

PUNJAB AND HARYANA HIGH COURT

Gopal Dass Labhu Ram Saini

Vs

The State

(T Chand, J.)

19.09.1958

ORDER

Tek Chand, J.

1. This petition of revision has been presented on behalf of one Gopal Dass Halwai of Amritsar from his conviction under Section 167(81) of the Sea Customs Act, 1878. The trial Court had also convicted him under Section 23 of the Foreign Exchange Regulation Act, 1947. He was sentenced for each offence to 9 months' rigorous imprisonment and the two sentences were ordered to run concurrently.

2. The prosecution story is that on 18th of April, 1957, P.W. 5 B. K. Kalia, Customs Inspector, received information at about 4.30 P.M. that Gopal Dass, along with two accomplices, was proceeding to Delhi for the sale of smuggled gold. This information was conveyed by Shri Kalia to Shri H. B. Dass who organised a party which proceeded to the Railway Station, Amritsar. The members of the party learnt that the railway train had left a few minutes earlier. P.W 1 R. S. Bains, Inspector Customs P and I, Amritsar, who was one of the party, rushed towards Jullundur in a jeep car and managed to reach Beas Railway Station before the arrival of the railway train. Accused Gopal Dass, on search of the train, was spotted in a III class compartment, and on enquiry he told that he had no gold on him. On the search of his person two railway tickets for adults and a third railway ticket for child were taken possession of.

On being asked as to where his companions were he denied that he had any companion with him. Search for the companions of Gopal Dass was made at Kartarpur but was of no avail. At Jullundur Railway Station, on search being renewed, Gulzari Lal accused, aged 10 years, and another person, Juj Kumar, were found in a compartment and they had no ticket. Gulzari Lal told the officers that his ticket was with his uncle Gopal Dass who was sitting in another compartment.

On a search of the person of Gulzari Lal eight pieces of foreign gold were found concealed in a piece of cloth tied round the boy's waist. Exhibit PA is memo of recovery. P.W. 2, Bindra Ban Dhawan, the Assistant Station Master at Jullundur City, attested the recovery memo. Both Gopal

Dass and Gulzari Lal were then taken to the Customs House at Amritsar and next day the statements of the two accused were recorded by Shri Sachdeva, Deputy Superintendent of Customs. Exhibit PB is the statement of Gopal Dass (accused) and Exhibit PC is the statement of Gulzari Lal.

The gold recovered from Gulzari Lal weighed 79 tolas 2 mashas and 7 1/2 rattis. The seven gold pieces bore the numerals '999' and the eighth piece bore the mark "N. M. Rothschild". Exhibit PD is the complaint signed by Mr. B. J. Soares, Assistant Collector, Land Customs, Amritsar. Exhibits PE and PL are letters signed by the Collector of Central Excise and Land Customs, Delhi, authorising Shri B. J. Soares to prosecute Gulzari Lal and Gopal Dass respectively, under Section 167 (81) of the Sea Customs Act and under Section 19/23 A of the Foreign Exchange Regulation Act, 1947. Show cause memos were issued to the two accused of which Exhibit PG is a copy. Exhibit PH was a reply received from Gulzari Lal. The gold recovered has been confiscated by the Collector. Shri R. S. Bains (P.W. 1), Inspector Customs, is the principal prosecution witness who has deposed regarding the recovery of the tickets from Gopal Dass and of gold from Gulzari Lal and has given details as to how the accused were chased and searched and brought to Amritsar. P.W. 3 Prem Sagar has merely stated that on 19th April, 1957, when he was present in the Customs House the Statements (Exhibit PB) of Gopal Dass and Exhibit PC of Gulzari Lal were recorded. P.W. 5 Shri B. K. Kalia, Inspector Customs, Special Branch, Delhi, and P.W. 6 Shri Y. R. Sachdeva, Deputy Superintendent Customs, Delhi, were members of the party who followed the train in jeep and they support the statement made by P.W. 1. Exhibit PB is the statement of Gopal Dass accused in the nature of a confession, and Exhibit PC is a similar statement of Gulzari Lal recorded by P.W. 6 Shri Y. R. Sachdeva, Deputy Superintendent Customs.

