

PETITIONER:
RADHA KISHAN BHATIA

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT:
23/11/1964

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
SUBBARAO, K.
AYYANGAR, N. RAJAGOPALA

CITATION:
1965 AIR 1072 1965 SCR (1) 213
CITATOR INFO :
RF 1970 SC1310 (6)
RF 1972 SC 648 (8)
RF 1984 SC 667 (26)

ACT:
Sea Customs Act, 1878 (Act 8 of 1878), s. 167(8)-Person concerned in illegal importation of gold,--who is--Inference from possession of gold held to be smuggled--Positive finding as to being concerned in illegal importation, necessity for recording.

HEADNOTE:
A number of gold bars held to be smuggled were recovered from the person of the appellant. The Collector of Central Excise and Land Customs ordered the confiscation of the gold and imposed a penalty on the appellant under s. 167(8) of the Sea Customs Act (Act 8 of 1878). The appellant's writ petition challenging the above order was allowed by a single Judge of the Punjab High Court on the ground that the Collector had not recorded a finding that the appellant was concerned in the act of smuggling gold into the country. On Letters Patent Appeal the appellate Bench set aside the order of the single Judge and dismissed the writ petition, whereupon the appellant came to the Supreme Court by special leave.
It was contended on behalf of the appellant that the finding that the smuggled gold was recovered from the person of the appellant was not sufficient in itself to justify the conclusion that the appellant was concerned in committing the offence of importing gold illegally. It was also urged that Collector had not recorded any finding that the appellate was concerned in such importation.
HELD: (i) The person who can be penalised under s. 167(8) is one, who is in any way 'concerned' in the commission of the offence of bringing into India or taking out of the country goods with respect to which certain prohibitions or restrictions exist. The expression 'concerned in any such offence' in the penalty part of s. 167(8) may include the person who be 'interested' or 'involved' or 'engaged' or 'mixed up' in the commission of the offence referred to in the first column of s. 167(8).

[216 E; 217 A-B]

(ii) Such 'concern' of the appellant in the commission of the offence must be at a stage prior to the completion of the offence of illegal importation of gold into the country. The offence of importation is completed when the goods have crossed the customs frontier as is clear from the provisions of ss. 18 and 19. Once the gold has been imported any subsequent interest etc. in the smuggled gold cannot bring in the person showing such interest etc. within the purview of s. 167(8) for the purpose of imposition of the penalty.

[217 B-D]

(iii) The mere finding of fact recorded by the Collector of Customs in this case about the smuggled gold being recovered from the person of the appellant was not sufficient to conclude that the appellant was 'concerned' in the illegal importation of the smuggled gold into the country and therefore liable for penalty under s. 167(8) of the Act.

[217 D-E]

Pukhraj Jain v. D. R. Kohli, I.L.R. 1959 Bom. 1771, Gopal Mayaji v. T. C. Seth, A.I.R. 1960 Bom. 478 and Addl. Collector of Customs v. Sitaram, A.I.R. 1962 Cal. 242. approved.

214

(iv) A finding of fact by the Collector of Customs that a person is in possession of smuggled goods does not necessarily imply that the Collector had considered the question of the person's being 'concerned' in the commission of the offence of illegal importation of goods. It is true that an omission to record a formal finding to this effect may not be fatal to the imposition of penalty by the Collector, but the order must show that he had considered this aspect of the matter. The order should clearly indicate what matter he had considered to have a bearing on the question of the person's being concerned in illegal importation of the goods, and why he had concluded therefrom that the person was so concerned and therefore liable to pay the penalty under s. 167(8) of the Act. [219 C-D; 218 B-C]

Balbir Singh v. Collector of Central Excise & Land Customs, New Delhi, A.I.R. 1960 Punj. 488, referred to.

Union of India, v. Jagdish Singh, I.L.R. 1962 (1) Punj. 369, disapproved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 777 of 1962.

Appeal by special leave from the judgment and decree dated March 6, 1962 of the Punjab High Court (Circuit Bench) at Delhi in L.P. Appeal No. 120-D of 1960.

