

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Crl.Revision No.634 of 2004
Date of decision: 6.4.2010

Tarsem Chand

... Petitioner

versus

Assistant Collector of Customs

... Respondent

CORAM: HON'BLE MR. JUSTICE JORA SINGH.

Present: Mr.Parampal Singh, Advocate,
amicus cariae, for the petitioner.
Mr.Karminder Singh, Advocate,
for the respondent-UOI.

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JORA SINGH, J.

Tarsem Chand filed this revision to impugn the judgment dated 3.2.2004 rendered by Additional Sessions Judge, Amritsar. By the said judgment, appeal against the judgment of conviction and order of sentence dated 9.11.2000 passed by CJM, Amritsar, was dismissed.

As per judgment of conviction and order of sentence, revisionist was convicted under Section 135 of the Customs Act and sentenced to undergo RI for three years and to pay a fine of Rs.5,000/-, in default of payment of fine, to further undergo RI for three months.

Prosecution story, in brief, is that complaint under Sections 135 and 135-A of the Customs Act, 1962 (for short 'the Act') was instituted by the Assistant Collector of Customs, Department of Revenue, Ministry of Finance, Government of India, Attari Rail, Amritsar, against Mohd. Akram and Tarsem Chand on the allegation that on 11.2.1988, Tarsem Chand was

selling chana bhatura on his rehri at platform No.1 at L.C.S. Attari Rail. Uttam Chand Sharma, Superintendent Customs, along with Sharanjit Singh, while on general supervision at platform No.1, L.C.S. Attari Rail, noticed some hand bags and envelopes, partly lying on the ground and partly in the box of the rehri of Tarsem Chand. Ashok Kumar and Prem Kapoor were joined as independent witnesses. Hand bags and envelopes were found in possession of the petitioner. Customs officials enquired from the petitioner regarding hand bags and envelopes, then the petitioner disclosed that hand bags and envelopes belong to Mohd. Akram and Jamsed Ali, who were present by the side of the rehri. Then on search of hand bags and envelopes in the presence of independent witnesses, pearls, synthetic stones, diamonds and two bottles of Johnie Walker (foreign whisky) were recovered. Recovered articles were taken into possession vide memo (Ex.PA), attested by the independent witnesses and Sharanjit Singh, Inspector Customs. Memo was also signed by Mohd. Akram and Jamsed Ali. Recovered articles were seized under the Act and got tested from Vijay Kumar Seth, who confirmed that seized articles were pearls, synthetic stones and diamonds, worth Rs.5,14,257/-. Petitioner made a statement on 11.2.1988 and 12.2.1988 under Section 108 of the Act by admitting that recovered bag containing seized goods was kept by Mohd. Akram and Jamsed Ali, with a direction that seized articles were to be handed over to them at the time of departure of train and Mohd. Akram was to pay him Rs.1500/- for that job. Petitioner agreed to keep the seized articles in his possession and to do the job as assigned to him by Mohd. Akram. Mohd. Akram also admitted on 11.2.1988 that recovered articles were owned by him and same were to be handed over to one Rafiq in Pakistan, who was to give him Rs.11,400/- as

commission for exporting seized goods illegally. After obtaining sanction, complaint was instituted. Mohd. Akram was declared proclaimed offender.

In pre-charge evidence, Sharanjit Singh, Inspector Customs appeared as PW1 and R.K.Duggal as PW2.

Accused was charged under Sections 135 and 135-A of the Act, to which he did not plead guilty and claimed trial.

After charge, prosecution again produced Sharanjit Singh (PW1) and R.K.Duggal (PW2) for further cross-examination. Both witnesses fully supported the prosecution story.

PW3 Vijay Kumar Seth stated that recovered articles after test were found to be pearls, synthetic stones and diamonds, worth Rs.5,14,257/-.

PW4 Sukhpal Singh, Inspector Customs, was the Incharge of Malkhana, and stated that case property was deposited with him.

PW5 Uttam Chand Sharma, retired Assistant Collector Customs, has supported PW1 Sharanjit Singh and PW2 R.K.Duggal by saying how the recovery was effected from the accused.

PW6 Sarabjit Singh, Inspector Customs, stated that case property was kept in one trunk containing 73.667 kgs. semi precious stones and other seized articles, sealed with seal No.130 of Customs Division, Amritsar.

After close of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. He denied all the prosecution allegations and pleaded to be innocent.

Opportunity was given to lead evidence, but no defence was led.

After hearing learned counsel for the Customs Department, defence counsel for the petitioner and from the perusal of evidence on file, petitioner was convicted under Section 135 of the Act and sentenced as stated aforesaid.

Against the judgment of conviction and sentence by the Court of CJM, Amritsar, appeal was preferred by the petitioner, but the same was ultimately dismissed.

I have heard learned counsel for the petitioner, State counsel and gone through the evidence on file.

Learned counsel for the petitioner argued that the petitioner was carrying on his business on rehri at platform No.1. He was not in conscious possession of recovered articles. Mohd. Akram and Jamsed Ali were the owners of recovered articles. Petitioner was to receive only Rs.1500/- to hand over the recovered articles to the above said persons at the time of departure of the train. Petitioner had no knowledge about the contents of the bags/envelopes. If the Court is of the opinion that the petitioner had the conscious possession of the recovered articles, then lenient view may be taken. Petitioner has already undergone one year and nine months. Occurrence was in the month of February, 1988. At that time, petitioner was the only bread winner of his family and belongs to a poor family.

Learned State counsel argued that no doubt occurrence was in the month of February, 1988. Petitioner is the first offender. No objection if lenient view is taken.

In view of the statements of Uttam Chand and Sharanjit Singh, seized articles were recovered from the bags/envelopes lying on the rehri. If

the petitioner had no knowledge about the contents of bags/envelopes, then there was no idea to keep the bags/envelopes on his rehri and to collect Rs.1500/- from Mohd. Akram or Jamed Ali, who were not known to him. Revisional Court is not to reassess the evidence on the file. Impugned judgment is to be set aside if impugned judgment of first appellate Court is perverse and against law, and evidence on the file was misread. But in the instant case, evidence on the file was rightly scrutinized. Mohd. Akram and Jamed Ali were not known to the petitioner. Admittedly, petitioner was carrying business on his rehri at platform No.1. Articles were recovered from the bags/envelopes kept by the petitioner on his rehri. Petitioner was to get Rs.1500/- to hand over the bags/envelopes when Mohd. Akram and Jamed Ali were to leave the Railway Station. That means, petitioner had the knowledge that there was something in the bags/envelopes, otherwise no question of payment of Rs.1500/- for keeping the bags/envelopes for a short period till the departure of the train. So, evidence on the file shows that petitioner was in conscious possession of the recovered articles.

Admittedly, occurrence was in the month of February, 1988. Petitioner is the first offender and belongs to a poor family. He has already undergone sufficient sentence. Petitioner is to become a hard criminal if directed to serve the sentence awarded by the trial Court.

Keeping in view the nature of offence and antecedents of the petitioner, a lenient view is taken and sentence is reduced from three years to one year and nine months. Fine is ordered to be maintained. Petitioner is directed to surrender before the concerned authority to undergo one year and nine months, failing which concerned authority is to take necessary action.

With the aforesaid modification on the point of sentence,
revision being without merit is dismissed.

6.4.2010
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(JORA SINGH)
JUDGE