Supreme Court of India
State Of Gujarat vs Mohanlal Jitamalji Porwal And ... on 26 March, 1987
Equivalent citations: AIR 1987 SC 1321, 1987 CriLJ 1061, 1987 (2) Crimes 1 SC, 1987 (13) ECC 12, 1987 (29) ELT 483 SC, (1987) 2 GLR 1316, (1987) 2 GLR 632 SC, JT 1987 (1) SC 783, 1987 (1) SCALE 598, (1987) 2 SCC 364, 1987 2 SCR 677, 1987 (2) UJ 129 SC
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Bench: M Thakkar, S Natarajan
JUDGMENT M.P. Thakkar, J.

1. A passenger travelling by a train, (respondent No. 1 herein) who had adorned his waistline with a Waist chain (kandora) weighing 820 grammes, which according to the prosecution, was made of pure gold and was coated with mercury so as to give an appearance of being made of silver was acquitted by the trial court relying on the evidence of a licensed gold dealer as a defence witness, who, as per the narration in para. 17 of the judgment of the trial court, stated that:-

...such chains are put on as 'kandora' on the waist of ladies and gents in Rajasthan. He had sold such kandoras and seen people putting on such kandoras in Rajasthan State on their waist. Such chains or kandoras can be prepared out of pure gold as well as mixed gold. In old times such kandoras used to be prepared out of pure gold. In these days such type of kandoras are sold out to us by people. The witness further states that the design of muddamal chain was much in vogue in Rajasthan as because of unsoldered hooks it would fetch full value on sale. By pure gold he meant gold of more than 99.60 purity or 24 carats purity. According to him about 25 years back sharps of Rajasthan were not allowed to sell gold of less purity than 99.60 under Mewari State Law....

The Learned Trial magistrate persuaded himself that the aforesaid evidence established that it was an ornament and not primary gold. The learned Magistrate acted with an impropriety in making himself a witness for the defence by observing:-

...I have seen the seized gold chain myself in court. It cannot be called in unfinished state or form. It is an ornament....

The trial court in these premises held that what was seized was an 'ornament' and not 'primary gold'. The trial court accordingly acquitted the respondent-accused of the charge for an offence under Section 85 of the Gold (Control) Act of 1968. It is a matter of great concern that the High Court confirmed this finding by overlooking a significant circumstance which stood out a mile. If the chain was bona fide worn as an ornament, it would not have been plated with silver. The desire to show off being the basic purpose of wearing an ornament, one may subject an ornament of silver to gold plating. But one would not subject an ornament of pure gold to silver plating. It was obvious that it was a deceitful device to evade the law. Be that as it may, this aspect need not be probed further in view of the fact that the appeal preferred by the State against the order of acquittal in so far as it concerns the offence under Section 85 of the Gold (Control) Act, 1968 was not pressed. Suffice it to say that the approach made by the trial court evinces a permissive and over-indulgent attitude towards the violators of laws enacted to prevent and punish economic offences.

2. The occasion for approaching this Court has been provided by the view taken by the High Court in regard to the charge for an offence under Section 135(1) read with Section 111 of the Customs Act. The charge against respondent No. 1 was that he was concerned with acquisition, carriage, keeping or concealing with the goods which were liable to be confiscated under Section 111 having regard to the fact that there was a prohibition against the import into India of goods which were found in his possession namely pure gold of the specified fineness i.e. 99.60 or 24 carat. It needs to be recalled that Respondent No. 1 had adorned himself with a gold chain which was coated with mercury in order to give it an appearance that it was made of silver. The trial court disregarded the evidence of P.W. 3, the gold-smith who certified that the chain was made of pure gold and that the presumption under Section 123 (123. Burden of proof in certain cases-(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 seized.

2. This section shall apply to gold, diamonds, manufacturers of gold or diamonds, watches and any other class of goods which the Central Government may by notification in the Official Gazette specify) of the Customs Act could not be raised as in the opinion of the learned Magistrate, P.W. 1 Mahida, Superintendent of Customs who had made the seizure could not have "entertained a reasonable belief" that the article in question was made of smuggled gold. The trial court also found fault in regard to the proof of report of the Mint Master that the article in question was made of pure gold of the specified fineness.

3. The High Court confirmed the acquittal on all the three grounds. The request made by the learned Assistant Public Prosecutor for adducing additional evidence under Section 391 of the CrPC in order to remove the alleged formal defect in the proof of the Mint Master was rejected. That is why the matter has been brought before this Court by way of the present appeal.

