

Krishna Pillai vs State Of Madras Representing The ... on 25 November, 1953

Equivalent citations: AIR1954SC335, (1954)IMLJ389(SC), AIR 1954 SUPREME COURT 335

JUDGMENT

Bhagwati, J.

1. The appellant and one mohamed ibrahim alias kottai thambi were apprehended when crossing Into the indian union from the french territory of pondicherry on the night of the 23rd march, 1952, at 1 a.m. the appellant was found conveying dutiable goods namely 2 blocks of gold weighing 307 7/8 tolas in all by tying them in a special cloth pouch around his waist and concealing them under his clothes and he was aided and abetted in that act by mohamed ibrahim.

The appellant was charged with having committed an offence of conveying the said dutiable goods from the french territory of pondicherry into the indian union (madalapet village) by land by a route other than the authorised route prescribed under the land customs act, i.e., offence under section 7(1)(b) of the land customs act, and mohamed ibrahim was charged with having committed an offence under section 7 (1) (c) of the land customs act.

2. They were put up on the 24th march, 1952, before the stationary sub-magistrate, cuddalore, when the appellant pleaded guilty, stating that one person came and gave him the gold through a lane and asked him to bring it into the indian union. The learned magistrate accepted this plea of the appellant and convicted the appellant and sentenced him to rigorous imprisonment for four months. He also ordered the confiscation of the two blocks of gold which were found on the person of the appellant. In view of the admission and the consequent conviction of the appellant the case was withdrawn against mohamed ibrahim who denied his guilt.

3. The appellant filed a revisional application in the high court of judicature at madras. The high court was impressed with the argument advanced by the counsel for the appellant that the circumstances of the case threw suspicion as to the genuine and voluntary nature of the confession made by the appellant. The high court however in so far as the appellant had been in jail for about 16 days did not think it necessary to order a retrial and accordingly set aside the conviction and sentence. The high court however while acquitting the accused curiously enough ordered that the order for confiscation of the two blocks of gold should stand and it is this order against which the appellant has obtained from this court special leave to appeal.

4. The power of the court to order confiscation of the goods which was sought to be exercised in this case was derived from section 7 (3) of the land customs act which runs as under:

such magistrate shall thereupon inquire into and try the charge brought against the accused person and 'upon conviction' may sentence him to imprisonment which may extend to six months or to fine not exceeding rs. 1,000 or both and may confiscate the goods in respect of which the offence has been committed."

5. It is clear from a perusal of this section that the only jurisdiction and power which the court has got under this section is to confiscate the goods in respect of which the offence has been committed upon conviction and not otherwise. If once the high court set aside the conviction and sentence passed upon the appellant the high court has neither the jurisdiction nor the power to confirm the order of confiscation of the two blocks of gold which has been passed by the learned magistrate.

6. We are of the opinion that the order made by the high court in regard to the confiscation of the two blocks of gold was manifestly illegal and without jurisdiction. The learned counsel for the state was unable to support the decision of the high court on this point. The appeal will therefore be allowed and the order of confiscation of the two blocks of gold set aside.