

(1977) 04 CAL CK 0001

Calcutta High Court

Case No: None

Collector of Customs and
Another

APPELLANT

Vs

Jaykrishna Saha and Another

RESPONDENT

Date of Decision: April 4, 1977**Acts Referred:**

- Constitution of India, 1950 - Article 226, 50
- Land Acquisition Act, 1894 - Section 16(5)

Citation: 81 CWN 908**Hon'ble Judges:** Sabyasachii Mukharji, J; M.M. Dutt, J**Bench:** Division Bench**Advocate:** A.K. Dutt and M.K. Basu, for the Appellant; R.N. Bajoria, D.K. Dhar and Amiya Narayan Mukherjee, for the Respondent**Final Decision:** Dismissed

Judgement

Sabyasachi Mukharji, J.

On the 11th July, 1973 a search was conducted at the residence of Joy Krishna Saha and Charu Bala Saha who are related to each other as husband and wife. In course of the search 226 pieces of gold sovereigns and a sum of Rs. 90,000/-were seized. Statements were also recorded from both the persons who are the petitioners/respondents in this appeal. The statements of both the persons were almost in identical terms. The gold sovereigns, according to them, were given to Charu Bala Saha by the father of her husband who died in the year 1956, They could not definitely say when the gift was made by the father of Joy Krishna Saha. Certain statements were also made with regard to the cash. In the petition under Article 226 of the Constitution it has been alleged by the petitioners/respondents as follows:

"The ornaments belonging to your petitioner no. 2 were, however, not seized by the said Customs Officers and were left with your petitioner no. 2".

This allegation, that certain ornaments belonging to the petitioner no. 2 were found in the course of the search but were not seized, had not been denied in the affidavit-in-opposition filed in answer to the Rule Nisi issued by this Court.

The petitioners/respondents were served with a notice to show cause why 226 pieces of gold sovereigns which were seized as aforesaid should not be confiscated. On the 29th December, 1973 the said notice was issued under the provisions of the Gold (Control) Act, 1968. The said notice stated the facts as mentioned hereinbefore and also recorded the fact that the petitioners/respondents had made declarations and then further intimated to the petitioners the provisions of section 8(5) of the Gold (Control) Act, 1968 and the provisions of section 16 of the said Act. The petitioners/respondents were therefore called upon to explain and to show causes why the gold sovereigns under seizure should not be confiscated u/s 71 (1) of the Gold (Control) Act, 1968 and why penal action should not be taken against them u/s 74 of the said Act. The petitioners respondents challenged the said notice in an application under Article 226 of the Constitution and the application came up for hearing before Mr. Justice T. K. Basu and by a judgment delivered and order passed on 20th January, 1977 the learned Judge has quashed the said notice and has made the Rule absolute. The appellants have come up in appeal from the said judgment.

2. In this appeal we are concerned with the question whether on the admitted facts or on undisputed facts it can be said that the notice in question had been issued without jurisdiction. As mentioned hereinbefore the respondents were charged with two offences. The first was violation of the provisions of section 8(5) of the Act. Section 8 of the Act deals with restrictions regarding acquisition, possession and disposal of gold. Sub-section (3) of section 8 stipulates that no person shall, except as otherwise provided in the Act, acquire, or agree to acquire, the ownership, possession, custody or control, buy, accept or otherwise receive or agree to buy, accept or otherwise receive any article, except by succession, intestate or testamentary. Sub-section (4) of section 8 provides that no person, except as otherwise provided in the Act, dispose of or agree to sell, deliver, transfer or otherwise dispose of any article to a person who is not a licensed dealer or refiner except in the manner indicated in sub-section (4). Sub-section (5) of section 8 is to the following effect:

"(5) Notwithstanding anything contained in sub-section (3) and (4), a person may accept or transfer by way of gift or exchange, gold coins not exceeding five in number, if, together with the gold coins received by way of gift or exchange, the total holding of gold coins of the donee or transferee, as the case may be, does not exceed fifty grammes."

3. Sub-section (5) of section 8 imposes a ceiling on the number of gold coins which may be accepted by gift which is five and on the total weight of gold coins in the possession of the donee which is 50 grammes. The respondent no. 2 had received gift in excess of 5 and total weight was much in excess of 50 grammes. But these

gold coins according to the respondents, were received by the respondent no. 2 as gift from a person who had died in the year 1956. Therefore, this gift must have taken place before 1956. In the impugned notice, there is, no allegation that these statements as to the receipt of these gold coins by way of gift from a person who died in 1956, is incorrect or untrue. The Act in question came into force on 1st September, 1968. Therefore it appears that the gift in the instant case took place at a time when the present Act was not in force. The Act is clearly prospective in operation and therefore there cannot be any question of contravention of section 8(5) of the Act by the respondents. It was, therefore, in our opinion rightly held by the learned Judge that there is nothing in the allegations made in the notice upon which the respondents could be said to have contravened the provisions of section 8(5) of the Act.

