

CASE NO.:
Appeal (crl.) 926 of 2001

PETITIONER:
LINDER FRANK WOLFGANG

Vs.

RESPONDENT:
YOGESH D.SHAH & ANR.

DATE OF JUDGMENT: 11/09/2001

BENCH:
D.P.MOHAPATRA & K.G.BALAKRISHNAN

JUDGMENT:

D.P.Mohapatra, J.

Leave granted.

Shri Harjinder Singh learned counsel for the appellant has not challenged before us the conviction of the appellant under Section 135 of the Customs Act, 1962 and the sentence of simple imprisonment for five years and fine of Rs.5,000/-. The sole contention raised by him is that the mother of the appellant who is an old lady is seriously ill in Poland and she has expressed a desire to see her only son. He referred to a copy of the letter dated 15.5.2001 received from the Consulate of the Republic of Poland in Mumbai to the Minister of Jails (Gujarat) requesting him to grant remission of the remaining period of sentence (then 7 months) on compassionate and humanitarian grounds. Learned counsel further contended that the appellant has already undergone substantial part of the sentence which is to be completed in December, 2001. In view of the subsequent development after the judgment of the High Court the learned counsel contended that this Court may reduce the sentence to the period of imprisonment already undergone and order release of the appellant immediately.

Sri T.V.Ratnam, learned counsel for the respondents contended that in view of the serious allegations made against the appellant in the case this Court should not accept the prayer for modification of the sentence.

From the discussions in the judgment of the High Court it appears that a plea for reduction of the sentence was made on behalf of the appellant before the Court. The High Court referring to the judgment of this Court in the case of Devchand Kalyan Tandel Vs. State of Gujarat reported in 1997 (89) E.L.T. 433 (S.C.) and the case of K.I.Pavunnn vs. Assistant Collector (H.Q.) Central Excise, Collectorate, Cochin, reported in 1997 (90) E.L.T. 241 (S.C.) declined to take a lenient view in the matter and rejected the plea for reduction of the period of the sentence.

In K.T. Pavunny vs. Assistant Collector case (supra)

this Court altered the sentence. The operative portion of the judgment reads as follows:

"Having reached the finding that the appellant has committed the offences under section 135(1)(i) of the Act and Sections 85(1)(a) and 86 of the Gold (Control) Act, 1968 we think that instead of being committed to jail, the appellant should be sentenced to pay fine of Rs.10,000 and Rs.5,000 respectively for the two aforementioned offences, within 4 months from today. In default, he shall undergo imprisonment for a period of 2 months and 1 month respectively which are directed to run consecutively.

The appeal is accordingly allowed to the above extent of modification and the sentences imposed by the High Court stand modified accordingly."

We have considered the prayer of the appellant for reduction of sentence to the period already undergone. We have also perused the observations made by this Court in the case of Devchand Kalyan Tandel vs. State of Gujarat (supra) and the judgment in K.T. Pavunny vs. Asstt. Collector (H.Q.) Central Excise, Collectorate, Cochin (Supra), in which this Court altered the sentence substituting the period of imprisonment. We are of the view that on the facts and in the circumstances of the case, considering the illness of the mother of the appellant who is an old lady which fact has been authenticated by the Consulate of the Republic of Poland and a short period of about four months is left for completion of the sentence, the prayer of the appellant for reduction of sentence should be allowed. Accordingly, while maintaining the conviction of the appellant, the order of sentence is modified to the extent of the period of imprisonment already undergone by him. He shall be released forthwith if his detention is not required in any other proceeding.

The appeal is disposed of.

.....J.
(D.P.MOHAPATRA)

.....J.
(K.G.BALAKRISHNAN)

11th September, 2001