Supreme Court of India
Pukhraj vs D. R. Kohli on 15 March, 1962
Equivalent citations: 1962 AIR 1559, 1962 SCR Supl. (3) 866
Author: P Gajendragadkar
Bench: Gajendragadkar, P.B.

PETITIONER:
PUKHRAJ

Vs.

RESPONDENT:
D. R. KOHLI

DATE OF JUDGMENT:
15/03/1962

BENCH:
GAJENDRAGADKAR, P.B.
BENCH:
GAJENDRAGADKAR, P.B.
KAPUR, J.L.
AIYYAR, T.L. VENKATARAMA

CITATION:
1962 AIR 1559 1962 SCR Supl. (3) 866
CITATOR INFO :
RF 1972 SC 689 (16)
R 1987 SC1321 (4)

ACT:
Smuggled Gold-Seizure-Presumption of being smuggled Reasonable belief, when justified--Confiscation-Legality of-If importer alone liable to confiscation of gold-Sea Customs Act, 1878 (VIII of 1878), ss. 19, 167(8), 178, 178A-Foreign Exchange Regulation Act, 1947 (7 of 1947), 88. 8(1), 23A.

HEADNOTE:
The appellant, a goldsmith, while travelling in a train from Calcutta was searched and found to be in possession of gold weighing 290.6 tolas valued at Rs. 29,835. The gold was seized as it was reasonably believed to be smuggled gold. After service of a show cause notice and after due enquiry the Collector passed an order for the confiscation of the gold under s. 167(8) of the Sea Customs Act. The appellant contended that the presumption under s. 178A of the Act could not be raised as on the facts of this case there could be no reasonable belief that the gold was smuggled gold, that the gold could not be confiscated as the appellant was

not the importer thereof and that s, 167(8) was not applicable to the facts of the case.
Held, that the order of confiscation of the gold was validly and properly made.
Section 178A of the Act imposed the burden of proving that the gold was not smuggled gold on the appellant if it was seized under the Act in the reasonable belief that it was smuggled gold. Though the question whether there was a reasonable belief or not was justiciable, the Court was not sitting in appeal over the decision of the officer and all it could consider was whether there were ground which prima facie justified the reasonable belief. The facts that a large quantity of gold was recovered from the appellant, that the authorities had precise information about the appellant and that he was travelling without a ticket were sufficient to justify the reasonable belief.
Section 167(8) of the Sea Customs Act provided for the confiscation of any goods the importation of which was pro-hibited or restricted if they were imported contrary to the prohibition or restrictions For the confiscation of the goods it was not required that they should be necessarily found with the person concerned with their importation.
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Under s. 8(1) of the Foreign Exchange Regulation Act, 1947, the Government of India issued a notification in 1948 which prohibited the bringing. into India of gold from outside except with the general or special permission of the Reserve Bank. Section 23A of this Act provided that the restrictions imposed under s.8 thereof shall be deemed to have been imposed under s.19 of the Sea, Customs Act. Thus the 1948 notification had the force of a notification under s. 19 of the Sea Customs Act and gold imported in contravention thereof was liable to be seized under s. 178 and rendered the gold liable for proceedings under s. 167(8). Since the gold was smuggled gold in view of the statutory presumption under s.178A it was properly confiscated under s. 167(8).

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 511 of 1960. Appeal from the judgment and order dated March 20, 1959, of the Bombay High Court at Nagpur in Special Civil Application No. 322 of 1958.