B. D. Sharma, for the appellant.

D. R. Prem, V. D. Mahajan and R. N. Sachthey, for the respondents.

The Judgment of the Court was delivered by Raghubar Dayal, J. A number of gold bars, held to be smuggled gold, were recovered from the person of the appellant on September 17, 1957, when he was going in a truck from Jaisalmer to Pokaran. The Superintendent of Land Customs issued a notice to the appellant on December 4, 1957, to show cause why penal action be not taken against him and as to why the goods should not be confiscated under s. 167(8) of the Sea Customs Act, 1878 (Act 8 of 1878), hereinafter called the Act. The appellant showed cause and on March 21, 1959, the Collector of Central Excise and Land Customs, hereinafter shortly termed Collector, ordered the

confiscation, of the gold seized from the person of the appellant and imposition of a penalty of Rs. 15,000 on him under S. 167(8) of the Act. The appellant presented writ application under art 226 of the Constitution to the High Court of Punjab praying for the issue of a writ of certiorari quashing the order of the Collector dated March 21, 1959 and for the issue of a writ of mandamus directing the respondents not to take any steps against him for the realisation of the amount of penalty.

215

The writ petition was allowed by the learned Single Judge on the ground that the Collector had not recorded a finding that the appellant was concerned in the act of smuggling gold into the country, in view of the decision of the Division Bench of the Punjab High Court in Balbir Singh v. Collector of Central Excise & Land Customs, New Delhi(1). On letters patent appeal the appellate Bench set aside the order of the learned Single Judge and dismissed the writ petition. The appellate Bench relied on the Full Bench decision of the Punjab High Court in Union of India v. Jagdish Singh (2). It was held in that case that it was not necessary for the Collector of Customs to record a formal finding to the effect that the person proceeded against was concerned in the importing of the smuggled gold. The appellant then preferred this appeal, after obtaining special leave from this Court.

Mr. Sharma, for the appellant, does not question the finding that the gold was recovered from the person of the appellant as alleged or that the gold recovered was a smuggled gold. His contention is that these findings, by themselves, do not justify the conclusion to the effect that the appellant was concerned in committing the offence of importing gold illegally. His further contention is that the Collector did not record any finding to the effect that the appellant was concerned in such importation of the gold. It is therefore urged that the Collector was not competent to impose the penalty on the appellant.

Mr. Prem, for the respondent, has urged that on these facts the appellant must be held to be 'interested in the importation' of the smuggled gold and that the word 'concerned' in s. 167(8) of the Act be construed in the light of the policy of the Act and the difficulties in establishing the fact of a person found in possession of smuggled gold being actually concerned in the importing of it illegally.

The relevant portion of s. 167(8) reads

"The offences mentioned in the first column of the following schedule shall be punishable to the extent mentioned in the third column of the same with reference to such offences respectively

(Column 1) (Column 3)

offences Penalties

(1) (2)

8. If any goods, the importation or Such goods shall be liable to confiscation- exportation of which is for the time tion, and being prohibited or restricted by or under Ch. IV of this Act, be imported any person concerned in any such

(1) A.I.R. 1960 Pun. 488.

(2) A.I.R. 1962 Punj. 484.

216

(1)

into or exported from India contrary to such prohibition or restriction, of

if any attempt be made so to import or export any such goods, or
if any such goods be found in any package produced to any officer of Customs as containing no such goods or
(2)

offence shall be liable to a penalty not exceeding three times the value of the goods, or not exceeding one thousand rupees.

The question is, who can be said to be 'concerned' in any such offence for the purposes of the expression used in the third column relating to penalties. Such a person would be one who is concerned in the importation or exportation of such goods whose importation into or exportation from India is contrary to the prohibition or restriction placed under Chapter IV of the Act. The offences described in the first column have reference to ss. 18 and 19 of the Act. Section 18 prohibits the bringing into India, whether by land or sea, of the goods mentioned in its several clauses. Section 19 empowers the Central Government to prohibit or restrict by notification in the Official Gazette, the bringing or taking by sea or land goods of any specified description into or out of India across any customs frontier. It follows therefore that the person who can be penalised under s. 167(8) is one who is in any way 'concerned in the commission of the offence of bringing into India or taking out of the country goods with respect to which certain prohibitions or restrictions exist. It is not disputed that gold cannot be brought into the country without a valid permit from the authority empowered to issue it. It is not disputed also that the gold recovered from the appellant was imported into the country illegally. The appellant can therefore be said to be concerned in the commission of the offence of illegally bringing into the country gold, if he had been in some way responsible for such 'bringing into the country. He cannot be said to be so concerned in the commission of this offence if he is not responsible in this manner and if he got possession of the gold after it had been brought into the country. His being in possession of such gold, when arrested, can in no way raise the presumption that he actually brought such gold into the country from outside the border or that he was responsible for its being brought into the country by taking such action which led to the importing of the smuggled gold prior to its import. There is no evidence about any action taken by the appellant in connection with the import of the gold found in his possession. It is immaterial what meaning be attributed to the

