

In Re : A.M.M. Sathakathullah

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Court : Chennai

Decided On : Nov-05-1963

Reported in : 1965CriLJ306

Judge : Kailasam, J.

Appellant : In Re : A.M.M. Sathakathullah

Advocate for Pet/Ap. : Mr. S. Govind Swaminathan

Judgement :

Kailasam, J.

1. The second accused in C.C No. 5118 of 1962, on the file of the Chief Presidency Magistrate, Egmore, is the appellant. He was tried for an offence under Section 23(1A)(a) of the Foreign Exchange Regulation Act, in that he was knowingly concerned in the importation of gold and wrist watches without a valid permit on 8.8.1961 at Madras. He was found guilty under Section 167(81) of the Sea Customs Act and sentenced to six months-rigorous imprisonment and a fine of Rs. 250.

2. P.W. 1, the Preventive officer attached to the Customs Department, was on duty on 10.8.1961 on board S.S. Rajula. He noticed a cook on board the ship (who was tried as the first accused) moving in a suspicious manner. P.W. 1 questioned him. When he was searched, it was found that he had on his person four bars of gold.

When the canteen was searched, a garlic bag containing 90 pieces of wrist watches was recovered.

3. P.W. 1, the Rummaging Inspector, questioned the first accused, and the first accused made a statement and undertook to point out the person to whom he had to deliver these items. The first accused, Selvaraj, took P.W. 2 to No. 26 Parianna Maistry St., which was occupied by the present appellant. P.W. 2 searched the room at 7 p.m. on 10.8.1961. The appellant at that time tore a paper and threw it out of the window P.W. 2 collected it and pasted it. The pasted slip of paper is M.O. 4. The paper M.O. 4 was written by the appellant in his own hand. The appellant wrote a statement in his own hand, and that is Ex. P. 4, P.W. 3 was one of the persons present at the time of the search and he corroborated the testimony of P.W. 2.

4. In Ex. P. 4 the appellant stated that one Yusuf from Penang wrote him a letter ten days before the date of the occurrence stating that he would be sending through Selvaraj, the first accused, watches and gold, and that after he received them the appellant should pay Rs. 1500 as cooly to him, that he was also informed that Selvaraj would be staying in a lodge at Egmore, and that he should go and meet the said Selvaraj and take delivery of the articles, that again two or three days before the incident Yusuf wrote from Penang another letter stating that he had sent the aforesaid articles through Selvaraj, the first accused, that the appellant wrote on a violet ruled paper details about the articles, which were mentioned in the letter and tore the aforesaid two letters written by Yusuf, that on the morning of 10th August 1961 Selvaraj came to his house and told him that he would bring the articles at 2 p.m. that at about 7 p.m., Selvaraj and other Customs Officials came to his room, that at that time he took a paper from his pocket, tore it and threw it outside and that the Customs Officers seeing this brought the torn paper and pasted it together.

5. In the lower Court the appellant filed a written statement. In the statement he mentioned that on receipt of a letter from Yusuf ten days before the ship arrived, he informed Yusuf, that he did not wish to do the business which was requested of him, that when he received another letter from Yusuf he noted the items and the

value of the goods on a piece of paper and tore off the letter, that on receipt of that letter he wrote back to Yusuf stating that he was not going to help Selvaraj to sell the articles brought by him, that when the ship arrived, he did not go to Dwaraka Lodge to meet Selvaraj, that on the morning at about 11 a.m. a person stating that he was Selvaraj came and, wanted to meet him, that the appellant told him that he was Sathakathullah, that Selvaraj asked him why he did not meet him at Dwarka Lodge, that Selvaraj informed him that Yusuf had given him 90 wrist watches and some gold pieces with instructions to get in touch with the appellant, that the appellant told Selvaraj that he did not wish to have any dealings with him, asked Selvaraj to take back the said goods to Penang and that in the presence of Selvaraj the appellant tore off the piece of paper in which he had noted the items and the value of the goods and threw it in the room. He further stated that Selvaraj came along with the Customs Officers at 7 p.m. on 10th August 1961 that at that time the appellant picked up the torn pieces of paper and threw them out, that the Customs Officers picked up the torn pieces of paper, pasted them with transparent adhesive paper and searched his room.

