisonment for six months on each count. Both the sentences of imprisonment shall run concurrently. The accused will surrender to her bail. Revision application filed by the State is allowed. Rule made absolute. Sentence enhanced.