217

word 'concerned' It can have the meaning 'interested' as urged for the respondent. It may have the meanings 'involved' or 'engaged' or 'mixed up'. The requirements of the expression 'concerned in any such offence' in the penalty part of s. 167(8) are that the person to be penalised must be interested or involved or engaged or mixed up in the commission of the offence referred to in the first column of s. 167 (8). The interest or the involvement or the engagement or the mixing up of the appellant in the commission of the offence must be at a stage prior to the completion of the offence of illegal importation of gold into the country. Once the gold has been imported, any subsequent interest etc., in the smuggled gold cannot bring in the person showing such interest etc., within the purview of s. 167(8) for the purposes of the imposition of the penalty. The offence of importation of goods is complete when the goods have crossed the customs frontier. This is

clear from the provisions of s. 19 and also from those of s. 18 which, however, does not use the actual expression 'across the customs frontier'.

We are therefore of opinion that the mere finding of fact recorded by the Collector of Customs in this case about the smuggled gold being recovered from the possession of the appellant is not sufficient to conclude, as urged for the respondent, that the appellant was 'concerned' in the illegal importation of the smuggled gold into the country and therefore liable for the penalty under s. 167 (8) of the Act.

The view we have expressed has been taken by the Bombay, Calcutta and Madras High Courts in Pukhraj fain v. D. R. Kohli(1); Gopal Mayaji v. T. C. Seth(2); Addl. Collector of Customs v. Sitarmn(3); Devi Chand J. & Co. v. Collector, Central Excise(").

The Punjab High Court has taken a different view and we may now consider its reasons for the contrary view.

In Balbir Singh's Case (5) there was no dispute that the Collector had not recorded a finding that the petitioner before the High Court was concerned in the offence of importation or exportation of goods which were for the time being prohibited or restricted. It was therefore held that the order imposing a penalty on the person could not be sustained. It was this case which was relied on by the learned Single Judge in the present case as the finding recorded by the Collector was as follows

(1) I.L.R. 1959 Bom. 1771. (2) A.I.R. 1960 Bom. 478.

(3) A.I.R. 1962 Cal. 242. (5) A.I.R. 1960 Punj. 488. (4) A.I.R. 1960 Mad. 281.

218

"In view of all this evidence on record I hold that the gold in question is smuggled one and was recovered from Shri Radha Kishan while he was taking the same to Pokaran in truck No. RJM 40.

I therefore order confiscation of the seized gold under Section 7(i) of the Land Customs Act ... I also impose upon Shri Radha Kishan a personal penalty of Rs. 15,000 (Rupees Fifteen thousand only) under Section 167(8) of the Sea Customs Act, 1878."

The Division Bench, on Letters Patent Appeal, relied on Jagdish Singh's Case(1) and held that the finding that Radha Kishan was concerned in the importation of gold was implicit in the manner in which the Collector dealt with the case. It observed :

"It cannot be gainsaid that here, apart from the fact that the smuggled gold in a large quantity was found concealed on the person of Radha Kishan, the plea taken by Radha Kishan that it was not taken from his person was found to be false and this circumstance taken together with the recovery of the smuggled gold would be sufficient for the Collector to be satisfied that Radha Kishan was concerned in the importation of the smuggled gold."