A.S. Bobde, and Ganpat Rai, for the appellant. G.C. Mathur and P. D. Menon, for the respondents. 1962. March 15. The Judgment of the Court was delivered by GAJENDRAGADKAR, J.-On the 26th July, 1958, the Collector of Central Excise, Nagpur, passed an order directing absolute confiscation of five bars of gold weighing 290.6 Tolas found in the possession of the appellant Pukhraj and imposing upon him a personal penalty of Rs. 25,000/- under s. 167 (8) of the Sea Customs Act, 1878

read with a. 19 of the said Act and s. 23-A of the Foreign Exchange Regulation Act, 1947. Aggrieved by the said order, the appellant filed a writ petition in the High Court of Bombay at Nagpur under Arts. 226 and 227 of the Constitution on September 15, 1958. By this petition, the appellant claimed a writ of Certiorari or other appropriate writ or order quashing the impugned order. It was urged by him in support of his petit-ion, inter alia, that s. 178A of the Sea Customs Act was unconstitutional in that it infringed the appellant's fundamental right under Art. 19 (1) (1) and (g) of the Constitution. It was also. urged that on the merits, the said impugned order was not justified by the relevant statutory provisions of the Sea Customs Act read with the Foreign Exchange, Regulation Act. The High Court rejected the appellants challenge to the validity of s. 178A and held that the order directing the confiscation of five bars of gold was valid. The High Court, however, took the view that the direction issued by the Collector of Central Excise imposing a personal penalty of Rs. 25,000/- On the appellant was invalid and so, the said direction was sot aside and a writ issued in that behalf. The appellant then applied for and obtained a certificate from the said High Court and it is with the said certificate that he has come to this Court for challenging the correctness of the order passed by the High Court by which the confiscation of gold in question has been held to be valid.

The main point on which the certificate was granted by the High Court to the appellant was in regard to the constitutional validity of a. 178A. That question has, in the meanwhile, been decided by this Court on September 25, 1961, in Civil Appeals Nos. 408 to 410 of 1960 and other companion appeals. The judgment of the constitutional Bench dealingwith those appeals has upheld the validity of s.178A and so, the principal point which the appellant wanted to raise before this Court is now concluded against him. For the appellant, Mr. Bobde has, however, urged three other contentions before us in support of his case that the confiscation of gold is not justified.

Before dealing with these contentions, it is necessary to mention very briefly the relevant facts which led to the confiscation of gold. The appellant is a goldsmith by profession and owns a gold and silver shop at Rajnandgaon in Madhya Pradesh. On October 25, 1956, whilst he was travelling by the passenger train from Calcutta on the CalcuttaNagpur route, he was searched at Raigarh railway station and found to be in possession of five pieces of gold bullion weighing 290.6 tolas valued at Rs. 29,835/- approximately. The said gold was then seized by the Officer concerned acting on a reasonable belief that' it was smuggled gold, and notice was issued against the appellant on May 20, 1957, calling upon him to show cause why action should not be taken against him for having contravened the notification issued by the Government of India No. 12 (11)-F.1/48 dated August 26, 1948 under the foreign Exchange Regulation Act, 1947 read with s.23A of the said Act and s.19 of the Sea Customs Act and punishable under item (8) of s.167 of the Sea Customs Act. The appellant sent a reply and thereupon, the Collector of Central; Excise held an enquiry. At the enquiry the appellant appeared by counsel and examined four witnesses in support of his plea that he was in possession of gold Which belonged to him and which was not smuggled gold at all. Documentary evidence in the form of account books was also produced by the appellant in sup. port of his plea. The Collector of Central Excise disbelieved the evidence adduced by the appellant and came to the conclusion that the presumption arising under s.178 of the Sea Customs Act had not .been rebutted by the appellant and so, he proceeded to pass the impugned order confiscating gold and imposing on the appellant a personal penalty of Rs.25,000/-. It is in the light of these facts that the three contentions raised by Mr. Bobde fall to be, considered in the present appeal. The first argument raised in support of the

