Prem Narayan Sharma Vs. State of U.P.

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Court : Allahabad

Decided On : Nov-20-2001

Reported in : 2002(80)ECC436

Judge : U.S. Tripathi, J.

Appeal No. : Criminal Revision No. 2475 of 2001

Appellant : Prem Narayan Sharma

Respondent : State of U.P.

Disposition : Petition dismissed

Judgement :
ORDER

U.S. Tripathi, J.

1. This revision has been directed against the judgment and order dated 8.8.2001 passed by IInd Additional Sessions Judge, Varanasi in Criminal Appeal No. 144 of 2001, dismissing the appeal of the applicant and confirming the conviction of the applicant under Section 135 of Customs Act and sentence of RI for a period of three years but reducing the fine of Rs. 5000 to Rs. 100.

2. The prosecution story, briefly stated, was that on 22.12.1999 at about 1 P.M. the Customs Authorities were checking the vehicles at Mudila at Gorakhpur

Sonauli Road. In the meantime, bus No. UP 53 G 6665 owned by U.P. State Road Transport Corporation reached there. The above bus was stopped by the Customs Authorities and on checking the applicant Prem Narayan Sharma, who was travelling from said bus was found in possession of 2 packets of golden biscuits of foreign origin containing 6 Biscuits each weighing 1110.340 grams worth Rs. 5,05,204. It was being carried by the applicant in India without any authority. The applicant was apprehended and his statement was recorded under Sections 107/108 Customs Act. After due investigation, complaint was filed against the applicant in the Court of Special Chief Judicial Magistrate, Varanasi by Assistant Commissioner Customs.

3. The learned Magistrate summoned the applicant for trial under Section 135 of Customs Act. The prosecution in support of its case examined Surender Nath (P.W. 1). In his statement under Section 313 Cr. P.C the applicant admitted that he was carrying golden biscuits of foreign origin from Nepal. Considering the evidence of Surendra Nath (P.W. 1) and the statement of the applicant, the learned Special Chief Judicial Magistrate convicted the applicant under Section 135, Customs Act and sentenced him to undergo R.I. for a period of three years and to pay fine of Rs. 5,000

4. Aggrieved with his above conviction and sentence, the applicant filed Criminal Appeal No. 149 of 2001. The Appellate Court confirmed the conviction and sentence of three years R.I. but reduced the fine from Rs. 5,000 to Rs. 100.

5. The above order of appellate Court has been challenged in this revision.

6. Heard the learned Counsel for the applicant and the learned A.G.A. and perused the record.

7. So far the merit of the revision is concerned, there is evidence of Custom Inspector Surendra Nath, who had stated that on 22.12.1999 at about 1 P.M. the U.P.S.R.T.C. Bus No. UP 53G 8665 was checked at Mudila on Gorakhpur Sonauli Road. The applicant was found sitting in the said bus. On his personal search, he was found in possession of 2 packets containing 6 golden biscuits each of foreign origin. The weight of gold was 1110.340 grams and its market price was Rs.

5,05,204. No cross examination was made from the witness. The applicant in his statement under Section 313, Cr. P.C also admitted that he was carrying said gold from Nepal. As such there was sufficient evidence coupled with the admission of the applicant to prove the guilt of the applicant for the offence punishable under Section 135, Customs Act.

8. The learned Counsel for the applicant further contended that there was no pairokar of the applicant and therefore, the sentence be reduced.

9. Having gone through the relevant provisions I find no force in the above contention.

Section 135 of Customs Act reads as under:

Evasion of duty or prohibitions:

(1) Without prejudice to any action that may be taken under this Act, if any person--

(a) is in relation to any goods any way knowingly concerned in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or

(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing , selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under Section 111.

he shall be punishable--

(i) in the case of an offence relating to any of the goods to which Section 123 applies and the market price whereof exceeds one lakh of rupees, with imprisonment for a term which may extend to (seven years) and with fine;

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be less than (three years);

(ii) in any other case, with imprisonment for a term which may extend (three years) or with fine, or with both.

It is not disputed that provisions of Section 123 of Customs Act are applicable in the case of gold. Therefore, in the absence of special and adequate reasons, the minimum sentence of imprisonment in such case shall not be less than 3 years. Therefore, there is no question of reducing the sentence.

10. So far imposition of fine is concerned the Appellate Court had already reduced the fine of Rs. 5,000 awarded by Trial Court to Rs. 100. The Appellate Court, therefore, has already shown much leniency in this regard.

11. The revision lacks merit and is, accordingly, dismissed.