The circumstances referred to by the Punjab High Court appellate Bench may be sufficient for holding that the appellant knew, that he was carrying smuggled gold and that he was thereby committing some offence. But we are unable to say how these circumstances lead to the conclusion that he must be 'concerned' in the importation of that gold. It

is not invariably the case that smuggled things are carried by the smuggler himself or by someone who had taken steps for the smuggling of those goods. They can be carried by persons who had nothing to do with the smuggling or illegal importation of the goods into the country and had come to possess them subsequently even with the knowledge that they were smuggled goods.

The facts of Jagdish Singh's Case() were somewhat different. The conclusion, whose correctness is not before us for decision, about Jagdish Singh's being concerned in the illegal importation of the foreign watches was based not only on his being in possession of those watches after taking delivery of the parcel from the post office but was based on several other circumstances. We are how-

(1) A.I.R. 1962 Punj. 484.

219

ever concerned with the other aspect of the decision in this case and that relates to the findings which a Collector should arrive at before he imposes a penalty on the person proceeded against, under s. 167 (8) of the Act. The Collector had not recorded any express finding that Jagdish Singh had been concerned in the illegal importation of the watches. The High Court held that law does not require any formal finding to that effect. It is true that an omission to record a formal finding to this effect may not be fatal to the imposition of the penalty by the Collector, but the order of the Collector must show that he had considered this aspect of the matter. The order should clearly indicate what matters he had considered to have a bearing on the question of the person's being concerned in illegal importation of the goods and why he had concluded therefrom that that person was so concerned and therefore liable to pay the penalty under s. 167 (8) of the Act. The decision of the High Court in Jagdish Singh's Case(1) does not appear to hold to the contrary. It is said at p. 486

"What has to be ascertained is whether the Tribunal's mind was directed to a certain matter and whether the Tribunal did, in fact, arrive at a particular conclusion. In the present case, I have no doubt that the Collector did conclude that Shri Jagdish Singh was responsible for the illegal importation of the watches in question and 'could not absolve himself from the infringement of the regulations'."

The judgment in question mentions that the Collector of Customs, after recording the order of confiscating the watches held to be of foreign origin and to have been imported through unlawful means, went on to consider the question of Jagdish Singh's personal liability and held that he could not be absolved of the liability of having infringed the Import Trade Control Regulations. If the Collector had actually done so, his omission to record a formal order about Jagdish Singh's being concerned in the illegal importation of the watches would not have made the order bad in law. The further extract from the order of the Collector does not, in our opinion, support this view of the High Court as it indicates that the Collector formed this opinion on the basis of his finding that Jagdish Singh was in possession of the smuggled watches. The way the Collector recorded his finding indicates that he concluded about Jagdish Singh's being concerned in the illegal importation of the watches merely on the basis of his being in possession of those watches. This he could not have justifiably done in view

(1) A.I.R. 1962 Punj. 484.

220

of what we have said above. The extract from the Collector's order in this connection is :

"Shri Jagdish Singh cannot absolve himself from the infringement of I.T.C. Regulations inasmuch as he was in possession of the offending watches. 1, therefore, impose on Shri Jagdish Singh a personal penalty of Rs. 7,000. "

We do not agree with the High Court that it was implicit in this order that the Collector was fully satisfied that Shri Jagdish Singh was concerned in the offence described in S. 167(8) of the Act.

We therefore hold that a mere finding of fact that a person is in possession of smuggled goods does neither imply that the Collector of Customs had considered the question of the person's being concerned in the, commission of the offence of illegal importation of the goods nor in any way justifies the conclusion that the person must have been so concerned. Other circumstances indicating that the person had some connection with the importation of the goods prior to their actual import have to be established. In the present case no such circumstances have been alleged which would connect the appellant with the actual importing of the smuggled gold recovered from his person. There is no mention of any such circumstances in the order of the Collector or even in the reply affidavit filed in the High Court by the Assistant Collector of Central Excise and Land Customs, New Delhi, though the appellant had said in ground no. C of the writ petition that there was absolutely no material before respondent no. 3 on which he could have come to a finding that the petitioner had imported the said gold.

We may also mention here that there is no allegation that the appellant himself smuggled the gold from outside the country.

In the result, we allow the appeal with costs throughout, set aside the order of the appellate Bench of the High Court and restore that of the Single Judge.

Appeal allowed.

221