3. Gopal Dass accused-petitioner denied his guilt and stated that he was forced to sign the statement (Exhibit PB) and recovery memo (Exhibit PA). He denied that any railway tickets had been recovered from him. He also stated that his signatures on Exhibit PJ which purports to be a receipt for the railway tickets were obtained by force. He denied that he was travelling in the railway train and stated that the Customs Officer had taken him into custody from his jeep at Amritsar. Guizari Lal had also denied his guilt. The finding of the Magistrate was that Gopal Dass was the owner of the gold in question which he was carrying through his nephew Guizari Lal who was a minor aged 10 years and below 9 years on the day of the occurrence. He convicted both Gopal Dass and Guizari Lal under Section 23 of the Foreign Exchange Regulation Act and under Section 107(81) of the Sea Customs Act. He ordered Guizari Lal minor to execute a bond of Rs. 1,000/-with one surety for keeping good conduct for two years and to appear and receive sentence when called upon during such period, and in the meantime to keep the peace and to be of good behaviour.

Gopal Dass petitioner was sentenced to undergo 9 months' rigorous imprisonment for each offence; but the sentences were to run concurrently. On appeal preferred by Gopal Dass his conviction and sentence under Section 23 of the Foreign Exchange Regulation Act were set aside but his conviction and sentence under Section 167(81) of the Sea Customs Act were maintained.

4. It has been argued before me by the learned counsel for the petitioner that the confessional statements Exhibits PB and PC of accused Gopal Dass and Gulzari Lal respectively are not admissible in evidence in view of the provisions of Section 25 of Indian Evidence Act. The learned counsel maintained that apart from these two statements the other evidence on the record is not sufficient for basing conviction of the accused. On behalf of the State it was urged that the statements of the accused, Exhibits PB and PC were recorded by Shri Y. R. Sachdeva, Deputy Superintendent Customs, and he cannot be deemed to be a "Police Officer" within the meaning of Section 25 of the Indian Evidence Act, and, therefore, these confessions can be proved against the accused and used as evidence. Section 25 of the Indian Evidence Act runs as under:

"No confession made to a Police Officer shall be proved as against a person accused of any offence." Section 25 of the Indian Evidence Act is a distinct departure from the law of confession in England. The rule embodied in this section was enacted in view of special circumstances obtaining in India and this law was enacted with a view to put a stop to confessions obtained by the police under torture, coercion, by deceit or by other malpractices. In enacting this provision as observed by Mahmood J., "the Legislature had in view the malpractices of police officers in extorting confessions from accused persons in order to gain credit by securing convictions, and that those malpractices went to the length of positive torture; nor do I doubt that the Legislature, in laying down such stringent rules, regarded the evidence of police officers as untrustworthy, and the object of the rules was to put a stop to the extortion of confession, by taking away from the police officers the advantage of proving such extorted confession during the trial of accused persons", vide *Queen Empress v. Babu Lal*¹ The object of the Legislature in excluding such confessions is to avoid the danger of admitting false confessions obtained from accused persons through undue influence or coercion. Bearing the object underlying the placing of confessions made to a Police Officer under a legal ban the High Courts in this country have given to the words "Police Officer" in Section 25 of the Indian Evidence Act a wide meaning. The *Queen v. Hurribole Chunder Ghose*², was the earliest case decided four years after the enactment of the Indian Evidence Act when it was felt that the principle underlying Section 25 was broad-based. Garth, C. J. observed:

"I consider that the term "police officer" should be read not in any strict technical sense, but according to its more comprehensive and popular meaning. * * * and I think it better in construing a section such as the 25th which was intended as a wholesome "protection to the accused, to construe it in its widest and most popular signification." (Vide pp. 215 and

216).

In a Full Bench decision in *Amin Shariff v. Emperor*, AIR 1934 Cal 580 it was held- "The Legislature in using the term "Police Officer" in Section 25 did not intend to exclude from its meaning Excise Officers exercising powers of detection and investigation of

crimes committed against Excise Laws."

In Section *Fernandez v. The State*, AIR 1953 Cal 219, Guha J., observed-

"In our opinion, therefore, though Section 25. Evidence Act was placed on the Statute Book before the Sea Customs Act was enacted, in the interests of the purity of administration of justice Customs Officers who exercise powers substantially analogous to those of police officers should also be subjected to the same limitations in the matter of confessions".

5. Coming to the provisions of the Sea Customs Act, under Section 169 an officer of the Customs duly employed in the prevention of smuggling is empowered to search any person where he reasonably believes that such person has dutiable or prohibited goods secreted about his person. Under Section 170A an officer of Customs may detain a person and produce him before the nearest Magistrate so that he may be screened or X-rayed. Under Section 171A an officer of Customs has the power to summon any person whose attendance he considers necessary either for giving evidence or for producing a document or any other thing in connection with the smuggling of any goods. Under Section 173 a Customs Officer is empowered to arrest any person against whom there exists a reasonable suspicion that he has been guilty of an offence under the Sea Customs Act. A Customs Officer may under Section 178 seize any thing liable to confiscation. It appears from the above provisions of the Sea Customs Act that Customs Officers have powers analogous to police powers relating to prevention or detection of crimes even though those powers fall short of powers of investigation. The power of investigation is not the real or governing test for the application of Section 25 of the Indian Evidence Act. In *Nanoo Sheikh Ahmed v. Emperor*³, a Full Bench of Bombay High Court held that an Abkari Officer was a Police Officer under Section 25 of Indian Evidence Act as he exercised the powers of Police Officer conferred upon him by law. In *Om Parkash v. The State of Punjab*⁴, it was held that the position of a Ward Rationing Officer is analogous to that of an Excise Officer carrying out a raid on suspected premises and a confession made by an accused person to the Ward Rationing Officer is on no different footing from a confession made to a Police Officer and is, therefore, inadmissible under Section 25.

