

Public Prosecutor Vs. Avvaru Annappa

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Court : Andhra Pradesh

Decided On : Jul-01-1968

Reported in : AIR1969AP278; 1969CriLJ1022

Judge : Kondaiah, J.

Acts : [Evidence Act, 1872](#) - Sections 3 and 25; Central Excises Act, 1944 - Sections 14; Defence of India Rules, 1962 - Rule 126-P and 126-P(2); [Customs Act, 1962](#) - Sections 135

Appeal No. : Criminal Appeal No. 592 of 1966

Appellant : Public Prosecutor

Respondent : Avvaru Annappa

Advocate for Def. : C. Padmanabhareddy, Adv.

Advocate for Pet/Ap. : K. Jayachandrareddy, Addl. Public Prosecutor

Judgement :

1. This appeal by the State is preferred against the judgment of the Principal District Munsiff Magistrate, Vijayawada in C.C. No. 396 of 1965 acquitting the accused of the charge of being in possession of 11 gold slabs at about 4.20 A.M. on 10-1-1965 on the Vijayawada railway platform, holding that the prosecution has not proved the guilt of the accused beyond reasonable doubt.

2. The case for the prosecution is that the accused who got down from the Janata Express proceeding to Madras on Vijayawada Railway platform at 4-20 A.M. on 10-1-1965, was found to be in possession of 11 gold slabs sealed in a cloth belt like a bag tied round his waist under his clothes on being searched by P. W. 1 the Deputy Superintendent of Central Excise, Vijayawada in presence of P. W. 2 the Assistant Station Master, Vijayawada Railway Station. M. Os 2 to 12 are the gold slabs which were seized from the accused under Ex. P-1, the mahazar prepared by P. W. 1 and the same on being tested, were found to be of 24 carats. The accused who was taken to the Central Excise Office between 11 A.M. and 12 noon. has made a statement Ex. P-2 to P. W. 1 admitting his possession of M. Os. 2 to 12, weighing about 110 tolas without a permit while he was coming that Khazipet, and that he was getting the same for his personal use. P. W. had taken one of the slabs marked M. O. 12 to the mint at Bombay and got is tested by P. W. 7 the Deputy Chief Assayer, I. G. Mint, Bombay, who on examination, found the sample to be containing gold in purity of 9990 and issued the certificate Ex. P-8.

3. The accused was arrested and produced before the Magistrate who remanded him to custody. The Deputy Collector of Central Excise, Guntur adjudicated the case and confiscated the gold to the Central Government under Ex. P-3. The Collector of Central Excise and Customs Hyderabad passed Ex. P-4. the order sanctioning prosecution of the accused under [Customs Act, 1962](#). Ex. P-5 is the sanction to prosecute the accused under Defence of India Rules (Gold Control) 1962.

4. The prosecution examined P. Ws. 1 to 7 and filed Exts. P-1 to P-10 in support of its case. P. W. 1 is the Deputy Superintendent of Central Excise, Vijayawada who seized M. Os. 2 to 12 foreign marked gold slabs from the accused, who gave the statement Ex. p-2. He speaks to the entire prosecution story. P. W. 2, the Assistant Station Master, Vijayawada Railway Station, who was on duty at the time of the commission of the offence corroborates the testimony of P. W. 1 with regard to the search and seizure of M. Os. 2 to 12 from the accused and has written Ex. p-1, P. W. 3 an attestor of Ex. p-1, is a goldsmith who tested the gold slabs in a room on the railway platform and opined that the gold is of 24 carats. P. W. 4 a partner, of Sri Venkateswara Tobacco Company. Vijayawada, has recorded Ex. p-

2 between 11 A.M. and 12 noon on 10-1-1965. P. W. 5, an employee of the Central Excise Department, proves Exs. P-6, P-7 and P-8. P. W. 6 an Upper Division Clerk in the office of the Central Excise, Vijayawada has been examined to prove Exs. P-9 and P-10 to show that no permit for the import or possession of foreign gold was issued to the accused. P. W. 7 the Deputy Chief Assayer, I. G. Mint, Bombay after the requisite test, certified under Ex. p-8 that M. O. 12 contains foreign gold of 9990 purity and such gold slabs with similar marks will not be manufactured and marked in India.

5. The plea of the accused is one of not guilty. He states that Ex. p-2 was neither true nor voluntary and in any event inadmissible in evidence.

6. Rejecting the testimony of the Prosecution witnesses and holding that Ex. p-2 is inadmissible in evidence, the trial Magistrate has acquitted the accused.

