Labhchand Dhanpat Singh Jain vs The State Of Maharashtra on 3 December, 1974

Equivalent citations: 1975 AIR 182, 1975 SCR (2) 907, AIR 1975 SUPREME COURT 182, (1975) 3 SCC 385, 1975 SCC(CRI) 11, 1976 MADLJ(CRI) 117, 1975 2 SCR 907, 1976 (1) SCJ 112

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, Y.V. Chandrachud, A.C. Gupta

PETITIONER:
LABHCHAND DHANPAT SINGH JAIN

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA

DATE OF JUDGMENT03/12/1974

BENCH:
BEG, M. HAMEEDULLAH
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BEG, M. HAMEEDULLAH
CHANDRACHUD, Y.V.
GUPTA, A.C.

CITATION:
1975 AIR 182 1975 SCR (2) 907
1975 SCC (3) 385
CITATOR INFO :
C 1980 SC 593 (18,19)
R 1980 SC 793 (8)

ACT:
Customs Act, 1962, s. 108, 111, 123 and 135 Scope of.
Evidence Act (1 of 1872) S-106 and 114-Burden of proof of innocent receipt of gold-Presumption against accused oil totality of evidence, if properly drawn.
Code of Criminal Procedure (Act 5 of 1898) s. 342-No strict compliance with-Effect of.

HEADNOTE:
The appellant was arrested because of his suspicious conduct, and, when he was searched, 9 bars of gold with

foreign markings were found secreted in specially made concealed pockets of his trousers. When he was produced before the Additional Chief Inspector of Customs he made a statement recorded under s.108, Customs Act, 1962, In that statement he admitted the recovery of the bars, that he knew that he was carrying gold and that he knew that the the transporting of the gold was an offence, but stated that he was doing so on behalf of a 3rd party. He was convicted for an offence under s.135)1)(b) of the Act and the conviction was confirmed by the High Court.

In appeal to this Court, confirming the conviction,

HELD:(1) The offence under s. 135)1)(b) is punishable if the offender acquires possession of or is in any way concerned in carrying, removing, depositing. 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- s. 1 1 1. [909 C-D]

In the present case, the totality of facts proved was enough to raise a presumption under s.114. Evidence Act, that the gold had been illegally imported into the country so as to be covered by s.111(d). [911 D]

(a) The clandestine and guilty manner of transporting it shows that it wasrecently smuggled gold carried contrary to law. [910 0-H]

(b) The appellant's, admission that he know that the carrying of gold was an offence shows that the, gold must have been recently imported, or it any rate after 1948, when restrictions on the import of gold were imposed. 1910

(c) The gold was being, carried from Bombay, a port of entry for smuggled good$ to Delhi, where there, is a market for gold. [910 G]

(d) The burden of proving an innocent receipt of gold lay on the appellant under s. 106, Evidence Act,. and- he had not discharged the burden. [911 A-B]

Issardas Daulat Ram & Ors. v. Union of India and Ors., [1962] Suppl (1) SCR 358 followed.

(2) Assuming that the ratio of Gian Chand v. State of Punjab [1962] Supp. 1 S.C.R. 364 applied to the instant case. the result would only be that no presumption under s. 123 of Customs Act could be drawn against the appellant. But neither the trial Court nor the High Court had drawn any such presumption against the appellant. The inference regarding the character of the gold recovered and the appellant's guilty knowledge was drawn from circumstantial evidence. [910 C-D]

(3) The general form of questions put in the case do not strictly comply with the provisions of s.342, Cr.P.C., but the appellant has not suffered any

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injustice vitiating his conviction. He indicated in his answers that he would give a written explanation and his written statement dealt elaborately with all the

circumstances appearing in the evidence against him. [911 G-H]
(4) In view of his age and the fact that there was no previous conviction, the sentence of 3 months R.I. was reduced to the period already undergone, which was nearly 3 months, as it was not desirable to send him back to jail for a few days. [912 A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeal No. 79 of 1971.

Appeal by Special Leave from the Judgment and Order dated 16th January 1-971 of the Punjab and Haryana High Court in Criminal Appeal No. 1168 of 1968.

