

Lalit Kumar Vs. Asstt. Collector of Central Excise and anr.

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Court : Allahabad

Decided On : Apr-16-1982

Reported in : 1983(14)ELT2208(All)

Judge : V.N. Misra, J.

Acts : Gold (Control) Act, 1968 - Sections 2, 4(7), 67 and 85; Evidence Act - Sections 65

Appeal No. : Criminal Revision Nos. 1756 of 1980 and 213 of 1981

Appellant : Lalit Kumar

Respondent : Asstt. Collector of Central Excise and anr.

Disposition : Revision allowed

Judgement :

V.N. Misra, J.

1. These are two connected Criminal Revisions Criminal Revision No. 1756 of 1980 is by Lalit Kumar against the judgment and order dated 22-10-1980 by Sri S.N. Tandon, VIII, Additional Sessions Judge, Meerut in Criminal Appeal No. 145 of 1979 by means of which he maintained the conviction of the applicant under Section 85(1) (iii) (vi) (vii) (ix) of the Gold (Control) Act, 1968, but reduced the sentence from two years R.I. on these counts to nine months' R.I. Criminal

Revision No. 213 of 1981 is against this very order of the Additional Sessions Judge but only in respect of that portion of the order by means of which the sentence of the applicant was reduced.

2. Briefly stated, the facts involved in the case are that on 12-10-1974 a joint raid was made by the Central Excise Department. Income-tax and Sales Tax and the police at the residence of Chandra Prakash and that Lalit Kumar applicant son of Chandra Prakash was not present, but Chandra Prakash himself was present in the house and three Bahikhatas containing entries of gold transactions (Ext, 1 to Ext. 3) were recovered from a bag in his possession which had entries for the period 3-11-1972 to 12-10-1974 and 1970 to 1974. These entries related to primary gold as well as gold ornaments converted into new ornaments and also about money transactions in lieu of gold. On 19-8-1979 the applicant Lalit Kumar gave an application before the Assistant Collector of Central Excise, Meerut and Superintendent Gold, Meerut, accepting that these Bahikhatas related to his business and his father Chandra Prakash had no concern with them. After inquiry, the Collector, Central Excise, authorised the Assistant Collector, Central Excise to file a complaint against the applicant which was filed and in this complaint the applicant was convicted as aforesaid.

3. Under Section 4(7) of the Gold (Control) Act, the Gold Control Officer is to exercise his powers and to discharge his functions subject to such limitations, restrictions and conditions as the Central Government may think fit to impose. Under circular letter No. 22/78, F. No. 131/29/78-GC II dated 31st July, 1978, it was said that the Government of India was considering framing guidelines for launching prosecutions for offences committed under the Gold (Control) Act and pending finalisation of such guidelines the decision for prosecution under the Gold (Control) Act may be taken by the Collectors in those cases only where foreign marked gold or gold in respect of which smuggling was indicated was involved but in other cases where prosecution under the Gold (Control) Act was considered necessary prior clearance from Gold Control Administrator should be taken in each case. This clearly shows that by means of this circular letter the Government of India imposed a restriction on the functions of the Gold Control Officers and said that except where the Gold was foreign marked or was smuggled prosecution in

no case should be launched unless clearance had been obtained from the Government of India. In this particular case no clearance at all was obtained from the Government of India in respect of this prosecution and P.W. 1 H.R. Kataria, Assistant Collector, Customs and Central Excise stated that he was not even aware of this restriction imposed by the Central Government. It would, therefore, seem that this prosecution should not have been launched and cognizance of the offence should not have been taken in the absence of the clearance from the Government of India which had not been obtained. It was, however, argued on behalf of the Government of India that this circular letter from the Deputy Secretary, Government of India, was not mandatory and was only directory because in this letter it was said that clearance from Gold Control Administrator should be taken and it was not said that such clearance shall be taken before a prosecution is launched. I am unable to accept this argument, because it does not matter at all whether it was said that clearance should be taken or clearance shall be taken. A copy of the letter is on the record and it clearly shows that it was definitely laid down that clearance shall be taken and then such a prosecution launched and such clearance was not taken in this case.

4. Three Bahikhatas were seized from Chandra Prakash when he was carrying them in a bag and they were seized from inside his house. When the Excise authorities confronted Chandra Prakash he made an endorsement on one of these Bahikhatas that these Bahikhatus were not of his firm but were of his son Lalit Kumar, the applicant and the endorsement made by him was also signed by Lalit Kumar. On 5-12-1975 in reply to the show cause notice issued to him Lalit Kumar applicant stated that these Bahikhatas were in respect of his business and his father had no concern with them. It was however, not proved before whom the endorsement dated 2-9-1975 was made.