7. The learned Public Prosecutor contends that the entire approach and reasoning of the Court below is erroneous and illegal, that Ex. P-2 is admissible in evidence and that the order of acquittal cannot be sustained. Mr. Padmanabareddi, for the accused. strenuously contends contra and that there are not valid or justifiable grounds for my interference in this appeal against acquittal.

8. The points for determination are (1) whether the prosecution has brought home the guilt of the accused beyond reasonable doubt and (2) whether Ex. P-2 is admissible.

9. The Public Prosecutor has taken me through the entire evidence on record in support of his main contention that the appreciation of evidence by the trial Court is perverse and erroneous. On a reading of the entire evidence on record, I am unable to accept the finding of the trial Court that the search itself as alleged by the prosecution and the preparation of mahazarnama Ex. P-1 are untrue. P. W. 1 is the Deputy Superintendent of Central Excise, Vijayawada who is empowered to check the accused person on suspicion at 4-20 A.M. on Vijayawada railway platform on 10-1-1965. He says that no information, he stopped the accused on platform No. 4 at 4-20 A.M. about ten yards from the Railway parcel room. when he was alighting from Madras bound Janata Express and took him to the Railway

Parcel office and conducted search in the presence of P. W. 2 and another and found M. Os. 2 to 12 on the person of the accused. which later on were found to be of 9990 purity with foreign marks. He also states that ex. p-2 was given by the accused between 11 A.M. and 12 noon on the same day in the Central Excise Office in the presence of P. W. 4 and others. He states that the accused had neither a ticket not a platform ticket. The accused was arrested on the platform and was produced before the Magistrate for remand. The evidence P. W. 2 has been rejected by the lower Court on the sole ground that he would not have spared four hours time for assisting P. W. 1 in searching the accused and preparing a panchnama. On a reading of the evidence of P. Ws 1 and 2 I do not find any infirmity or material to reject their testimony. No doubt P. W. 1 is interested in booking cases of this kind of offence for which the accused has been charged. It is his duty to do so and on that account alone this evidence cannot be rejected.

10. There is no justification for the trial Magistrate to reject the testimony of P. W. 2 who even according to him was independent witness against whom nothing worth mentioning has been elicited to discredit his evidence. The reason given by the lower Court to brush aside the evidence of P. W. 2 might have deputed some one to look to his duties for some time, as the duty in which his assistance is sought for by P. W. 1 was also an important one, as he happened to be the Assistant Station Master in charge of the station at that time. The reasoning of the Court below in rejecting the testimony of P. Ws. 1 and 2 is really erroneous and unsustainable.

11. The Court below has given unnecessary importance with regard to the accused traveling in a particular train, with or without ticket and that some other person also was arrested at about that time outside the platform. Irrespective of the fact whether the accused has returned from Khazipet or any other place or that he was traveling with or without a ticket or that he intended to travel from Vijayawada station the fact that he was in possession of the contraband gold slabs was established beyond reasonable doubt as spoken to by the prosecution witnesses. It is immaterial for the prosecution whether he was coming from a particular place or that he intended to go to any particular place, when once it has been established that he was found in possession of the smuggled foreign gold of

11 slabs. The plea of the accused that he had purchased the same for his personal use is not acceptable and in any event, he has no requisite permission for the acquisition or purchase of the 11 slabs of smuggled foreign gold. In the circumstances and for the reasons stated above, I have no hesitation to hold that the respondent (accused) was found in possession of 11 slabs of smuggled gold having the marks 'Johnson Matthey 9990 London 10 Tolas' on one side and 'London Mocatta and Goldsmith Ltd.' on the other side at about 4.20 A.M. on 10-1-1965 on the Vijayawada railway station platform No. 4. The only irresistible conclusion on the facts one can reasonably arrive at, is that M. Os 2 to 12 were actually seized from the body of the accused in the railway station as alleged by the prosecution and ex. p-1 was prepared at that time.

12. On a careful reading of the evidence of P. Ws. 5, 6 and 7 and Exs. P-6 to P-10, I am satisfied that the prosecution has established beyond reasonable doubt that M. Os. 2 to 12 were gold slabs of 9990 purity with foreign marks not available in India, and the accused was not entitled to the possession of the same.

13. With regard to the admissibility of Ex, P-2, I must say that the finding of the lower Court cannot stand. The recitals in Ex. p-2, if found to be true and admissible, would amply corroborate the oral testimony of P. Ws. 1 and 2. P. W. 1 to whom the statement Ex. p-2 is given, is admittedly not a police officer within the meaning of S.25 of the Evidence Act.

