

## BALUMAL JAMNADAS BATRA

v.

## STATE OF MAHARASHTRA

August 29, 1975

[M. H. BEG, P. N. BHAGWATI AND R. S. SARKARIA, JJ.]

**B** *Customs Act, 1962, Section 123, sub-sections (1) and (2)—Seizure of smuggled goods prior to notification under sub-section (2)—Presumption under sub-section (1), if could be applied subsequent to notification to the goods seized.*

Section 123(1) of the Customs Act, 1962, provided that, 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.

**C** On 21-4-1967, Police Officers of the Anti-Corruption and Prohibition Bureau, Greater Bombay, acting on information received, had searched room no. 10 at 56, Sheriff Deoji Street, Bombay. This room was divided by partitions into three parts. In the central portion, the police found the appellant and three other persons. This portion was again sub-divided with a locked connecting door fixed in the passage to the sub-divided part. This was opened by one of the two Godrej lock keys produced by the appellant from a side pocket of his trousers. Eleven wooden boxes covered with jute cloth and secured by iron strips were found there. On opening them, six of them were found to contain cigarette lighters of "Imco Triplex Junior" brand "Made in Austria". Each of the six boxes were tightly packed with 1200 lighters. The remaining five boxes contained fifty sealed tins of flints for cigarette lighters which bore the following writing: "Tego Lighter Flints of Superior Quality Made in Germany" inscribed on them. A panchnama was prepared before Panchas. A rent receipt in the name of the appellant in respect of room No. 10, in this house, of which a portion was occupied by the appellant, and a bill for the consumption of electricity were also seized from the custody of the appellant together with the Godrej lock and the keys produced by the appellant. On 30th October, 1968, the Assistant Collector of Central Excise, Marine and Prevention Division, Bombay, filed a complaint alleging that the appellant had committed offences punishable under Section 135(a) and (b) of the Customs Act. The appellant had denied being in possession of the offending goods although he had admitted the production of keys from his possession. The trying Presidency Magistrate convicted him under section 135(b)(ii) of the Customs Act, 1962 and sentenced him to six months rigorous imprisonment and a fine of Rs. 2,000/-, and, in default, to three months further rigorous imprisonment. The High Court dismissed his appeal. This appeal has been preferred on the basis of the special leave granted by this Court.

**E** It was contended for the appellant that: (i) the presumption contained in s.123(1) of the Act would not place the onus of proving innocent possession of the goods in question upon the appellant; and, (ii) the goods in respect of which the appellant was prosecuted were not seized under the Act.

**F** Rejecting the contentions and dismissing the appeal, the court

**G** HELD: (i) Though lighters and flints were notified provided in Section 123(2), in the Official Gazette of 26-8-1967, the provisions of Section 123(1) which only lay down a procedural rule, could be applied when the case came up for trial before the Presidency Magistrate. He divided it on 15-7-1969. The complaint itself was filed on 30-10-1968. It is immaterial that the appellant was found in possession of the goods on 21-4-1967. [542-B-C]

**H** (ii) The very appearance of the goods and the manner in which they were packed indicated that they were newly manufactured and brought into this country very recently from another country. The inscriptions on them and writing on the boxes were parts of the state in which the goods in unopened boxes were found from which inferences about their origin and recent import

could arise. The appellant's conduct, including his untruthful denial of their possession, indicated consciousness of their smuggled character or *mens rea*. There was some evidence to enable the courts to come to the conclusion that the goods must have been known to the appellant to be smuggled even if he was not a party to a fraudulent evasion of duty. [543 B-D]

*Gian Chand & Ors. v. The State of Punjab*, [1962] Suppl. 1 S.C.R. 364, *Collector of Customs, Madras & Ors. v. D. Bhoormull* A.I.R. 1974 S.C. 859, *M/s. Kanungo & Co. v. The Collector of Customs, Calcutta & Ors.* A.I.R. 1972 S.C. 2136, *Issardas Daulat Ram & Ors. v. The Union of India & Ors.* [1962] Suppl. 1 S.C.R. 358, *Gopal Shorey v. The State of Bombay* [1959] S.C.R. 919 and *The State of Punjab v. Gian Chand & Ors.* Criminal Appeal No. 195 of 1962—decided by this Court on 2-4-1968, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 74 of 1971.

