IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.268 OF 2005

The Union of India Through the Assistant Collector of Customs, Rummaging and Intelligence, New Customs House, Mumbai	)	….Appellant/Complainant
V/s.		
1. Arjunkumar Chunilal Purohit, Village Loanava, Post Jaytada, District – Banaskanta, Gujarat State	)	
2. Mohammad Rafique Ahmed Miya Shaikh, Near Municipal Dak Bungalow, District – Banaskanta, Gujarat State	)	
3. The State of Maharashtra	)	…..Respondents/Accused

Mr. N. Natrajan for appellant.

CORAM : K.R.SHRIRAM, J.
DATE : 4th MARCH 2020

ORAL JUDGMENT :

1 This is an appeal impugning an order and judgment dated 27th March 2003 passed by the Chief Metropolitan Magistrate, Esplanade, Mumbai, acquitting respondent nos.1 and 2 (accused nos.1 and 2) of offence punishable under Section 135 (1) (b) read with Section 135 (1) (i) of the Customs Act, 1962 (the said Act).

2 Respondents nos.3, 4 and 5 were never traced and case was separated against respondent nos.3, 4 and 5.

3 Prosecution based on certain information received, intercepted a Premier Padmini car bearing registration no.GJ-8-661 of light blue colour near Rippon Guest House, Shuklaji Street, Mumbai. The car was found

locked and unattended and therefore, the officers of the Customs maintained a close surveillance on the car. After some time, one person (accused no.1) came near the car, opened the car and sat in the driver's seat and was about to start the car when the officers swooped and apprehended him. On interrogation, accused no.1 disclosed his name as Arjunkumar Purohit and he further disclosed that he had driven the car from Gujarat alongwith two others, who were booked in Room No.103 of Rippon Guest House. Immediately, some of the officers rushed to Room No.103 but only one person, i.e., accused no.2, was found. Accused no.2 was also apprehended and on preliminary examination conducted in the presence of two panchas, the car was then taken to the Customs House as the place near the Rippon Guest House was not very safe and it was already very late in the night, the officers found two cavities under the rear seat of the car and when those cavities were opened, they recovered 10 packets wrapped in brown adhesive tapers, each containing 10 bars of gold bearing foreign marking. In all 20 bundles containing 200 gold bars with foreign marking, totally weighing 23,320 gms. and valued at Rs.97,12,780/- was recovered and seized under panchnama. Statements of accused nos.1 and 2 under Section 108 of the said Act was also recorded. After obtaining sanction, complaint was filed and to the charge, accused nos.1 and 2 pleaded not guilty and claimed to be tried.

4 Prosecution led evidence of six witnesses, viz., Kalicharan Lambodar Panda, Customs Officer as PW-1; Rajnarayan Vikramaditya Pathak,

Superintendent of Customs as PW-2; Nagindas Mahadev Vengurlekar, Superintendent of Customs as PW-3; Johail Abdul Hussain Patanwala, panch witness as PW-4; Ravindranath Singh, Investigating Officer as PW-5; and Mumtaz Ahmed Bhatkar, Administrative Officer in Rippon Guest House as PW-6.

5 The Trial Court in the judgment has accepted the fact that accused nos.1 and 2 were apprehended with the Premier Padmini car bearing registration no.GJ-8-661 and 200 gold bars were seized. Nevertheless, the order of acquittal was passed on the basis that prosecution failed to prove that the bars seized were contraband gold of high degree of fineness of 99.9%.

6 While obtaining the order of sanction, prosecution relied upon assay certificate issued by authorised assayers M/s. Ratilal Chimanlal and Company. The sanction order provides “and whereas representative samples of the gold bars under seizure were got assayed by authorised assayers M/s. Ratilal Chimanlal and Company and were found to be of 999.9 purity”.

7 The whole case of prosecution is based on this assayers’ report. For inexplicable reason, this report of assayers M/s. Ratilal Chimanlal and Company was never produced in evidence. Mr. Natrajan in fairness and as an officer of the Court concurred that it was necessary for prosecution to have produced this document because even the sanctioning authority has relied only on this document while according sanction. To a query posed by the

Court, Mr. Natrajan also agreed that there is no explanation from prosecution as to why they could not even summon M/s. Ratilal Chimanlal and Company to come and give evidence or produce a duplicate of the same certificate if the original had been misplaced. Mr. Natrajan agreed that this was a major flaw in prosecution's case.

8 At the same time, Mr. Natrajan also submitted that Exhibit P-4 and Exhibit P-5 indicate that the gold seized from the car was contraband gold of high degree of fineness, i.e., of 99.9%. Mr. Natrajan submitted that Exhibit P-4 mentions 255340 gms. of confiscated gold received by India Government Mint and its attachment, which is a letter dated 25th September 1991 from Disposal Unit of Customs to General Manager of India Government Mint, gives a break up of confiscated gold with its file numbers. Mr. Natrajan submitted that first item in the letter refers to file no.S/14-5-48/91 and that is the concerned file of the matter at hand. Mr. Natrajan also referred to Exhibit P-18, which is a letter from Disposal Cell to Superintendent of Customs, Prosecution Cell dated 22nd June 2000. There also the same file reference is given. Mr. Natrajan also refers to Exhibit P-5, which is the melting/assaying result of gold submitted by the General Manager, India Government Mint to indicate that the gold seized was of 999.0 fineness. Mr. Natrajan submitted that the Court could have considered this document and come to a conclusion that the gold, that was seized from the car, was contraband gold of high degree of fineness, i.e., of 99.9%.

9 I am unable to sing alongwith Mr. Natrajan.

First of all, it does not appear that this argument was ever advanced to the Trial Court. Mr. Natrajan agrees that it was not advanced because it is not reflected in the impugned judgment.

Secondly, the melting/assaying result of the India Government Mint (Exhibit P-5) also does not indicate that the result, which is mentioned in Exhibit P-5, relates to the gold that was seized from the car no.GJ-8-661. The result is given as under :

M.No. ------------- *Fineness/Melting*	*Wt. In gms.*
2745 ______ 999.0	52,476.400
2746 ______ 999.1	52,482.000
2747 ______ 999.0	52,448.300
2748 ______ 999.1	52,461.900
2749 ______ 999.0	45,407.600
2808 ______ 856.1	51.900
Wt. after melting	255,328.100
Loss in melting	11.900
Wt. Before melting	255,340.000

10 The gold seized from the car was weighing 23,320 gms. But the report quoted above, does not mention anywhere 23,320 gms. or as Mr. Natrajan submitted 22,203.4 gms. because one gold bar was sent to M/s. Ratilal Chimanlal and Company for assaying. Therefore, from Exhbit P-5 also one cannot conclude that the report relates to the gold that was seized from the car.

11 In the circumstances, the Trial Court was correct in coming to the conclusion that prosecution has failed to prove that the gold, which was seized from the car, was contraband gold of high degree of fineness, i.e., of 99.9% as mentioned in the sanction.

12 There is an acquittal and therefore, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the Trial Court. For acquitting the accused, the Trial Court observed that the prosecution had failed to prove its case.

13 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with. I cannot find any fault with the judgment of the Trial Court.

14 Appeal dismissed.

(K.R. SHRIRAM, J.)