Hardayal Hardey and Ashok Grover, for the appellant. H. R. Khanna and M. N. Shroff, for the respondent. The Judgment of the Court was delivered by BEG, J.-The appellant aged 23 was arrested on 9-4-1967 by the Railway Police at the Bombay Central Railway Station as he was hurriedly trying to get into a second class compartment of the Frontier Mail bound for Delhi. It appears that manner in which he was trying to enter the second class compartment and his nervourness on being questioned by a Railway C.I.D. Police Officer, although the appellant had a ticket on him, aroused suspicion so that the appellant was detained. On a search of his person at the Police Station in the presence of Panchas, nine bars of gold with foreign markings were found secreted in especially made concealed pockets of his trousers. These were seized by the Railway Police. After further questioning by the Police, the appellant was summoned before Shri L. A. Digama, Addi- tional Chief Inspector of Customs, Bombay, where his statement under section 108 of the-Customs Act 1962 was recorded on 10-4-67. In that statement, the appellant admitted the recovery of gold bars from his person and stated that he had agreed with one Pannalal to carry them for delivery at Delhi for a sum of Rs. 100 to be paid to the appellant.-He stated that, from what Pannalal had told him and also from the weight of the bars, he knew that he was carrying gold. He stated that his father was also with him, but, as nothing incriminating was recovered from the father, he was allowed to go away. He also admitted that he knew that transporting of Old like this was a criminal offence. The appellant was prosecuted and convicted by the Presidency Magistrate of Bombay under section 135(b) of the Customs' Act of 1962 (hereinafter referred to as 'the Act') and sentenced to three months rigorous imprisonment. Charges under the Defence, of India Rules were also preferred against him but he was acquitted of these. The High Court of Bombay; after carefully re-examining the whole evidence in the case, had affirmed the conviction and sentence of the appellant; but, the appellant bad obtained special leave to appeal to this Court.

Learned Counsel for the appellant had urged before us that the conviction of the appellant is vitiated on three grounds.

Firstly, it is urged that there was no evidence whatsoever to hold that the gold seized from the person of the appellant was "liable to confiscation" as contemplated by Section Ill of the Act. It is

contended that the only category in which the gold under consideration could fall is Section 111(d) which describes it as of "any goods which are imported or attempted to be- imported or are brought within the Indian Customs waters for the purpose of being imported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force".

It was urged that, as restrictions on the import of gold were only imposed in 1948, there should have been some evidence to show when it was brought into India. Apart from other reasons given below, we think that this argument overlooks that an offence under section. 135(1) (b) is punishable if the offender "acquires possession of or is in any way concerned in carrying removing, depositing, harboring, 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 Ill".

Secondly, it is contended that the High Court had wrongly used section 123 of the Act so as to-wrongly place the burden of proof on the appellant when this provision did not apply. This Section reads as follows :

> "(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be....
>
> (a) in a case where such seizure is made from the possession of any person,. . . .
>
> (i) on the person from whose possession the goods were seized; and
>
> (ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;
>
> (b) in any other case, on the person, if any, who claims to be the owner of the goods so seize&'.
>
> (2) This section shall apply to gold, diamonds, manufactures of gold or diamonds, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify".

The argument is that, in order to apply section 123 of the Act, there must be a "seizure" of the goods by the proper Customs Officer duly authorised as provided by section 110 of the Act. Learned Counsel relied strongly on Gian Chand & Ors. v. The State of Punjab,(1) where it. was held, under the corresponding provisions of (1) [1962] Supp. 1 S.C.R. 364.

Sea Customs Act, 1878, that the burden of proof was shifted on to the accused only when the goods were "seized" in the sense that they were taken out of the possession of an accused by the "proper officer". That was also a case of "seizure" of allegedly smuggled gold. There, the police had initially commenced proceedings under Section 411 and 414 of the Indian Penal Code against the accused, but, afterwards, the case was handed over to the Customs'.authorities. The initial "seizure" being

one by the, ordinary police, it was held to be not one under the Act. In that case, this Court had set aside the order of the High Court because it held that the statutory presumption could not be used to convict. But, it did not, for that reason, acquit the accused. On the other hand, it sent back the case to the Trial Court for decision after considering the evidence without the aid of the statutory presumption.