appeal is that the confiscation of gold is not justified under s.167(8) because it has been found by the High Court that the appellant is not a person concerned in the offence of importation of the said gold. It appears that in dealing with the question as to whether the personal penalty imposed upon the appellant is valid or not, the High Court has relied on two considerations. It has held that the jurisdiction of the officer to impose a personal penalty was confined to the imposition of a penalty only up to Rs.1000/-and no more, and in support of this conclusion, the High Court relied on certain observations made by this Court in F.N.Roy v. Collector of Customs, Calcutta(1). This question has been recently considered by this Court in M/s. Ranchhoddas Atmaram v. The Union of India(2) and it has been held that the language in item (8) of s.167 is clear and it permits the imposition of a penalty in excess of Rs.1000/- and that must be given effect to whatever may have been the intention in other provisions. So, it is clear that the High Court was in error in taking the view that under section 167(8), it was not within the 'jurisdiction of the Collector of Central Excise to impose a penalty exceeding Rs. 1000/-. The High Court has also held that the appellant was not shown to have been concerned with the importation of the smuggled gold, though he was found in possession of it and this finding, according to the High Court, justified the conclusion that a personal penalty could not be imposed on him. We are not called upon to consider in the present appeal the correctness or propriety of this conclusion because there is no appeal by the respondent Collector of Central Excise challenging this part of the High Court's order. Basing himself on the finding of the High Court that the appellant was not concerned in the importation of ,smuggled gold, Mr. Bobde argues that even the goods cannot be confiscated under s.167(8). In our opinion, this argument is clearly misconceived. Section 167(8) clearly provides, inter alia, that if (1) [1957] S.C.R.1 151 at p.1158, (2) [1961] 3 S.C.R. 718.

any goods, the importation of which is for the time being prohibited or restricted by or under Chapter IV of the Act, be imported into India contrary to such prohibition or restriction, such goods shall be liable to confiscation. If s.167(8) applies, then there can be no doubt that as soon as it is shown that certain goods have been imported contrary to the statutory prohibition or restriction, they are liable to confiscation and the confiscation of the said goods is not based on the fact that they are necessarily found with a person who was concerned with their importation. Therefore, once s.167(8) is hold to be applicable, the validity of the order directing the confiscation of the smuggled goods is beyond any challenge.

The next question to consider is whether s.167(8) applies to the facts of this case, and that takes us to the relevant notification issued by the Government of India in 1948. This notification imposed restrictions on import of gold and silver and it has been issued under s.8(1) of the Foreign Exchange Regulation Act, 1947. The effect of this notification, inter alia, is that except with the general or special permission of the Reserve Bank, no person shall bring or send into India from any place outside India any gold, coin gold bullion. gold sheets or gold ingot, whether refined or not. Thus, bringing into India gold from outside is prohibited by this notification unless the said gold is brought with the general or special permission of the Reserve Bank. Section 23 of the said Act provides for penalty and procedure in respect of contravention of its provisions and of rules, orders or directions issued thereunder. Section 23-A provides that without prejudice to the provisions of s. 23 or to any other provision contained in the said Act, the restrictions imposed by sub-s.(1) and (2) of s. 8 shall be deemed to have been imposed under s. 19 of the Sea Customs Act, and' all the

provisions or that Act shall have effect accordingly, except that s. 183 thereof shall have effect as if for the word "shall" therein the word ','may" was substituted. It would, thus be noticed that the combined effect of the aforesaid provisions of the two Acts and the relevant notification is that the notification of 1948 has the force of a notification issued under s. 19 of the Sea Customs Act, and in consequence, gold imported in contravention of the said notification is liable to be seized under %. 1.78 of the said Act and renders the person in possession of the said gold liable for proceedings under s.167(8) of the said Act; and since the matter falls to be considered under the, relevant provisions of the Sea Customs Act, s. 178A is also applicable. This position is not disputed. Now s. 178A places the burden of proving that the goods are not smuggled goods on the person from whose possession the said goods are seized where it appears that the said goods are seized under the provisions of the Sea Customs Act in the reasonable belief that they are smuggled goods. Once it is shown that the goods were seized in the manner contemplated by the first part of s. 178A, it would be for the appellant to prove that the goods were not smuggled goods; and since it has been held by the Collector of Central Excise that the appellant had not discharged the onus imposed on him by s. 178A, the statutory presumption remained unrebutted and so, the goods must be dealt with on the basis that they are smuggled goods. As soon as we reach this conclusion, it follows that under s. 167(8) of the Sea Customs Act, the said goods are liable to confiscation. That is the view taken by the High Court when it rejected the appellants prayer for a writ quashing the order of confiscation passed by the Collector of Central Excise in respect of the gold in question, and we see no reason to interfere with it.