Appeal by Special Leave from the Judgment and Order dated the 25th January 1972 of the Bombay High Court in Criminal Appeal 1025 of 1959.

*N. H. Hingoorani* and *Mrs. K. Hingoorani* for the Appellant.

*S. B. Wad* and *M. N. Shroff* for the Respondent.

The Judgment of the Court was delivered by

BEG, J.—The appellant before us by special leave to appeal was convicted under Section 135(b) (ii) of the Customs Act, 1962 (hereinafter referred to as 'the Act'), and sentenced to six months rigorous imprisonment and a fine of Rs. 2,000/-, and, in default, to three months further rigorous imprisonment. Goods in respect of which this offence was found to have been committed were also confiscated.

On 21-4-1967, Police Officers of the Anti-Corruption and Prohibition Bureau, Greater Bombay, acting on information received, had searched room No. 10 at 56, Sheriff Deoji Street, Bombay. This room was divided by partitions into three parts. In the central portion the police found the appellant and three other persons. This portion was again sub-divided with a locked connecting door fixed in the passage to the sub-divided part. This was opened by one of the two Godrej lock keys produced by the appellant from a side pocket of his trousers. Eleven wooden boxes covered with jute cloth and secured by iron strips were found there. On opening them, six of them were found to contain cigarette lighters of "Imco Triplex Junior" brand "Made in Austria". Each of the six boxes were tightly packed with 1200 lighters. The remaining five boxes contained fifty sealed tins of flints for cigarette lighters which bore the following writing : "Tego Lighter Flints of Superior Quality Made in Germany". On the wooden boxes containing the lighters were found written "Dubai" and "Made in Austria". The five boxes containing flints had the words "Dubai" and "Made in West Germany" inscribed on them. A panchnama was prepared before Panchas. A rent receipt in the name of the appellant in respect of room No. 10, in this house, of which a portion was occupied by the appellant, and a bill for the consumption of electricity were also seized from the custody of the appellant together

- A with the Godrej lock and the keys produced by the appellant. Subsequently, the seized articles were made over to the inspector of Central Excise and Customs, Marine and Prevention Division, Bombay, on 24-4-1967, under Section 110 of the Customs Act.

- B The value of 7200 cigarette lighters was stated as Rs. 14,400/- and of 250 tins of flints as Rs. 15,000/- on which Customs duty of Rs. 15,840/- and Rs. 10,500/- respectively was alleged to be payable. In the complaint filed on 30th October, 1968, by the Assistant Collector of Central Excise, Marine and Prevention Division, Bombay, it is alleged that the cigarette lighters and flints were imported into India without an import licence and in contravention of provisions of Government of India, Ministry of Commerce & Industry, Import Control Order No.17/55 dated 7-12-1955 (as amended) issued under Section 3(2) of the Import & Export (Control) Act, 1947, which was to be deemed to be an order passed under Section 11 of the Act. It was submitted that the accused, having been concerned in a fraudulent evasion of payment of Rs. 26,340/- as customs duty to the Government, had committed offences punishable under Section 135(a) and (b) of the Act. The goods were also, as a necessary consequence, said to be liable to confiscation under Section 111(d) of the Act.

- D The appellant had denied being in possession of the offending goods although he had admitted the production of keys from his possession. He alleged that the portion of the room from which the goods were recovered was sublet to Dwarumal and Kishen who had kept the goods there. The appellant's explanation had been disbelieved by the trying Magistrate as well as by the High Court. The production of the key which, according to the prosecution evidence, the appellant had at first refused to produce, proved that the portion in which the boxes were kept was in appellant's exclusive possession with all that was contained in it. It is possible that he may have sublet other portions of the partitioned room to other persons, but there is no reason to doubt that the appellant was not only in possession of the boxes but knew something about the incriminating nature of their contents. Otherwise, why should he, at first, have refused to produce the key he had? Furthermore, the appellant had not given any evidence to show that his sub-tenants had placed the boxes there, or that there was any reason why he should allow them to use the portion reserved by him for himself. His case rested on his bare assertions in a written statement. Of course, no one had come forward to state or allege that the goods found, in the circumstances stated above, had been imported without payment of duty. The only question argued before us was whether the presumption contained in Section 123 of the Act, corresponding to Section 128(A) of the Sea Customs Act, 1878, or any other provision of law would place the onus of proving innocent possession of these goods upon the appellant. Section 123 of the Act reads as follows :

- H "123. Burden of proof in certain cases.—

(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, diamonds, manufacturers of gold or diamonds, watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify".