Even if we were to apply the ratio decidendi of Gian Chand's case (supra) in the case before us, we find that the result would only be that no presumption under section 123 of the Act could be used against the appellant. We do not think that the High Court or the Magistrate had used this presumption. We find that they had relied upon circumstantial evidence in the case to infer the character of the gold recovered and the accused's guilty knowledge. This brings us back to the first and the main contention on behalf of the appellant which was that there is no evidence to support the conviction of the appellant under section 35(b) of the Act. We are unable to accept this submission. A reference to Issardas Daulat Ram & Ors. V. Union of India & Ors.(1) is enough to show that the conduct of the accused and the incredible version set up by him were enough to saddle the accused with the necessary knowledge of the character of the goods found in his possession. In the case before us, we have not only evidence of the suspicious conduct of the appellant but his own admission that he knew that it was an offence to carry the gold which he had been asked to transport for payment of money to him. He had put forward an incredible story of having been entrusted with so much gold by one Pannalal whose identity was not estab- lished- and whose address was not revealed by the appellant. According to the appellant, Pannalal had just met him by chance. It is incredible that any person would entrust gold valued at about Rs. 40,000, on which Rs. 17,000 was payable as duty alone, to a youngster who was an utter stranger to him even if the carrier was to get Rs. 100 for the risky undertaking. It is significant that the appellant was found carrying gold from Bombay, a port of entry for smuggled goods, to Delhi, where there is a good market for gold. If it was not recently smuggled gold carried contrary to law there was no need for the clandestine and guilty manner of transporting it. We think that, in the circumstances of the case, an inference could very well be made that the gold must have been recently imported into the country, or, at any rate, after the' law passed in 1948 restricting its entry. The appellant admitted, in his statement under Section 108 of the Act, that transporting of these pieces of gold was an offence. If the gold had (1) [1962] Supp .(1) S.C.R. 358.

been legally imported before 1948 it could not be an offence to carry it. The appellant had not proved who Pannalal, the person who was alleged by him to have given him the gold to carry, was. Atleast, the burden of proving an innocent receipt of gold lay upon the appellant under Section 106 Evidence Act. The totality of facts proved was enough, in our opinion, to raise a presumption under section 114 Evidence Act that the gold had been illegally imported into the country so as to covered by Section 111(d) of the Act. The appellant had not offered any other reasonable explanation of the manner in which it was being carried.- Thirdly, it was urged that Section 342 of the Criminal Procedure Code had not been complied with inasmuch as only two very general questions were asked by the Trying Magistrate, followed by two others on one point. But, the seizure of gold from his possession and the surrounding circumstances were, not put to him. The first two questions and answers were :

"Q. 'Have you heard the evidence ?

Ans. Yes.

Q. What have you to say in regard to the evidence ?
Ans. I am filing my written statement. I have nothing more to say.
I want to examine one witness from Chief

Reservation Inspector, Western Railway, Bombay Central".

The questions and answers which followed afterwards were "Q. Have you heard and followed the Mint Report read out and explained to you?

Ans. Yes.

Q. What have you to say about the same ?

Ans. I have to say nothing. I want to add that I am producing the notice given by the Customs dated 6-10-67"

It is clear to us that the appellant was fully aware of the nature of the allegations made against him. He had not merely given a detailed explanation under section 108 of the Act, of the circumstances in which he' said he was arrested with the gold bars, but, he had also filed an elaborate written statement. He had indicated that this is the only form in which he would give his explanation. It is true that the general form of questions put does not strictly comply with the provisions of Section 342 Criminal Procedure Code. But, we are unable to hold that the appellant suffered any injustice for this reason. Indeed, he had not even raised such a question in the Trial Court or before the High Court. If he had done so, the alleged defect could have been easily cured. The objection seems to us to be most technical and flimsy. The defect could not have possibly vitiated the conviction of the appellant.

Lastly, it is urged that the appellant has already served nearly three months of the sentence and there is no previous conviction recorded against him so that we should reduce his sentence to the period already undergone. In view of the age of the appellant and the fact that there is no previous conviction proved against him, we consider it to be undesirable to send the appellant back to jail for a few days. We, therefore, reduce the sentence to the period already undergone. Subject to this modification, this appeal is dismissed. The appellant, who is on bail, need not surrender.

V.P.S. Appeal dismissed.