The next argument urged by Mr. Bobde is that certain witnesses whose evidence was recorded by the Collector of Central Excise in the enquiry before him, were not produced for cross-examination by the appellant. In our opinion, there is no substance in this argument. This complaint relates to the evidence of Anwar, Marotrao and his brother Rambhau. These three persons, it is alleged made their statements in the absence of the appellant. It was, however, stated before the High Court by Mr. Abhyankar for the department that Anwar was, in fact, examined in the presence of the appellant's counsel and the appellant's counsel did not cross-examine him. This statement was accepted by Mr. Sorabji who appeared for the appellant and so, no valid complaint can be made that Anwar gave evidence in the absence of the appellant and the appellant bad no opportunity to cross-examine him. Then, as regards Marotrao and: Rambhau, their statements were intended to show that the appellant's case that he had got the gold' melted through them was not true. At the enquiry, the appellant gave up this stand and did not adhere to his earlier version that the gold in question had been melted with the assistance of the said two witnesses. Since it became unnecessary to consider that plea because of the change of attitude adopted by the appellant, it was hardly necessary to allow the appellant to cross-examine the said two witnesses. Their version on the point was no longer inconsistent with the subsequent case set up by the appellant. Therefore there is no substance in the argument that the enquiry held by the Collector of Central Excise was conducted unfairly and the procedure adopted at the said enquiry was inconsistent with the requirements of natural justice.

The last contention raised by Mr. Bobde was that there is nothing on record to show that the seizure of gold from the appellant had been affected by the officer concerned acting on a reasonable belief that the said gold was smuggled. It would be recalled that S. 178A of the Sea Customs Act requires

that before the burden can be imposed on the appellant to show that the goods in question were not smuggled, it has to be shown that the goods had been seized under the said Act and in the reasonable belief that they are smuggled goods. The argument is that the question as to whether there was a reasonable belief or not is justiceable, and since there is no material on the record to show that the belief could have been reasonable, the statutory presumption cannot be raised. In our opinion, this argument is not well-founded. There are two broad features of this seizure which cannot be igno- red. The first feature on which the officer relied is supplied by the quantity of gold in question. It was found that the appellant was carrying on his person five pieces of gold bullion 'weighing as much as 290.6 tolas. This large quantity of gold valued at nearly Rs. 30,000/- itself justified a reasonable belief in the mind of the officer that the gold may be smuggled. In that connection, it may not be irrelevant to remember that the said officer had received positive information in the month of September, 1956, regarding the smuggling of gold by the appellant. That is why he was intercepted by the officer on the 25th October, 1956, at the Raigarb railway station at 16.30 hours. Then the other fact on which the reasonable belief can be founded is the suspicious circumstances of the appellant's journey. The appellant was found travelling without a Railway ticket and his explanation as to how he came to be. in the said passenger train is obviously untrue. A person carrying a, large quantity of gold and found travelling without a ticket may well have raised a reasonable belief in the mind of the officer that the gold was smuggled. The object of travelling without a ticket must have been to conceal the fact that the appellant had travelled all the way from Calcutta at which place the gold must have been smuggled. The story subsequently mentioned by the appellant about his journey to Tatanagar which has been disbelieved brings into bold belief the purpose which the appellant had in mind in travelling without a ticket. After-all-, when we are dealing with a question as to whether the belief in the mind of the Officer who effected the seizure was reasonable or not, we are not sitting in appeal over the decision of the said officer. All that we can consider is whether there is ground which prima facie justifies the said reasonable belief. That being so, we do not think there is any substance in the argument that the seizure was effected without a reasonable belief and so is outside section 178A.

In the result, the appeal fails and is dismissed with costs. Appeal dismissed.