IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.170 of 1994

A.K.Jain Assistant Collector
of Customs .. Appellant
Versus
Trilokchand Ashlchand Chopra
and two others .. Respondents

Mrs.A.A.Mane, for the appellant.

Mr.Balram Singh, Advocate for respondent no.2.

Mrs.S.V.Gajare, APP for the State.

None for the respondent no1.

CORAM : ABHAY M. THIPSAY, J.

DATED : 1st SEPTEMBER, 2015

ORAL JUDGMENT :

1 This is an Appeal under section 377(2) of the Code of Criminal Procedure filed by the Customs Department through their authorized Officer for enhancement of the sentences awarded to the respondent nos.1 and 2 who were accused in Case No.453/CS/93 dealt with by Chief Metropolitan Magistrate, Esplanade, Mumbai. The case arose on a complaint filed by the Assistant Collector of Customs, Preventive Department, alleging commission of offences punishable under section 13(1)(i) read with sections 135(1)(a) and 135(1)(b) thereof, as also offences punishable under section 85(1)(a) of the Gold (Control) Act, 1968

r/w section 85(1)(ii) and 85(1)(iii) thereof. After recording evidence before charge, the learned Chief Metropolitan Magistrate framed charges against the respondents as follows :-

Against the respondent no.1.

i) Charge of an offence punishable u/s 135(1)(i) read with section 135(1)(a).

ii) Charge of an offence punishable u/s 135(1) (b).

iii) Charge of an offence punishable u/s 85(1)(ii) of the Gold (Control) Act read with section 85(1) (a) of the said Act.

iv) Charge of an offence punishable u/s.85(1)(a) read with section 85(1)(iii) of the said Act.

Against the respondent no.2.

i) Charge of an offence punishable u/s 135(1) (i) read with section 135(1)(a).

ii) Charge of an offence punishable u/s 135(1) (b).

iii) Charge of an offence punishable u/s 85(1)(ii) of the Gold (Control) Act read with section 85(1) (a) of the said Act.

2 The respondents pleaded guilty to the said charge. The learned Chief Metropolitan Magistrate accepted the plea, and

by his order dated 4th November 1993, convicted and sentenced the respondents as follows :-

Respondent no.1 :

Offence	Punishment
S.135(1)(a)(i) of the Customs Act, 1962	Rigorous Imprisonment for Six months and fine of Rs.75,000/-.
S.135(1)(b)(i) of the Customs Act, 1962	Rigorous Imprisonment for Six months and fine of Rs.75,000/-.
S.85(1)(ii) r/w. S.8(1)(i) of the Gold (Control) Act,1968	Rigorous Imprisonment for Six months and fine of Rs.35,000/-.
S.85(1)(iii) r/w. S.85(1)(a) of the Gold (Control) Act, 1968	Rigorous Imprisonment for Six months and fine of Rs.35,000/-.

Respondent no.2 :

Offence	Punishment
S.135(1)(a)(i) of the Customs Act, 1962	Rigorous Imprisonment for Thirteen days and fine of Rs.5,000/-.
S.135(1)(b)(i) of the Customs Act, 1962	Rigorous Imprisonment for Thirteen days and fine of Rs.5,000/-.
S.85(1)(ii) r/w. S.8(1)(i) of the Gold (Control) Act,1968	Rigorous Imprisonment for Thirteen days and fine of Rs.2,500/-.

3 Being aggrieved by smaller sentences imposed by the Chief Metropolitan Magistrate, the appellant has filed the Appeal for enhancement.

4 When the Appeal came up for final hearing, none appeared for the respondent no.1 inspite of repeated opportunities and repeated adjournments being granted. So far as the respondent no.2 is concerned, Mr.Balram Singh appeared for him and wanted a discharge. However, it was observed that the

respondent no.2 was not available, and as such it was thought fit not to discharge the learned counsel, who on expressing this view, agreed to argue the Appeal.

5 I have heard Mrs.Mane, learned counsel for the appellant. I have heard Mr.Balram Singh, learned counsel for the respondent. I have carefully gone through the application, the evidence adduced before the charge, the plea of the respondents and the order passed by the Magistrate, convicting and sentencing the respondents on their plea.