6. The Lower Court found that the statements made by the appellant before the Court and the Customs Officers clearly established that there was some sort of prior understanding between the appellant and Yusuf. The lower Court also found that the appellant received two letters from Yusuf and that if the appellant had no concert whatsoever with this import, there would not have been any occasion for him for noting the details of the items in a bit of paper and tearing the paper at the sight of the Customs Officers.

7. The case against the appellant depends upon the statements made by him to the Customs Officers, Ex. P. 4 and his conduct in receiving two letters from Yusuf, noting the particulars of the articles, meeting Selvaraj on the morning of the day of occurrence and tearing them off when he saw the Customs Officers.

8. The appellant retracted his confession in the trial court and stated that P.W. 2 dictated the statement and he wrote it, as he was forced to do so. The statement made in the court is different from the one, which he made to the Customs Officers. Though in Ex. P. 4, the statement made to the Customs officers, he did

not state that he wrote to Yusuf refusing his services when he received the two letters from Yusuf, in the statement made in court he stated that he wrote to Yusuf declining his services. So also in the statement made in court he stated that, when Selvaraj came to him on the morning of the occurrence, he refused to have anything to do with the articles and asked him to return back the articles to Penang. The assertions made in the statement in court, which are not found in Ex. P. 4, are clearly exculpatory in nature and were made for the first time in court. Much weight cannot therefore be attached to his statement in court.

9. It has been held that a statement made to the Customs Officers is admissible in evidence. It has not been shown that the Customs Officers made any inducement or used force and extracted the confession. There is no material to suspect the truth of the statement made to the Customs Officers. This statement, as already pointed out, has been retracted in the trial court. It is, therefore, necessary that there must be some material to corroborate the statement made by the appellant to the Customs Officers in order to satisfy the court that the statement made could be acted upon. The prosecution relies on the conduct of the appellant in meeting Selvaraj in the morning and tearing off the papers when he saw the Customs Officers.

10. The confession is to the effect that the appellant received a letter ten days before the occurrence that Yusuf would be sending wrist watches through Selvaraj and that the appellant should receive them and pay Selvaraj Rs. 1500 as cooly to him. It was also stated that the appellant should meet Selvaraj at a particular hotel. The appellant received another letter two or three days before the occurrence to the effect that Yusuf had already sent the articles through Selvaraj. The appellant tore the two letters, after making a note of the details of the articles mentioned in the second letter. Selvaraj came in the morning of the date of occurrence and told the appellant that he would bring the articles at 2 p.m. and at 7 p.m. Selvaraj came with the Customs Officers and when the appellant saw the Customs Officers he tore off the paper on which he noted the particulars and threw the torn pieces outside, and the Customs Officers collected them and pasted them together.

11. The appellant was found guilty of being knowingly concerned in the evading of duty chargeable on the goods, an offence punishable under the latter part of Section 167(81) of the Sea Customs Act. It has now to be considered whether the prosecution has established that the appellant was in any way knowingly concerned in any fraudulent evasion of any duty of prohibition or restriction or of any of the provisions of the Sea Customs Act, According to the Chamber's Dictionary the word 'concern' means 'to relate or belong; to affect or interest; to involve by interest'; and the word 'concerned' means 'interested, involved, troubled.' According to the Oxford Dictionary 'to be concerned in' means 'to take part in or to be related to'. Therefore the expression is of wide import. As observed by the Supreme Court in *Sewpujanrai Indrasanrai Ltd. v. Collector of Customs* : 1958 CriLJ1355 a person may be concerned in the importation of smuggled gold without being a smuggler himself or without himself contravening any of the provisions of the Foreign Exchange Act The expression 'concerned in' will cover cases which will not amount to abetment of the offence under Section 107 I.P.C. If a person is interested in or consciously taken any step whatever in the illegal import, he will be guilty. As pointed out by Debabrata Mookerjee J. in *Additional Collector of Customs v. Sitaram Agarwalla* : AIR1962 Cal242 , the words 'concerned in' appear to have been deliberately used for the purpose of punishing every one who may have anything to do in the process or operation which precedes the bringing of prohibited goods into this country. A person will be concerned in the doing of an act, if he takes part or consciously takes any step whatever in the illegal import of the goods. He will not be guilty under the section if he has nothing to do with the import, but comes to have dealings with the goods after they had been imported. It was held in *Devichand Jestimal and Co. Bangalore v. Collector of Central Excise Madras* : AIR1960 Mad281 that to be in possession of gold or to sell the gold or to buy the gold, once the process of importation is completed and independently of the acts connected with such importation, it will not be an offence under Section 167(81) of the Sea Customs Act.

