Boormal Vs. the Assistant Collector of Central Excise

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Court : Chennai

Decided On : Mar-25-1969

Reported in : (1969)2MLJ485

Appellant : Boormal

Respondent : The Assistant Collector of Central Excise

Judgement :

N. Krishnaswami Reddy, J.

1. The appellant, Boormal was convicted under Section 135 (b) of the Customs Act, 1962 and Rule 126-P (2) (ii) and (iv) of Gold Control Rules and sentenced to undergo Rigorous Imprisonment for a period of six months under each of the two counts and in addition, he was also sentenced to pay a fine of Rs. 500 under the second count, by the Chief Presidency Magistrate Madras by his judgment dated 14th March, 1967.

2. The prosecution case is briefly this : On information that one Champalal residing at 2/65, Ponnappa Chetty Street, Park Town, Madras, was illicitly trafficking in foreign gold, P.W. 1, Sri R. Srinivasan, Inspector of Central Excise with the assistance of other officers raided the said premises at about 9 a.m. on 12th January. 1965 after having obtained search warrant from the Gazetted Officer of the Department. The said premises was searched in the presence of P.Ws 3 V.K. Kupparchari who was having his goldsmith shop opposite to the premises of

Champalal and one A. Balu Chetty. As P.W. 1 and his officers were in the act of searching the premises they heard a noise of a motor-cycle approaching the house. They saw the appellant attempting to enter the premises and on seeing him, Champalal was said to have signalled to the appellant, on which the appellant got into his motor-cycle and sped away. P.W. 1, suspecting that the appellant might be involved in the nefarious activities in trafficking in gold, immediately took his motor-cycle which he had kept 10 years away from the premises and. chased the appellant and intercepted him after overtaking him, about three furlongs from the place of the said premises. The appellant gotdown from his motor-cycle. P.W. 1 took him back to the house of Champalal where the officers were. In the presence of P.W. 3 and other officers, P.W. 1 searched the two pockets of the trouser of the appellant. Each pocket contained one paper packet wrapped in handkerchief. On opening each packet, it was found to contain 20 pieces of gold bars each weighing 10 tolas bearing marks 'John Mathoi made in London '. The appellant did not have either the invoice or licence to possess gold. P.W. 1 sezied the gold under a mahazar and also the motor-cycle which the appellant had used while carrying gold. The gold seized from the appellant was found to be of 24-carat gold. The appellant was taken to the office of Central Excise and there, he gave a statement (Exhibit P-5). to the Superintendent, Central Excise. He also gave another statement (Exhibit P-6) which was recorded by the Inspector. Subsequently, the gold was confiscated and a penalty was levied under the Indian Customs Act.

3. When questioned by the lower Court, the appellant denied that gold was seized from him. He stated that he was not residing in the house of Champalal but he was taking his bath and bed in that house. He admitted that at about 9-30 a.m. on 12th January, 1965 when he was riding a motor-cycle in Ponnappa Chetty Street, he was stopped by a Customs Officer and was taken to the house of Champalal. He further stated that he told the officers that one Khader had given him two packets, the contents of which he did not know and showed those packets by taking them out from his pant pockets. He also stated that when the packets were opened, there were gold bars in them. He admitted that he gave statements, Exhibits P-5 and P-6 before the Excise Officials but those statements were taken from him by force.

4. Admittedly, the appellant was in possession of gold. He had no licence. He would say that one Khader gave these packets and he did not know their contents. It is very difficult to believe his version on this aspect. When he was having these packets in his trouser pockets, he must have known that what he was having with him in the packets was gold. He must have felt the heaviness of gold when he was having it in his pockets and it must have aroused his curiosity to know as to what the packets contained. There cannot, therefore, be any doubt that he was in possession of gold with foreign markings. His case was that he has been carrying gold as requested by one Khader and that he did not have any interest in it. Whether the appellant had any interest in foreign gold which he was carrying, or not, he would be liable under Section 135 (b) of the Customs Act. Section 135 (b) of the Customs Act makes any person acquiring possession of or in any way concerned in carrying, removing, depositiong, 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 in, liable to punishment on conviction. This section includes carriers also. The learned Counsel appearing for the appellant is unable to challenge the conviction of the appellant under Section 135 (b) of the Customs Act. The conviction of the appellant under Section 135 (b) by the trial Court is correct and it is, therefore, confirmed.

