

Gangadhar Vs. Customs

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Court : Delhi

Decided On : Jul-23-2005

Reported in : 123(2003)DLT396; 2005(83)DRJ607; 2005(190)ELT159(Del)

Judge : R.S. Sodhi, J.

Acts : Customs Act - Sections 132 and 135

Appeal No. : CrIR 484/2003

Appellant : Gangadhar

Respondent : Customs

Advocate for Def. : B.K. Kapur, Adv.

Advocate for Pet/Ap. : Gurbaksh Singh, Ad

Judgement :

R.S. Sodhi, J.

1. This Revision Petition is directed against the Order dated 6th May, 2003, of the Additional Sessions Judge, Delhi in CA No. 1/2002, whereby the learned Judge has dismissed the appeal of the Petitioner herein arising out of the order dated 24th December, 2001, of the Metropolitan Magistrate, whereby the learned Magistrate has held the Petitioner guilty under Section 132/135(i)(a) of the

Customs Act and sentenced him to undergo imprisonment for total one year and to pay a fine of Rs.2,500/-.

2. Counsel for the Petitioner submits that he does not wish to challenge the judgment of conviction on merits but confines his arguments only to the question of sentence. I, therefore, confirm the order of conviction. Counsel for the Petitioner submits that the offence is dated 12th March, 1989, and that the Petitioner has already suffered incarceration for over seven and a half months out of the total sentence of imprisonment of one year awarded to him. The fine has also been deposited. He also submits that the Petitioner is a daily wage worker belonging to a poor strata of society and is the only bread winner of the family comprising of crippled widowed mother and two minor child besides his wife. He submits that putting him in jail at this belated stage when he is making a sincere attempt to raise a responsible family would be counter productive. In this view of the matter, he submits that this Court should exercise power of awarding sentence less than the minimum.

3. Counsel for the Customs on the other hand submits that these are no grounds for exercising this power since the length of trial is of no consequence and there is no suffering caused to the accused. He submits that the accused must be taught a lesson so that in future he does not commit this offence again. He also submits that the society demands that the accused must suffer so that a proper message is sent to all those who may commit the offence.

4. Heard Counsel for the Petitioner as also the Counsel for the Customs. I am of the considered opinion that in the present case where the Petitioner is a daily wage worker, who has been duped into carrying some quantity of gold, it would not be proper to unfold the wrath of society on this poor citizen. He is undoubtedly the only bread winner of his family which consists of crippled widowed mother and two minor children. Sending the Petitioner to jail after 16 years, surely is not going to be beneficial to the social order nor can it be beneficial to the ends of justice. The criminal judicial system is reformatory in nature and a citizen if after having committed an offence can be rehabilitated, that is the greatest contribution that this Court can make to the society. In this case the accused has already undergone

seven and a half months of imprisonment and no useful purpose would be served in requiring him to undergo remaining four and a half months of sentence of imprisonment at this belated stage.

I am of the view that the ends of justice would be met if the sentence of imprisonment of the petitioner is reduced to the period already undergone. It is ordered accordingly.

5. With this modification, Crl.Rev.P.484/2003 is disposed of. The bail bond and the surety shall stand discharged.

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