12. In *Attorney General v. Robson* 1850 5 Ex. 790 it was contended that the defendant was not concerned in the unshipping of the tobacco, though the purpose for which the vessel was hired might have been known to him, and a

person, who merely afforded to others the means of doing a particular act, could not be said to do it himself. The contention was negatived, and Pollock C.B. held that the words 'otherwise concerned' mean having an interest whatever in the matter. Alderson B. observed that in the circumstances it might not be said that the defendant assisted but he was certainly concerned in the unshipping.

13. From the above decisions it is seen that the words 'concerned in' are of wide import and have been designedly used by the legislature for punishing every one, who has anything to do in the process of importation of smuggled goods into this country. As pointed out by Alderson B, a person, even though he might not have assisted in the import, may be held to have been concerned in the import. It is unnecessary for the prosecution to establish that the person in any way abetted in the import. In the light of the above discussion, it has to be decided whether on the facts of the case the prosecution has made out that the appellant was concerned in the import of the watches.

14. In his statement, Ex. P. 4, to the Customs Officer, the appellant admitted that he received two letters from, Yusuf informing him that wrist watches and gold were being sent through Selvaraj and that the appellant should receive them and pay Selvaraj Rs. 1500 as cooly to him. The statement of the, appellant that he received two letters from Yusuf, is amply corroborated by the existence of the note, M.O. 4, which the appellant prepared of the articles which were mentioned in the letters. Selvaraj had in his possession the articles noted in the slip on board the ship. The statement of the appellant in court that on receipt of the two letters he wrote to Yusuf that he would not be a party to the affairs cannot be accepted, as the appellant did not state so in Ex. P. 4. The plea that he declined his services is exculpatory and belated. There is also no direct evidence to prove that the appellant consented to receive the smuggled goods. It has not been established that the appellant replied these two letters. But the appellant has admitted that after making note of the articles and the prices mentioned in those two letters, he destroyed the letters. This conduct is suspicious. In this connection the statement of the appellant in Ex. P. 4 that Selvaraj saw him at 11 a.m. on the morning and stated that he would bring the articles at 2 p.m. becomes very important.

Selvaraj was arrested at 4 p.m. on board the ship on suspicion by P.W. 2. If, before his arrest, it is established that at 11 a.m. he contacted the appellant and that the appellant agreed to receive the smuggled goods, it would clearly prove that the appellant accepted to receive the smuggled goods according to Yusuf's letters. In fact Mr. S. Govind Swaminathan, learned Counsel for the appellant, stated that if it is established that Selvaraj met the appellant on the morning and the appellant agreed to receive the goods, he would have nothing further to say in favour of his client. But he submitted that the prosecution has not succeeded in proving that Selvaraj met the appellant that morning at 11 a.m. and the appellant agreed to receive the articles. In Ex. P. 4 the appellant stated that Selvaraj came to his house in the morning and told him that he would bring the articles at 2 p.m. Ex. P. 4 does not state whether the appellant agreed to receive the goods or not. But in his written statement in the trial court, the appellant pleaded that Selvaraj came at 11 a.m. and informed him that he had come from Yusuf with the smuggled goods and that the appellant told him that he did not wish to have any dealing with him and asked Selvaraj to take the said goods to Penang. The plea of the appellant that he told Selvaraj that he would not have any dealings with him and asked Selvaraj to take back the goods was mentioned for the first time in the trial court and was not stated by him in Ex. P. 4.