5. The learned Counsel for the appellant strenuously urges that the conviction of the appellant under Rule 126-P (2) (ii) and (iv) of the Gold Control (in Defence of India Rules, 1962) cannot be sustained as he is only a carrier and these Rules will not apply to carriers of gold unless it is shown that a person in possession of gold has certain interest in the gold itself. To appreciate the contention of the learned Counsel, we have to necessarily consider the object and the scheme of the Gold Control in Defence of India Rules. The object of the Gold Control Rules appears to be to control, restrict and regulate the acquisition and possession of gold inside the country where as the Indian Customs Act restricts and regulates the import of gold into the country. The Indian Customs Act makes any person involved in any manner in unauthorisedly importing gold into this country, liable for punishment. As already' noted, it includes carriers also. The object and scheme of the Gold Control Rules is to prohibit the owners, the manufacturers of articles of gold and persons

who have interest in it from dealing with it in any manner as they like without the authorisation by the authority mentioned in the Rules. Rule 126-B prohibits manufacture of articles of gold. Rule 126-C restricts the making of gold ornaments. Rules 126-D prohibits loans on hypothecation of gold. Rule 126-F requires dealers and refiners in gold to take licence. Rules 126-F and 126-G deal with returns as to gold and the maintenance of accounts by every licensed dealer and refiner. ' Dealer ' is defined in Rule 126-A (c) as any person who carries on, directly or otherwise, the business of making, manufacturing, buying, selling, supplying, distributing, melting, processing or converting ornaments and includes a person buying, selling, supplying, distributing, melting, processing or converting gold for the purpose of making or manufacturing ornaments, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and also includes an undivided Hindu family, a local authority, company, society registered under the Societies Registration Act and co-operative society, club, firm or other association which carries on such business as mentioned above. Rule 126-A (h) defines ' refiner ' as the owner or occupier of refinery. Rule 126-H restricts possession and sale of gold by a licensed dealer and a refiner, not included in the return. Rule 126-H (2) (d) restricts any person from buying or otherwise acquiring or agreeing to buy or otherwise acquiring gold, not being ornament, except by succession, intestate or testamentary, or in accordance with a permit granted by the Board in this behalf. It is significant to note that Rule 126-H (2) (d) prohibits a person from buying or otherwise acquiring gold except by succession etc., etc.. This indicates clearly that what is prohibited is acquiring any interest in gold. Rule 126-I requires that every person, not being a dealer or refiner, shall submit declaration as to possession of gold other than ornament. Rule 126-I (2) provides the category of persons who have to submit declaration on behalf of a minor or a lunatic; idol or a deity; in respect of gold under the management of Court of Wards; under the management of any administration or receiver; vested in an executor or an administrator of a will; of a firm, of an undivided Hindu family; of any public or private trust; of a company incorporated outside India; of a temple, mutt, church, mosque or any other religious institution; of wakf; and of any society, club or other association. Rule 126-I makes it clear that the declaration is to be made by a person who owns gold. Rule 126-I (10) prohibits any person other than a dealer or a refiner from acquiring or having in his possession or under his control any quantity of gold required to be declared under this rule unless such gold has been included in a declaration or further declaration made thereunder.. Rule 126-I (11) states that any person in possession or control of any gold, not being ornament, shall be presumed, until the contrary is proved, to be the owner thereof.

6. A careful reading of the above provisions clearly indicate that what is controlled and regulated is the ownership of gold or acquisition possession, or control of any quantity of gold. Mere possession of gold under all circumstances, as the possession by a carrier, is not made punishable under these Rules as is made punishable under the Customs Act. This is further made clear by Rule 126-I (11) that any person in possession or control of any gold, may be presumed to be the owner thereof, until the contrary is proved. This provision pre-supposes that it is open for a person to show that his possession of gold is not as the owner thereof or a person having interest in it. This presumption indicates that Rule 126-I applies to owners of gold.. If there are materials available before the Court, in spite of a man being in possession of gold, that he is not the owner of gold, it can be taken in those circumstances that the presumption provided under Rule I26-I (11) is rebutted and the contrary is proved. It is not necessary that the accused, to prove the contrary, should let in separate evidence.

7. In this case, taking into consideration the evidence let in by the prosecution, there are materials to show that he was not the owner of gold. Champalal is the resident of the premises raided by P.W. 1 and his party. The appellant was only taking food and bed there. There is nothing to show that he was doing business in gold or in any other commodity. The evidence of P.W. 1 is that the appellant was carrying gold in his pant pockets on the motor cycle. I am, therefore, of the view that the appellant must have been only the carrier of gold and not the owner thereof. The conviction of the appellant under Rule 126-P (2) (ii) and (iv) of Gold Control (in Defence of India Rules, 1962) is, therefore, set aside and he is acquitted of that charge.

8. In the result, the conviction of the appellant under Section 135 (b) of the Indian Customs Act is confirmed and his conviction and sentence under Rule 126-P (2) (ii) and (iv) of Gold Control (in Defence of India Rules, 1962) are set aside. So far as the sentence under Section 135 (b) of the Customs Act is concerned, I reduce his sentence of imprisonment to the period already undergone and instead, I sentence him to pay a fine of Rs. 2,000 in default to undergo simple, imprisonment for three months. If the appellant had already paid a fine of Rs. 500 under the second count of which he has been acquitted by me, that amount would be deducted from the fine of Rs. 2,000 payable by him under Section 135 (b) of the Indian Customs Act. Time for payment one month.

9. The appeal is partly allowed.