

**The Superintendent, Central Excise Vs. V.A. Radha Krishna Setty**

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**Court :** Karnataka

**Decided On :** Apr-05-1974

**Reported in :** 1975CriLJ1161

**Judge :** K. Bhimiah and ;B. Venkataswami, JJ.

**Appellant :** The Superintendent, Central Excise

**Respondent :** V.A. Radha Krishna Setty

**Judgement :**

**B. Venkataswami, J.**

1. The appellant, the Central Excise Department, Bangalore, has preferred this appeal against the judgment of acquittal of the respondent passed by the Judicial Magistrate, First Class, (1st Court), Bangalore, in C. C. No. 1382/72.

2. The respondent had been charged with offences under Section 85 of the Gold Control Act and Section 135 (b) of the Customs Act, for having been found in possession of 2 billets'pillets') of gold of foreign origin on 2-8-1969 at Subbamma Gallu, Akkipet, Bangalore. The learned Magistrate convicted the respondent on the charge under Section 85 of the Gold Control Act but released him on bond for Rupees 500/- under Section 4 of the Probation of Offenders Act. He, however, acquitted the accused on the other charge. The appellant, as we could gather from the arguments, is concerned only with acquittal on the charge

under Section 135(b) of the Customs Act. We, therefore, concern ourselves only with that charge.

3. The few relevant facts are : The respondent is a jeweller and hence accustomed to deal in gold. On 2-8-1969, the Central Excise Officials, presumably on reliable information, lay in wait for the respondent-accused at Dandina Subbammaganagalli, and on seeing him on the road, detained and searched him. The two 'pellets' of gold were recovered from his person, namely from the pocket of the shirt (M. O. 1) worn by him at the time. The 'pellets' were seized under a mahazar Ext. P-1. The respondent was questioned and his statement recorded as per Ex. P-2. Thereupon they got the gold appraised by an experienced jeweller P. W. 3, who opined that the said gold was of foreign origin as per his certificate Ex. P-3. Thereafter, after the necessary sanction to prosecute, the complaint was instituted before the court. It is also relevant to note here that a certificate of the Master of Mint has also been marked as Ex. D-1 which would clearly show that the billets were of 998.7 purity.

4. The learned Magistrate, after trial, has come to the conclusion that it had not been shown that the gold was of foreign origin. In coming to that conclusion he has been mainly influenced by the fact that there was mention of 'Tolas' on the billets in question and the said expression being in vogue only in India, the gold could not be presumed to be of foreign origin, notwithstanding the other evidence placed on record as to the markings and purity of such gold. He, therefore acquitted the respondent of the charge under Section 135(b) of the Customs Act as in force then. Hence this appeal.

5. On behalf of the appellant, it is urged that the finding regarding the foreign origin of gold is vitiated for two reasons. Firstly, that all the oral and documentary evidence bearing on that aspect has not been examined, before coming to the conclusion that it was not of foreign origin. Secondly, the effect of Section 123 of the Customs Act throwing the burden of proof on the accused, requiring him to prove that the goods were not smuggled, has not been noticed or appreciated at all. The further argument is that if an accused person does not undertake and discharge the said burden, thereby establishing that they were not smuggled

goods, he must be held to be guilty of an offence under Section 135(b) of the Customs Act, subject of course to the proof of mens rea as held by this Court in the case of Central Excise Superintendent v. Armugam AIR 1967 Mys 175 : 1967 Cri LJ 1350.

6. On a careful consideration of the oral and documentary evidence on record, we are clearly of opinion that the conclusion of the learned Magistrate that the gold seized was not of foreign origin, cannot be sustained. It is in the evidence of P. Ws. 1 and 3, the Superintendent of Central Excise and the panch for seizure, that the gold billets in question were in fact seized from the respondent (accused) as spoken to by them. The said witnesses have also spoken to the contents of the panchanama Ex. P-1 and also the fact of the respondent having made a statement as per Ex. P-2. With regard to Ex. P-1, the panchanama, the evidence of P. W. 3, the panch, has been sought to be questioned by suggestions to the effect that he was under an obligation to the complainant. We have carefully gone through his evidence and we find no warrant in support of such a view. With regard to Ex P-2, the statement of the respondent before the Customs Authorities, the plea of the respondent has been that he had been made to sign several papers under coercion and Ex. P-2 is one of them. Quite apart from Ex. P-2, in our opinion, there is other ample evidence to show that the gold billets were in fact seized from him and they bore markings as indicated in the panchanama and they were of '999.0' purity. We have earlier observed that the evidence of P. Ws. 1 and 3 together with Ex. P-1 panchanama for seizure would clearly establish that the said gold had been in fact seized from the respondent in the manner spoken to by the witnesses. As regards the foreign origin, we have from the evidence of P. W. 2, an expert jeweller, and the certificate issued by him as per Ex. P-3, that in his opinion the said gold was 'definitely of foreign origin'. P. W. 2 is an appraiser of 22 years standing with the Syndicate Bank. His opinion is based on the markings and fineness of the billets. The markings found are 'Compagine meraux Paris 10 tools 999.0.' Although the test applied by him is only the touchstone method for the purpose of the determination of fineness, his evidence finds corroboration from Ex. D-1 the certificate issued by the Mint. It is, therefore, clear from this evidence that the use of the word TOLAS', assuming that it is only an Indian weight and not ordinarily used by foreign agencies, is not decisive of the matter. Hence, the