Therefore, the statement that he refused to have dealings with Selvaraj cannot be accepted. The prosecution has to establish that Selvaraj met the appellant on the morning of the occurrence and the appellant agreed to receive the goods. When Selvaraj was arrested at 4.15 p.m. on board the ship, he confessed that he kept the gold and watches. He made a statement, Ex. P. 2 in which he stated that Yusuf had instructed him to deliver the goods to a person, who was near Broadway and that he would show the person to the Customs Authorities, After making the statement Selvaraj took P.W. 2, and showed the appellant to him. In the statement Selvaraj did not mention that he met the appellant in the morning. P.W. 2, the Rummaging inspector, did not in his evidence state that Selvaraj told him that he met the appellant on the morning of the incident. When Selvaraj was questioned in the trial court, it was not suggested to him that he stated to P.W. 2 that he met the appellant on the morning of the occurrence. It was not put to the appellant that Selvaraj met the appellant in the morning. It is not necessary that

every material fact in the confessional statement Ex. P. 4 should be corroborated. But it has to be considered whether the statement of the appellant in Ex. P. 4 that Selvaraj met him on the morning of the occurrence and stated that he would bring the articles at 2 p.m., could be acted upon.

The appellant in Ex. P. 4 did not state that he agreed to receive the articles. The appellant admitted in the trial court that Selvaraj visited him to the morning and told him that he had wrist watches and gold from Yusuf. The appellant added that he declined to have any dealings with him. In his written statement he further added that he asked Selvaraj to take back the goods to Penang and that in the presence of Selvaraj tore off the piece of paper, in which he had noted the items and the value of the goods, into pieces and threw them in the room. Therefore, apart from his statement in Ex. P. 4, the definite case of the appellant in the trial court was that Selvaraj met him that morning. Though the fact of Selvaraj visiting the appellant that morning was not put to the appellant and his explanation asked for and though P.W. 2 did not mention in his statement, as the appellant had definitely admitted Selvaraj's visit that morning in Ex. P. 4 as well as his statement in court, there could be no prejudice to him in acting on his admission. The statement, Ex, P. 4, does not mention whether the appellant agreed to receive the goods or not. The appellant after noting the details of the articles with their value in a piece of paper destroyed the letters received from Yusuf. If the appellant never intended to comply with the request of Yusuf, one cannot understand why he made a note of all the articles with the prices as found in the letter.

The evidence of P.W. 2, the Rummaging Inspector is that when Selvaraj showed the appellant to him, the appellant tore the paper and threw the torn pieces through the windows and that he collected the torn pieces and pasted them together. It is not disputed that M.O. 4 is in the handwriting of the appellant and the articles that were noted in the letters were found in the possession of Selvaraj on board the ship. There is no reason at all for rejecting the testimony of P.W. 2 that the appellant tore the paper when he saw P.W. 2. The statement of the appellant that he tore the paper in the morning after declining his services to Selvaraj is opposed to his confession and belated and cannot be accepted. The conduct of the appellant proves that he had a guilty mind. If the noting of the details of the

articles with their value by the appellant was innocent, there is no reason for his destroying the original letters and the piece of paper on his seeing P.W. 2. The conduct of the appellant in tearing off the piece of paper establishes that he noted the particulars from Yusuf's letter with a view to receive the articles from Selvaraj and did not want it to fall into the hands of P.W. 2. It has already been found that Selvaraj did meet the appellant in the morning. In Ex. P. 4 the appellant admitted that Selvaraj stated that he would bring the articles at 2 p.m. Taking the various circumstances namely the admitted receipt of two letters from Yusuf, the tearing off the two letters received from Yusuf after noting the details in a piece of paper, the meeting of Selvaraj on the morning of the incident and the tearing off the slip of paper on seeing P.W. 2, it can be safely presumed that when Selvaraj stated that he would bring the goods at 2 p.m. the appellant accepted to receive the goods according to Yusufs letters.

These facts conclusively establish that the appellant when he received the two letters from Yusuf accepted to receive the smuggled goods from Selvaraj according to the direction in the letter. The facts found prove that die appellant was concerned in the illegal import of the gold and watches. The conviction under Section 167(81) of the Sea Custom Act is therefore correct The conviction under Section 231A(a) of the Foreign Exchange Regulation Act is also confirmed. The sentence cannot be said to be excessive. The conviction under Section 167(81) of the Sea Customs Act and the sentence are confirmed. No separate sentence is necessary under Section 231A(a) of the Foreign Exchange Regulation Act. The appeal is dismissed.