

In Re: K. Dhanabal

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Court : Chennai

Decided On : Sep-22-1978

Reported in : 1979CENCUS228D

Judge : Maheswaran, J.

Appeal No. : Criminal Revision Case No. 840 of 1975 and Criminal Revision Petition No. 829 of 1975

Appellant : In Re: K. Dhanabal

Disposition : Petition dismissed

Judgement :

ORDER

Maheswaran, J.

1. This petition coming on for hearing on Monday the 4th day of September 1978 upon perusing the petition and the judgment of the Lower Courts and the record in the case and upon hearing the arguments of Mr. K. Alagumalai, Advocate, for the petitioner and of Mr. Ilias Ali for the Central Government Prosecutor on behalf of the State and the case having stood over for consideration till this day, the Court made the following order:

The scooter bearing registration No. TMC 2286 driven by Dhanabal, the revision petitioner, was intercepted at about 9-30 A.M. on 4-11-1971 near the commercial tax check-post at Hosur on the Bangalore-Hosur trunk road in between 39-4 and 39-6 Kms. stones by P.W. 1. Raymond, Inspector of Central Excise and P.W. 2, S.M.Nizar, Intelligence Officer, Revenue Intelligence, Madras and other officers. On the pillion was another person by name Balakrishnan, the revision petitioner in Crl. R.C. No. 881 of 1975. The officers felt suspicious as the revision petitioner and the other person who was on the pillion found it difficult to push the scooter as it was very heavy. P. Ws 1 and 2 asked them the reason for the difficulty in pushing the scooter, when both the revision petitioner and the other person confessed that they were carrying bars of gold. P.W. 4, Sadiq, a mechanic, who was sent for by P.Ws. 1 and 2 opened the petrol tank of the scooter in the presence of P.W. 5 Village Munsif and P.W. 1 and 2 found 5 cloth bags each containing 100 bars of gold of foreign origin with the markings 'Johnson Mathey-9990 London' concealed underneath the petrol tank of the scooter. There were about 500 bars of gold of 24 ct. purity valued at Rs. 11,40,000/-. P.W. 1 seized the gold under Ex. P. 1 mahazar attested by P.W. 5 under the reasonable belief that the gold bars were smuggled into India from a foreign country. He seized the scooter with registration No. TMC 2286 and also a new pocket transistor Radio 'Expo 70' under the provisions of the Customs Act. When P.W. 1 questioned the revision petitioner the revision petitioner made a statement. Ex. P. 2 is the statement made by the revision petitioner. P.W. 3, Chari, Superintendent of Central Excise, examined the second accused on 5-11-1971 at about 7-00 A. M. and recorded Ex. P. 8 statement in the presence of P.W. 5, the village munsif. The Collector of Central Excise sanctioned prosecution and the Assistant Collector of Central Excise, Vellore laid the chargesheet.

2. The learned trial Magistrate found the revision petitioner and the other person guilty under Section 8(1)(ii) and (iii) and Section 85(1) of the Gold Control Act and Section 111 read with Section 135(b) of the Customs Act and convicted them thereunder and sentenced them to undergo rigorous imprisonment for two years under each count, the sentences to run concurrently and also to pay a fine of Rs. 2,000/- each in default to undergo rigorous imprisonment for nine months. In appeal, the learned Sessions Judge confirmed the convictions and sentences.

Aggrieved, the revision petitioner has filed this revision.

3. The case of the revision petitioner was that one Govindan took him to Bangalore and asked him to take the scooter and deliver it at Madurai and that he had no knowledge that gold bars had been kept concealed in the scooter and that the statement was made, because he was beaten.

4. There are no merits in this petition. The evidence of P.W. 1 and P.W. 2 very clearly shows that the scooter which the revision petitioner was riding was intercepted. The evidence of P.W. 1 would clearly show that the revision petitioner and the other person travelling on the pillion told him that they were carrying gold and the gold bars concealed under the petrol tank were recovered under a mahazar Ex. P.1. P.W. 2, S.M. Nizar, an-other officer who was present at the time of the seizure corroborated the evidence of P.W. 1. P.W. 4, Sadiq, a mechanic spoke to the dismantling of the scooter and to the seizure of the gold biscuits with foreign markings, P.W. 4 has attested the mahazar, Ex. P.1. P.W. 5, the village munsif was present at the time of seizure and has attested the mahazar, Ex. P. 1. It is therefore clear that the revision petitioner and the other person were found in possession of gold with foreign markings. Both of them did not have a permit or licence issued by the Reserve Bank of India. Ex. P. 2, the statement given by the revision petitioner very clearly shows that he was asked by Govindan to carry gold of foreign origin to Madurai in a scooter. He was therefore aware that he was carrying gold of foreign origin. It is futile for him now to contend that he was not aware of the fact that gold bars were kept concealed in the petrol tank of the scooter. The revision petitioner was not a mere carrier, because he was aware that the gold which he was carrying is smuggled gold of foreign origin. In view of the provisions of Section 123 of the Customs Act (LI1 of 1962) and the fact that the gold has been siezed in the belief that it was smuggled as it contained foreign markings, it is the duty of the revision petitioner to have repelled the presumption by adducing evidence to show that the origin was not foreign at all and therefore, the gold could not be held to be smuggled. Further, the presumption implied in Section 123 of the Customs Act is that if the goods are seized in the reasonable belief that they were smuggled and if the accused fails to show that such goods are of indigenous origin, an inference that such goods are smuggled would clearly

arise in favour of the prosecution. Ex. P. 2 very clearly shows that the revision petitioner had the necessary knowledge that the gold was smuggled gold and therefore liable for confiscation. I earlier pointed out that the revision petitioner was not in possession of a permit or licence for his possession of gold of foreign origin. There is, therefore, clear proof that the gold is smuggled gold. In *Vallabhdas Liladhar v. Assistant Collector of Customs* AIR 1965 S.C. 481 the Supreme Court has observed as follows:

Once it is proved that the gold is smuggled gold, it follows that it was brought into the country without payment of duty or in violation of the prohibition or restriction in force and whosoever brought it and whosoever dealt with it thereafter knowing it to be smuggled in the manner provided in the section must be held to have the intention of evading the payment of duty or violating the prohibition or restriction.

Following this observation, with respect I am of the view that the convictions of the revision petitioner are correct.

5. The learned Counsel for the petitioner contended that the sentence is too severe and that the court may consider reducing the sentence of imprisonment to the period already undergone. In answer, I may extract the observations of the Supreme Court in *Balakrishna v. State of West Bengal* : 1974 CriLJ280 The following are the observations:

The new horizons in penal treatment with hopeful hues of correction and rehabilitation are statutorily embodied. In India in some special enactments; but crimes professionally committed by deceptively respectable members of the community by inflicting severe trauma on the health and wealth of the nation--and the numbers of this neo-criminal tribe are rapidly escalating--form a deterrent exemption to human softness in sentencing.

Following these observations, with great respect, I decline to interfere on the question of sentence. The convictions and the sentences are confirmed and the revision petition is dismissed.

(1) AIR 1965 S.C. 481

(2) : 1974 CriLJ280

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