

PETITIONER:
KEWAL KRISHAN

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT:
06/03/1962

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

CITATION:
1967 AIR 737 1962 SCR (3) 613

ACT:

Sea Customs--Goods seized in reasonable belief that they are smuggled--Burden of proof--If on person from whose possession goods are seized--Constitutionality of statutory provision--The Sea Customs Act, 1878 (8 of 1878), ss.167(81), 178A--Foreign Exchange Regulation Act, 1947 (7 of 1947), s.23A.

HEADNOTE:

The appellant was searched by a Customs Official and some bars of gold were found tied round his waist. Out of those bars some were of base metal and the rest of pure gold which borne foreign marks. The appellant had no permit from the Reserve Bank of India to import the gold. He was prosecuted and convicted under s. 167(81) of the Sea Customs Act. He brought an appeal to the Supreme Court by Special leave. Held, that s. 178A of the Sea Customs Act, 1878, is constitutional.

The contention that before the presumption under s.178A of the Sea Customs Act could be raised the prosecution had to prove that the gold was of foreign origin was rejected and held that s. 178A provides that when the goods are seized in the reasonable belief that they are smuggled goods the onus is on the accused to show that they are not smuggled.

Collector of Customs, Madras v. Nathella Sampathu Chetty (1962) 3 S.C.R. p.786 followed.

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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 126 of 1959.

Appeal by special leave from the judgment and order dated June 19, 1959, of the Punjab High Court in Criminal Revision No. 144 of 1959.

R. L. Kohli, for the appellant.

G. C. Mathur and P. D. Menon, for the respondent.

1962. March 6. The Judgment of the Court was delivered by

KAPUR, J.-This is an appeal by special leave against the

judgment and order of the High Court of the Punjab and raises the constitutionality of s.178A of the Sea Customs Act., 1878 (Act 8 of 1878), which has been held by this Court to be constitutional in the Collector of Customs, Madras v. Nathella Sampathu Chetty(1).

At the time, of arguments before us a further point was raised that in order that s.178A of the Sea Customs Act may become applicable, the prosecution must further prove that the goods which were sought to be affected by the order of the Customs Officer were goods of foreign origin and there must be evidence in support of the reasonableness of the belief of the Customs Officer that the goods were smuggled goods. The question now sought to be raised was not agitated in any of the courts below.

The appellant on February 11, 1958, when he was sitting in a third class compartment of the Amritsa Kalka train standing on Platform No. 5 of the Amrsar Railway Station, was searched by a Customs Official and some bars of gold were found tied round his waist. These gold bars were seized and a recovery memo wits prepared, Out of these gold (1) [1962] 3. S.C.R. 786.

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bars four were of base metal and the rest were of pure gold some bearing the stamp of Johmon Mathey & Co. Ltd., 999-10 tolas and 2-1/4 bars bore marks of N.M. Rothschild & Sons 10 tolas (990-0). No permit from the the Reserve Bank to import this gold was produced by the appellant. Under the Foreign Exchange Regulation Act, 1917, the importation of gold without such permit is prohibited and such contravention is punishable under s.23-A of the said Act read with s.167(81) of the Sea Customs Act.

The appellant was prosecuted under s.23A of the Foreign Exchange Regulation Act and 167(81) of the Sea Customs Act and his defence was that he was not in possession of the gold bars which were taken from an attache case left by a stranger under the seat where he (the appellant) was sitting. The Additional District Magistrate held the offence to be proved and convicted the appellant of the offence and sentenced him to one year's rigorous imprisonment. An appeal to the Sessions Judge resulted in the reduction of the sentence to 8 months' rigorous imprisonment. On revision to the High Court the sentence was reduced to six months' rigorous imprisonment. The appellant has come in appeal by special leave.

The trial court accepted the testimony of the Customs Officials and held that the defence of the appellant was false and that gold worth Rs. 14,000/- was found in his possession. The learned Sessions Judge in appeal also accepted the testimony of the Customs Officials and held the defence to be false and came to the conclusion that the gold was found in possession of the appellant. In the High Court the same plea was taken and was rejected.

For the first time in this Court it is contended that before the presumption under s.178A can be made applicable, it must be proved by the prosecution that the goods were of foreign origin, i.e. had been

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imported from abroad and only then does the presumption under s. 178A arise which relates only to the question of Customs duty having been paid. In other words the contention comes to this that the prosecution must first prove that the goods in dispute in a particular case have been imported from a foreign country and once that is proved the onus then will be on the person in whose possession the goods are found that he had paid the Customs duty. Apart

from the fact that this question has never been raised, that is not the effect of s.178A of the Sea Customs Act which provides:-

"178A. (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 on the person from whose possession the goods were seized.

(2) This section shall apply to gold, gold manufactures, diamonds and other precious stones, cigarette and cosmetics and any other goods which the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every notification issued under sub section (2) shall be laid before both Houses of Parliament as soon as may be after it is issued".

Two Customs officers appeared as witnesses, Inspector Satnam Singh and Deputy Superintendent A.N. Kapur, the former is an Inspector of Land Customs and the latter a Deputy Superintendent of Customs. There is nothing to indicate in their cross-examination that the officers did not have a reasonable belief that the goods were smuggled goods and the question that the officers did not have reasonable belief is not suggested either from the cross-examination of these witnesses or from the findings

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of the courts below. Even in his statement of case it is contended that the mere existence of stamp of foreign companies on gold does not necessarily prove that the gold is of foreign origin. It might be put on spurious gold which may be of Indian origin. In our opinion apart from the fact that this question has not been raised, it is quite clear that what s.178A of the Sea Customs Act provides is that when the goods are seized in the reasonable belief that they are smuggled goods then the burden of proving that they are not smuggled goods is on the person from whose possession the goods are seized. The onus is on him to show that the goods are not smuggled, that is, not of foreign origin on which duty is not paid. The onus is not on the prosecution to show that the goods are not, of Indian origin. That appears to be the view taken in the Collector of Customs, Madras v. Nathella Sampathu Chetty (1) where at the learned Judges observed :-

"We are therefore of opinion (1) that section 178A was constitutionally valid, (2) that the rule as to the burden of proof enacted by that section applies to a contravention of a notification under section 8(1) of the Foreign Exchanges Regulation Act 1947 by virtue of its being deemed to be a contravention of a notification on under section 19 of the Sea Customs Act, (3) that the preliminary requirement of section 178A that the officer seizing should entertain, 'a reasonable belief' that the goods seized were smuggled" was satisfied in the present case."

In our opinion there is no merit in this appeal and it is dismissed. The appellant will surrender to his bail-bonds.

Appeal dismissed.

(1) [1962] 3 S.C.R. 786.

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JUDIS