5. It will be seen that when these Bahikhatas were seized Chandra Prakash did not say that these Bahikhatas were not of his firm. These Bahikhatas were of the firm Chandra Prakash Rajendra Prasad. They were recovered from a bag which Chandra Prakash was carrying. Chandra Prakash was found carrying these Bahikhatas inside a bag and was apprehended inside his own house and an endorsement was made by him that these Bahikhatas were of his firm and had

been recovered from his possession. In spite of it on a mere statement made by Chandra Prakash subsequently it was believed that they were not of the firm of Chandra Prakash and his son Lalit Kumar was prosecuted who has now denied that these Bahikhatas were of his firm and that he is in any way liable for the entries in them. The prosecution did not bother to get any evidence to show that Lalit Kumar was also a partner in the firm Chandra Prakash Rajendra Prasad and the statement of Chandra Prakash dated 12-10-1974 (Ext. Ka. 4) was that in respect of entries in these Bahikhatas he would not be able to say anything but would explain them on the opening of the office. All this clearly indicated that the Bahikhatas were of the firm Chandra Prakash Rajendra Prasad which was a firm of Chandra Prakash and the applicant was not concerned with them. In spite of it on a statement of Chandra Prakash made on 2-9-1975 it was believed that they did not relate to his business and related to the business of his son Lalit Kumar only.

6. The prosecution solely relied on the admissions made by Lalit Kumar on 19-8-1975 and then 5-12-1975. The admission on 19-8-1975 (Ext. Ka. 8) was made by Lalit Kumar in his application to the Assistant Collector, Central Excise and the Gold Superintendent in which he said that these three Bahikhatas related to his business, the business of his brother and the business of his mother and the firm of his father had no concern with this business. Similarly, on 5-12-1975 in reply to the show cause notice Lalit Kumar stated that these Bahikhatas related to his business and his father had no concern with them. It is now said that these admissions were wrongly made by Lalit Kumar, because Bahikhatas had been seized from his father Chandra Prakash who suffered from heart ailment and in order to avoid a shock to him his son Lalit Kumar contended that the Bahikhatas were of his business.

7. The entries of these Bahikhatas were also not proved and only three extracts made from these Bahikhatas were proved as Excts. Ka-5, Ka-6 and Ka-7. Under Section 65, Evidence Act, secondary Evidence could not be given because the original Bahikhatas were on record and even if secondary evidence could be given it was necessary for prosecution to prove the correctness of the original entries, and to prove that the extracts were true copies of the original. P.W. 3 D.C. Ahuja

and P.W. 4 Ram Nath were the two witnesses who were examined to prove these entries. Ram Nath said that these were two extracts but did not proceed to prove who had made the original entries.

8. It was urged that a presumption under Section 67, Gold (Control) Act would be made in respect of the entries in these Bahikhatas and they would be read in evidence. In this case, however, the Bahikhatas were seized from Chandrika Prasad and were being used against Lalit Kumar from whom they had not been seized. Therefore, no presumption could be made under Section 67, Gold (Control) Act and the entries in the Bahikhatas had to be properly proved which was not done.

9. It was also urged that 'gold' as defined in Section 2(h), Gold (Control) Act includes ornaments also as stated in Section 2(j). Therefore, even if the applicant was dealing in ornaments only and was converting old ornaments into new ones on commission he was a dealer of gold. It was, however, not shown that the ornaments in which the applicant was dealing were of purity more than nine carats and were, therefore, of gold as mentioned in Section 2(j) of the Act. It could not be therefore, supposed that the applicant was dealing in ornaments of this purity, and was a dealer of gold who was required to get a licence before he could work as a dealer.

10. A complaint was filed against Lalit Kumar applicant under Section 85, Gold (Control) Act. In this complaint it was said that the applicant took 669.125 gms. of primary gold, received Rs. 2,43,812.56 cash in lieu of gold and prepared 24,347.990 gms. of gold ornaments which he gave to his customers, but the entries in these Bahikhatas were not at all proved to show that so much of gold or cash was taken and converted into ornaments. For these various reasons, therefore, the applicant could not be convicted and the question of setting aside the order reducing the entries on him cannot arise.

11. It would thus be seen that the Gold Control Officer was to work under such restrictions which were imposed on him by the Central Government, Central Government had imposed a restriction on him that such prosecution shall not be filed unless clearance had been obtained from the Gold Control Administrator but

no such clearance was obtained from the Gold Control Administrator and then the complaint was filed. The three Bahikhatas in his case which were seized from Chandra Prakash and related to his firm Chandra Prakash Rajendra Prasad were not said to relate to the business of the applicant Lalit Kumar but a subsequent statement was made by Chandra Prakash that the Bahikhatas did not relate to his firm and related to the business of Lalit Kumar and this was accepted by the authorities and a prosecution was launched against Lalit Kumar. The admissions made by Lalit Kumar at two different stages showing that the Bahikhatas related to his business was the only evidence used against him and even if this was accepted the entries in these Bahikhatas were not proved. No presumption could be made in this case under Section 67 of the Gold (Control) Act and it was not shown that Lalit Kumar was a dealer in gold as defined in Section 2(j) of the Act.

12. Criminal Revision No. 1756 of 1980 is, therefore, allowed. The conviction and sentence of the applicant are hereby set aside. The applicant is on bail. He need not surrender and his bail bonds are hereby discharged. Fine, if paid, shall be refunded to him. Criminal Revision No. 213 of 1981 is hereby dismissed.

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