conclusion of the trial court that the gold billets had not been shown to be of foreign origin cannot be sustained. We hold, therefore, that the Prosecution has satisfactorily established that the gold seized is of foreign origin.

7. Even otherwise, in view of the provisions of Section 123 of the Customs Act and the fact that the gold had been seized in the belief that it was smuggled, it was the clear duty of the respondent to have repelled the presumption by adducing evidence to show that the origin was not foreign at all and, therefore, the goods could not be held to be smuggled. On behalf of the respondent, no attempt has been made to show that the said gold had been covered by a permit or a licence or that it had been purchased, locally without any knowledge as to its foreign origin. In such circumstances, it is clear that the respondent must be held to have committed the offence under Section 135(b) of the Customs Act. It is of course true that to bring home the offence under Section 135(b) it must be further shown that the accused had the necessary knowledge or had reason to believe that the said gold was liable for confiscation under Section 111 of the Customs Act. But this intention is necessarily subjective and therefore must be gathered from the facts and surrounding circumstances of a case. In the instant case, the respondent had been aware of the markings on the gold. He is himself a jeweller. He had not a permit or a licence in support of such possession. He had not even troubled himself to place any evidence on record as to how he came by the gold billets. It is also established by the Prosecution that the gold must have been smuggled as it was of foreign origin. In these circumstances the enunciation of the Supreme Court in *Vallabhdas Liladhar v. Assistant Collector of Customs* AIR 1965 SC 481 : (1965) 1 Cri LJ 490 clearly applies. The enunciation is:

Once it is proved that the gold is smuggled gold, it follows that it was brought into the country without payment of duty or in violation of the prohibition or restriction in force and whosoever brought it and whosoever dealt with it thereafter knowing it to be smuggled in the manner provided in the section must be held to have the intention of evading the payment of duty or violating the prohibition or restriction.

8. In the light of the above discussion, we hold that the charge under Section 135(b) of the Customs Act has been made out. The acquittal of the respondent, of

the said charge has therefore to be set aside.

9. On behalf of the respondent-accused, several contentions were urged by his learned Counsel, Sri R. A. Ramaswami, in an effort to sustain the judgment of the lower court. We shall briefly consider them. His first contention is that the use of the word 'tola' and the admission of P. W. 2 that 24 carats gold was indigenously available, would clearly negative the theory that the billets were of foreign origin. We have earlier concluded that the use of the word 'tola' is not decisive of the matter. In regard to the other facet of this contention, P. W. 2 has nowhere admitted that such billets were indigenously available. Indeed, there is not even a clear suggestion to that effect in the evidence of this witness. Hence this contention has to be rejected.

10. It is next contended that the Prosecution has failed to prove affirmatively that the goods were smuggled in order to attract the provisions of Section 123 of the Customs Act for the burden of proof to be shifted on to the accused. We have earlier held that the goods have been shown to have been smuggled. Reliance, in this behalf, was placed on a decision of a learned single Judge of the Kerala High Court in Assistant Collector of Customs v. Pratap Rao Sait 1972 Cri LJ 1135(Ker). It is no doubt laid down therein that in order to attract the provisions of Section 123 of the Customs Act, one of the requirements to be proved is that the goods were seized in the reasonable belief that they were smuggled goods. But when the goods have been proved to be smuggled, an inference would follow automatically that such goods were seized in the reasonable belief that they were smuggled. Even otherwise, the belief entertained by the Customs Officer has been spoken to in a way by P. W. 1, a Superintendent of the Excise Department. Hence we find no merit in this contention.