It is true that lighters and flints were notified as provided in Section 123(2), in the Official Gazette of 26-8-1967. Nevertheless, as the provisions of Section 123(1) of the Act only lay down a procedural rule, they could be applied when the case came up for trial before the Presidency Magistrate who actually decided it on 15-7-1969. Indeed, the complaint itself was filed on 30-10-1968. It is immaterial that the appellant was found in possession of the goods on 21-4-1967. There is, however, another objection to the applicability of Section 123(1) of the Act. It is that it would apply only to goods seized under the Act. It is contended that the goods in respect of which the appellant was prosecuted were not seized under the Act. Reliance was placed for this contention upon *Gian Chand & Ors. v. the State of Punjab*<sup>(1)</sup>.

Even if the goods with which we are concerned here were not seized under the Act, as provided by Section 111 of the Act, it is contended on behalf of the State that Section 106, read with Section 114 of the Evidence Act, was sufficient to enable the prosecution to ask the Court to presume that the appellant knew that the goods must have been smuggled or imported in contravention of the law. The appellant had not produced evidence to show that the goods were legally brought into India. Reliance was placed on behalf of the prosecution on : *Collector of Customs, Madras & Ors. v. D. Bhoormull*<sup>(2)</sup>; *M/s. Kanungo & Co. v. The Collector of Customs, Calcutta & Ors.*<sup>(3)</sup>, *Issardas Daulat Ram & Ors. v. the Union of India & Ors.*<sup>(4)</sup>, *Anant Gopal Sheorey v. The State of Bombay*<sup>(5)</sup>.

Learned Counsel for the appellant had, in his turn, relied upon *The State of Punjab v. Gian Chand & Ors.*<sup>(6)</sup>. He contended that it was necessary for the prosecution to prove : (1) that, the goods in question were actually smuggled or brought into the country without payment of customs duty at a time when payment of such duty had become obligatory; and, (2) that, the appellant was dealing with them knowing them to be smuggled goods. It was contended that mere possession by the accused of such goods could not enable the prosecution to apply Section 106 of the Evidence Act when the appellant could not know where the goods came from. It was urged that there was no evidence which could enable the appellant to know where the goods came from or when the goods were imported or that duty, if leviable, was not paid on them. The admissibility and sufficiency of

(1) [1962] (Suppl.) 1 S.C.R. 364.

(3) A.I.R. 1972 S.C.R. 2136.

(5) [1959] S.C.R. 919.

(2) A.I.R. 1974 S.C. 859.

(4) [1962] Suppl. (1) S.C.R. 358.

(6) Criminal Appeal No. 195 of 1962 -decided by this Court on 2-4-1963.

- A the inscriptions on the goods and the writing on boxes in which they were found, for proving the place from where they came, or when they were imported, were questioned. The contention was, that even if the appellant is deemed to be in possession with full knowledge of what the goods actually were, the Court could not go further and assume them to be smuggled or imported into the country from
- B another country of their assumed origin after a time when the restrictions on their import had been imposed. Unfortunately, the appellant did not admit the possession of the goods at all. If he could have succeeded in explaining satisfactorily how he was an innocent receiver of such goods without knowing that they were illegally imported or smuggled he may have had a chance of getting the benefit of doubt. The very appearance of the goods and the manner in which they were
- C packed indicated that they were newly manufactured and brought into this country very recently from another country. The inscriptions on them and writing on the boxes were parts of the state in which the goods in unopened boxes were found from which inferences about their origin and recent import could arise. The appellant's conduct, including his untruthful denial of their possession, indicated consciousness of their smuggled character or *mens rea*. In any case, there was
- D some evidence to enable the Courts to come to the conclusion that the goods must have been known to the appellant to be smuggled even if he was not a party to a fraudulent evasion of duty. Consequently, the appellant had been convicted only under Section 135(1)(ii) of the Act. We do not find sufficient reasons to interfere with this finding of fact or the sentence imposed. It would also follow that the goods
- E were rightly confiscated.

Accordingly, this appeal is dismissed.

V.M.K.

*Appeal dismissed.*