14. In *Raja Ram Jaiswal v. State of Bihar*, 0065/1963 : 1964 CriLJ705 on which reliance has been placed by the trial Court, their Lordships of the Supreme Court were dealing with a case under Bihar and Orissa Excise Act, wherein Inspector or Sub-Inspector of Excise was empowered to investigate any offence punishable under Bihar Act and the confessions recorded by such inspectors of Excise were held to be confessions to a police officer and hence inadmissible in evidence. That ruling has no application to the facts of the present case which, in my considered opinion is governed by the decisions of the Supreme Court in *State of Punjab v. Barkat Ram*, : [1962]3SCR338 and *Soni Vallabhadas Liladhar v. Assistant Collector of Customs Jamnagar*, AIR 1965 SC 481 which are directly on point. In : [1962]3SCR338 , the Supreme Court held that the statements given by accused

persons to the Customs Officers are inadmissible in evidence as they are not considered to be police officers are not purpose of Section 25 of the Evidence Act. This view of the Supreme Court has been affirmed by the later decision in AIR 1965 SC 481 (supra). In *Badaku Joti Savant v. State of Mysore.* : 1966 CriLJ1353 the Supreme Court held that the statement made by an accused person to the Deputy Superintendent of Customs and Excise is not hit by Section 25 of the Evidence Act and is admissible in evidence unless and otherwise the accused successfully takes advantage of Section 24 of the Evidence Act. In the present case, I am convinced that ex. p-2 was given by the accused to P. W. 1, Customs Assistant Collector and Deputy Superintendent of Central Excise, voluntarily and the same is not hit by the provisions of Section 25 of the Evidence Act, as P. W. 1 is not a police Officer within the meaning of Section 25.

15. Hence, on a careful consideration of the facts and circumstances I am satisfied that the finding of the Court below that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt, is unsustainable.

16. The next question that survives for determination is what is the offence that has been committed by the accused and under what provisions he has to be punished.

17. I am unable to agree with the contention of Mr. Padmanabhareddy that the case fails under R.126-P (3) of the Defence of India Rules which prescribes a punishment of imprisonment for a term which may extend to one month or with fine or with both. The provisions of sub-rule (3) of R.126-P of the Defence of India Rules 1962 will be applicable and attracted only when the offence falls under any other provision of this part of the Defence of India Rules for which no punishment is provided in sub-rule (1) or sub-rule (2) of R.126-P. The present case, in my considered opinion falls within the provisions of sub-rule 2 (ii) as well as sub-rule (2) (iv) of Rule 126-P of the Defence of India Rules. Whoever has in his possession or under his control any quantity of gold and buys or otherwise acquires or accepts gold in contravention of any provision of the Defence of India Rules, shall be punishable with imprisonment for a term of not less than six months and not more than two years and also with fine. No person is entitled t

possess any gold beyond a particular quantity permissible under the Defence of India Rules or any quantity of smuggled foreign gold slabs in contravention of the Defence of India Rules and has thereby committed the offence punishable under Rule 126-P (2) (ii) and (iv) of the Defence of India Rules and under Section 135(b)(ii) of the [Customs Act, 1962](#).

18. Mr. Padmanabhareddy next contends that the offence falls both under Rule 126-P (2) (ii) and (iv) of the Defence of India Rules as well as under Section 135(b)(ii) of the [Customs Act, 1962](#) and this Court may exercise its discretion and punish the accused under the latter Act, instead of under to accede to this request of Mr. Padmanabhareddy as in the instant case, the offence directly falls under Rule 126-P (2) (ii) and (iv) of the Defence of India Rules which has been specifically enacted to punish offenders who possess or acquire or buy any gold without the requisite permit. The Court has to exercise its discretion properly, fairly, reasonably and judiciously taking into consideration the facts and circumstances of each case. hence it is just and proper to convict the respondent (accused) though liable under both the Acts, under Rule 126-P (2) (ii) and (iv) of the Defence of India Rules as the same have been specially made to meet such a contingency. In the circumstances, I have no alternative but to convict the respondent (accused) under Rule 126-P (2) (ii) and (iv) of the Defence of India Rules and sentence him to undergo simple imprisonment for six months. As the gold slabs have already been confiscated by the Customs Authorities no further orders need be passed in that regard.

19. In the result, the appeal preferred by the State is allowed setting aside the order of acquittal passed by the Court below and sentencing the accused to suffer simple imprisonment for a period of six months.

Appeal allowed.

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