11. It is next contended that it has not been shown that the accused had knowledge that the goods were liable for confiscation under Section 111 of the Customs Act. We have earlier held that the accused must be imputed with knowledge that they were smuggled goods, on account of the various circumstances adverted to therein. It, therefore, follows that such goods were liable for confiscation under Section 111(d) of the Customs Act. It further follows

from this that it is reasonable to hold that the accused must be held to have had sufficient reason to believe that the goods were liable for such confiscation. It is also implied from Vallabhdas' case AIR 1965 SC 481 : (1965) 1 Cri LJ 490 that once the goods were proved to be smuggled the accused must be imputed with an intention to evade payment of duty or violating the prohibition or restriction imposed by the Customs Act. We are, therefore, unable to agree with this contention also.

12. Next it was contended that Section 123 occurring in Chapter XIV of the Customs Act would be applicable only to adjudication proceedings before the Excise Authorities and not proceedings before a Court which is exclusively governed by the provisions of the Evidence Act. This contention has no force. Suffice in this connection to refer to an enunciation of the High Court of Punjab in *State on Punjab v. Krishan Lal*, with which we are in respectful agreement. In para 4 of the said report it is observed thus:

This section (i.e., 178-A of the Sea Customs Act which is in pari materia with Section 123 of the Customs Act) provides an exception to the general rule that an accused person must be presumed to be innocent until the prosecution have established all the ingredients which make up a criminal offence. Owing to the peculiar nature of the offence which is dealt with under the Sea Customs Act the Legislature thought it wise to put the onus of proving his innocence upon the accused person where there was a reasonable belief that he was in possession of smuggled goods and such goods were actually seized from his possession. If the prosecution can prove that the gold recovered from the possession of the respondent was smuggled gold as if in law a presumption to this effect arises then he will clearly be guilty of the offence under Section 167. In the present case gold was, in fact, recovered from him and the only question, therefore, is whether it is smuggled gold or not. Section 178-A provides that gold must be presumed to be smuggled unless this presumption is rebutted by the person from whom the gold is recovered.

13. Lastly, it is contended that the 'markings' on the gold billets are in the nature of hear-say evidence and, therefore, cannot be relied on in view of the decision of the

Privy Council in *Comptroller of Customs v. Western Electric Co.* 1966 AC 367. In other words, such markings have to be properly proved by examining those who may have been responsible for making them or bad personal knowledge of such matters. In the instant case, we are not faced with any such difficulty. Quite apart from the oral evidence of P. W. 2, which even if held to be inconclusive, the presumption implied in Section 123 that if the goods are seized in the reasonable belief that they were smuggled, and if the accused fails to show that such goods are of indigenous origin, an inference that such goods were smuggled would clearly arise in favour of the Prosecution. The factual position in the instant case clearly gives rise to such a presumption, and in the absence of rebuttal, it must be held to have become conclusive. We are not, therefore, persuaded to agree with this contention. Hence all the contentions fail.

14. Before concluding, we wish to observe that Ex. P-2, the statement of the respondent before the Excise Authorities, is in our opinion true and voluntary and is amply corroborated by other evidence on record. This statement in our view goes a long way to substantiate the case for the Prosecution. Though our conclusions have been largely based on the other evidence on record, this piece of evidence cannot also be ignored.

15. Lastly, we turn to the question of sentence. The offence is of a kind which may be regarded as socioeconomic. Such dealings in smuggled goods which sap the economic life-blood of a nation must be put down with a heavy hand so as to act as deterrent to others who are similarly minded as the accused before us. But that would not mean that any extenuating circumstances present should be ignored. In the case on hand, the offence is of the year 1969. The accused has had the benefit of an acquittal. The gold seized has been valued only at Rs. 4,000/-. The accused seems to be a small-time merchant in the jewellery trade. We are also informed that the gold in question has already been confiscated. Having regard to all these circumstances, we think ends of justice will be met if the respondent-accused is sentenced only to a fine of Rs. 1,000/-.

16. In the result, this appeal partly succeeds and is accordingly allowed. The acquittal of the respondent on a charge, under Section 135(b) of the Customs Act

is hereby set aside.

The respondent is held guilty of a charge under Section 135(b) of the Customs Act and is convicted accordingly. He is sentenced to pay a fine of Rs. 1,000/- (one thousand) only. In default, he will have to undergo simple imprisonment for 3 months. His conviction and sentence on a charge under Section 85 of the Gold Control Act remains undisturbed.

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