6 It is not necessary to enter into an elaborate discussion of the various aspects involved, as it is not in dispute that in respect of the offence punishable under section 135 (1)(i) of the Customs Act, a minimum sentence of Rigorous Imprisonment for a period of 1(one) year had been prescribed by statute at the material time. Subsequently, that minimum sentence was enhanced by the legislature. However, at the material time, the minimum that was prescribed for the said offence, was Rigorous Imprisonment for a period of 1(one) year. The same could be cut down only for special and adequate reasons.

7 It appears to be the case of the Investigating Agency that the respondent no.1 was in unlawful possession of 50 gold bars, each weighing 10 tolas out of which 35 were actually found with him. The respondent no.1 confessed before the Customs Officers of his having disposed of the remaining 15 bars.

8 After going through the order passed by the Chief Metropolitan Magistrate, it does not appear that there were any reasons for awarding a sentence less than prescribed as the minimum by the statute. The Chief Metropolitan Magistrate has simply noted the submission advanced by the learned counsel for the respondent no.1 that the incident pertained to the year 1988, and that the respondent no.1 had already undergone the sentence of six months, and that as he was on bail, it was not necessary to sent him back to the prison. This submission appears to have weighed with the Chief Metropolitan Magistrate.

9 In my opinion, when the statute had prescribed the minimum sentence, the Chief Metropolitan Magistrate should have awarded the same. There were no special or adequate reasons for imposing a sentence less than the one prescribed as minimum by the Statute. The order passed by the Chief Metropolitan Magistrate imposing a sentence only of six months upon the respondent no.1, therefore, does not seem to be proper, or in accordance with law. In my opinion, the sentence imposed upon the respondent no.1 needs to be enhanced so as to bring in conformity with the sentence prescribed by the statute as the minimum.

10 So far as the respondent no.1 is concerned, he was merely the driver of the taxi in which the respondent no.1 was travelling with the contraband gold. Interestingly, the Investigating Agency was not certain as to whether the respondent no.1 had the requisite *mens rea*. When the statements of the

respondent no.2 were recorded under the provisions of section 108 of the Customs Act, he claimed ignorance of the fact that the respondent no.1 was in possession of gold in contravention of the provisions of the Customs Act and Gold (Control) Act.

11 The sentence awarded to him is also rather odd i.e. of 13 days. It is stated before me by the learned counsel for the respondent no.2 that the respondent no.2 had been in custody for 13 days before his release on bail, and this is why a sentence of 13 days has been imposed upon him.

12 After carefully considering the matter, it appears to me that the respondent no.2 initially claimed innocence. He claimed that he was not aware that the respondent no.1 was possessing contraband gold. It also appears that he was induced to plead guilty with the understanding that he would be let off with a sentence of Imprisonment to the extent already undergone. There is otherwise no reason for him to plead guilty as he was on bail for a period of more than five years, and had not admitted his guilt before the Customs Officers.

13 Though the practice and procedure adopted by the Chief Metropolitan Magistrate was improper, and not in accordance with law, it appears to be a fact that the respondent no.2 was induced to plead guilty. His role in the alleged offences is certainly on a much lesser footing than that attributed to the respondent no.1. The incident had taken place in the year 1988. The plea of guilty was taken by the respondent no.1 in the year 1993 when he was on bail for a period of about 5 years. The

sentence that was imposed upon him appears to be by way of a sort of plea bargaining. Considering that the sentence was imposed about 22 years back, I am not inclined to enhance the same inspite of recording my view that the imposition of a sentence of mere 13 days was not in accordance with law.

14 Under the circumstances, the Appeal is partly allowed.

15 The Appeal, so far as it relates to the respondent no.2 is dismissed.

16 The substantive sentences imposed upon the respondent no.1 with respect to the offences punishable under section 135(1) read with section 13(1)(a) and 135(1)(i) read with section 135 (1)(b) of the Customs Act are enhanced. Respondent no.1 shall undergo a sentence of Rigorous Imprisonment for a period of one year for each of the said offence.

17 The sentences shall run concurrently.

18 The Appeal is allowed in the aforesaid terms and only to the aforesaid extent.

(ABHAY M. THIPSAY,J)