4. P.W. 1, Superintendent of Customs Shri Mahida testified that he had seized the article in question in the reasonable belief that the same was an article made of smuggled gold. The acceptance of this evidence would result in the burden of proof being shifted on the person from whom the article was seized to establish that it was not smuggled gold in view of the statutory provision Section 123 of Customs relating to burden of proof which would justify raising the presumption that the article in question was made of smuggled gold. Whether or not the official concerned had seized the article in the "reasonable belief that the goods were smuggled goods is not a question on which the Court can sit in appeal. The law to this effect has been declared in no ambiguous terms in Pukhran v. D.R. Kholi . This Court has administered caution to the Courts not to sit in appeal in regard to this

question and has observed that if prima facie there are grounds to justify the belief the Courts have to accept the officer's belief regardless of the fact whether the court of its own might or might not have entertained the same belief. The law declared by this Court is binding to the High Court and it was not open to the High Court to do exactly what it was cautioned against by this Court. Section 123 of the Act does not admit of any other construction. Whether or not the officer concerned had entertained reasonable belief under the circumstances is not a matter which can be placed under legal microscope, with an over-indulgent eye which sees no evil anywhere within the range of its eyesight. The circumstances have to be viewed from the experienced eye of the officer who is well equipped to interpret the suspicious circumstances and to form a reasonable belief in the light of the said circumstances. In the present case the concerned official had mentioned three circumstances which made him entertain the reasonable belief that the article was a smuggled one viz:

(1) On the basis of the prior information he was alert and was on the look out, watching the movements of respondent No. 1.

(2) The chain which had adorned the waistline of respondent No. 1 was coated with mercury so as to give an appearance of being made of silver.

(3) As per the opinion of the goldsmith it was made of pure gold.

If these circumstances did not make the Superintendent of Customs entertain a reasonable belief that it was a smuggled article, he was not fit to be an Officer of the Customs Department. The circumstance that the chain was coated with mercury and given an appearance of having been made of silver though it was made of pure gold of 99.60 purity or 24 carat, was sufficient even for a layman, not to speak of a Customs official, to entertain the belief that it was smuggled gold. Would any one who was wearing an article as an ornament, evidently for abstentious purposes, given the article of pure gold the appearance of being made of silver? To repeat the observation made earlier one might coat an article of silver to give an appearance of having been made of gold but no one would ordinarily take the trouble and incur the expenditure to coat an article of gold in order to give it an appearance of having been made of silver. This was an extremely unusual circumstance which would have aroused the suspicion of anyone. When the goldsmith was summoned at the Railway Station to test the article on the spot, and he expressed the opinion that it was made of pure gold, there was no scope for taking any other view. Even if a layman, let alone a judge, were to ask himself the question as to whether in these circumstances he would have entertained a reasonable belief that the article was a smuggled article inasmuch as gold of this purity is manufactured only in foreign countries which have sophisticated equipment and the further fact that an attempt to camouflage the article was made by the person concerned his commonsense would not have given himself any other answer. The conduct of respondent No. 1 in coating the article of pure gold to make it appear as if it was of silver was itself a conduct which could have provided the basis for entertaining a reasonable belief it being a relevant piece of evidence as per the law declared by this Court in Isardas Daulat Ram and Ors. v. The Union of India and Ors. . The view taken by the High Court is altogether unreasonable and accordingly it cannot be sustained.

5. The next question which arises is as regards the request made by the learned Assistant Public Prosecutor for adducing additional evidence in order to prove letter Ex. 26 received from the Mint Master certifying that the article in question was made of gold of the purity of 99.60. The request was made in order to invoke the powers of the Court under Section 391 of the CrPC, 1973, which inter alia provides that in dealing with any appeal under Chapter XXIX the appeal court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself or ask it to be taken by a Magistrate. The High Court rejected the prayer on the ground that it did not consider it "expedient in the interests of justice to open a new vista of evidence" in view of the fact that the offence had taken place six years back. The mere fact that six years had elapsed, for which time-lag the prosecution was in no way responsible, was no good ground for refusing to act in order to promote the interests of justice in an age when delays in the Court have become a part of life and the order of the day. Apart from the fact that the alleged lacuna was a technical lacuna in the sense that while the opinion of the Mint Master had admittedly been placed on record it had not been formally proved the report completely supported the case of the prosecution that the gold was of the specified purity. To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The Community or the State is not a person-non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest. The High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court under Section 391 of the CrPC. We are of the opinion that the application should have been granted in the facts and circumstances of the case with the end in view to do full and true justice. The application made by the learned Assistant Public Prosecutor is therefore granted. The High Court will issue appropriate directions for the recording of the evidence to prove the report of the Mint Master under Section 391 Cr.P.C. when the matter goes back to High Court and is listed for directions. The appeal is therefore allowed. The order of acquittal is set aside. The matter is remitted to the High Court for proceeding further in accordance with law in the light of the abovesaid directions.