In *Public Prosecutor v. C. Paramasivam*⁵, a Division Bench preferred the above view of the Calcutta and Bombay High Courts and held that an Excise Officer under the Opium Act was a Police Officer for purposes of Section 25 of the Indian Evidence Act.

6. The learned counsel for the State has drawn my attention to *In re, Mayilvahanam*, AIR 1947 Mad 308, where a Single Judge of that Court expressed the view that an Assistant Inspector of Customs was not a "Police Officer", but this view was not followed in the later decision. My attention has also been drawn by Shri Tewari to *Radha Kishim v. Emperor*⁶, where it was held that Section 25 applies to Police Officer alone and not to persons invested with the powers of Police Officer for limited purpose. It was held in that case that confession made to an Excise

Inspector who had the power to search and investigate was admissible- In my opinion the broader view should be preferred as it is in accord with the purpose and intention underlying Section 25 of the Indian Evidence Act.

7. The confessional statements. Exhibits P. B. and P. C. of Gopal Das and Gulzari Lal accused made before the Customs Officer are hit by the provisions of Section 25 of the Indian Evidence Act and I cannot take them into consideration for determining the guilt of the accused.

8. The other evidence in this case consists of the statements of P. W. I. R. S. Bains, Inspector Customs Amritsar, P. W. 5 B. K. Kalia, Inspector Customs Delhi, and P. W.

6 Y. R. Sachdeva, Deputy Superintendent Customs. These three persons on receipt of information, reached Amritsar Railway Station and then proceeded in a jeep towards Jullundur. They prove that Gopal Das was found in possession of two tickets for adults and a third ticket for a child. They also found in another compartment Gulzari Lal accused and one person, Jujkumar, both of whom were without tickets. Gulzari Lal accused is a boy of ten years of age and he could travel on payment of half fare. Gulzari Lal informed the prosecution witnesses that his ticket was with his uncle Gopal Das who in proved on the record to be his uncle. The gold pieces in question were recovered from the person of Gulzari Lal. The possession of two and a half tickets by accused Gopal Das, and the presence of his nephew Gulzari Lal and Juj Kumar in another compartment in the same train and who could not produce their tickets, are established. Juj Kumar is no relation of Gulzari Lal. The conclusion that Gopal Das and his nephew Gulzari Lal, in whose possession the gold was found, were travelling together, and that the young nephew was carrying contraband gold on behalf of Gopal Das himself, cannot be said to be far-fetched. The probabilities and the circumstances of this case point to the guilt of Gopal Das. It is extremely unlikely that the boy Gulzari Lal should be carrying a large quantity of contraband gold on his own account or on behalf of someone other than Gopal Das and should be travelling in the same train without the knowledge of Gopal Das. On the other hand, the circumstances of this case indicate a very high probability that Gopal Das was in possession of the contraband gold which was being carried for him on the person of his young nephew, and who was being used as the instrument of his uncle's possession. Gopal Das cannot escape his criminal liability on the ground that it was being carried by his young nephew. In the circumstances of this case, the gold will be deemed to be in possession of accused Gopal Das.

9. Apart from the question of possession, the offence created under Section 167 (81) of the Sea Customs Act includes a variety of dealings with respect to prohibited goods. A person commits an offence not only when he acquires possession of, but also if he is, in any way, concerned in carrying, removing, depositing, harbouring, keeping, or concealing, or in any manner dealing with any goods with respect to the importation or exportation of which any prohibition or restriction is in force.

10. I am satisfied on the record of this case that there is cogent and convincing proof of the guilt

of the petitioner. I maintain his conviction and sentence and dismiss the petition of revision. The accused is ordered to surrender to his bail bond.

Cases Referred.

1ILR 6 All 509 at p. 523 (FB)

2ILR 1 Cal 207

3AIR 1927 Bom 4

4AIR 1931 Punj 387

5AIR 1953 Mad 917

6AIR 1932 Pat 293