4. The next aspect of the matter is whether the respondents could be said to have contravened section 16 of the Act. Section 16(1) provides that a person who owns, possesses or is in custody or control of any article or ornaments at the commencement of the Act shall furnish a declaration in the prescribed form subject to certain conditions. Section 16 (5) of the Act however, prescribes circumstances under which no declaration u/s 16 (1) of the Act is necessary Section 16(5) of the Act is in the following terms :

"(5) No declaration referred to in sub-section (1) or sub-section (3) shall be required to be made, (a) in relation to articles unless the total weight of articles owned, possessed, held or controlled by,

(i) a minor who is not a member of a family exceeds twenty grammes,

(ii) an individual (other than a minor), who is not a member of a family, exceeds fifty grammes,

(iii) a family, exceeds fifty grammes,

(iv) any person referred to in clauses (b) to (f) and (h) to (n) of sub-section (2) exceeds fifty grammes,

(b) in relation to any ornaments, or both article and ornaments where both articles and ornaments are owned, possessed, held or controlled unless the total weight of such ornaments or other articles and ornaments as the case may be, owned possessed held or controlled by

(i) an individual who is not a member of a family exceeds two thousand grammes,

(ii) a family exceeds four thousand grammes,

(c) in relation to any ornaments, or both article and ornaments, owned, possessed, held or controlled by any person referred to in clauses (b) to (f) and (h) to (m) of sub-section (2), unless the total weight of such ornaments, or both articles and ornaments, exceeds two thousand grammes."

5. In this connection it may be relevant to refer to certain definitions. Clause (b) of section 2 of the Act is as follows :

"(b) "article" means any thing (other than ornament), in a finished form, made of, manufactured from or containing, gold, and includes--

(i) any gold coin.

(ii) broken pieces of an article, but does not include primary gold."

Clause (p) defines ornament as follows:

"(p) "ornament" means a thing, in a finished form meant for personal adornment or for the adornment of any idol, deity or any other object of religious worship, made of, or manufactured from, gold, whether or not set with stones or gems (real or artificial), or with pearls (real, cultured or imitation) or with all or any of them and includes parts, pendants or broken pieces of ornament--

Explanation--For the purposes of this Act, nothing made of gold, which resembles an ornament shall be deemed to be an ornament unless the thing (having regard to its purity, size, weight, description or workmanship) is such as is commonly used as ornament in any State or Union territory."

6. It appears to us that in this case it cannot be disputed that the respondents constituted a family. In view of the declaration made by the respondents which is not controverted by the appellants it must also be admitted that the respondents as a family had ornaments. There is no allegation in the impugned notice that this statement of the respondents that the respondent no. 2 had ornaments is untrue or incorrect. It must, further, be noticed that there is no allegation in the notice that the total value of the ornaments and articles possessed by the respondents exceeded 4000 grammes. As stated before sub-section (5) of section 15 deals with the case of possession of articles and ornaments in different contingencies by the families. If the family possesses only article then the limit is 50 grammes, that is to say, unless the weight of the articles possessed by the family exceeds 50 grammes the family is not under any obligation to file any declaration. But in case where the family possesses both ornaments and articles then the limit is 4000 grammes. On behalf of the appellant it was contended that in such a case the family might possess 3999 grammes of articles and 1 gramme of ornament and in such a situation, according to the learned Advocate for the appellants, sub-clause (iii) of clause (a) would become nugatory. We are unable to accept this contention. The legislature has clearly spoken of three different situations for the family, one dealing with the situation when the family owns or possesses ornaments and the other only articles and the third where the family owns or possesses both ornaments as well as articles. Now for these three different situations the legislature has clearly made provisions. In the situation where the family owns or possesses only articles 50 grammes have been fixed as the limit for not filing declaration. While in the case of

the other two situations namely, where the family only possesses ornaments as well as the situation where the family owns or possesses ornaments as well as article the limit has been fixed at 4000 grammes. It would, in our opinion, be re-writing the section if we provide that in case where the family possesses both articles and ornaments it should be controlled by the limit so far as the articles are concerned as provided in sub-clause (iii) of clause (a) of section 16(5) of the Act. It has to be borne in mind that this is an Act which is for the regulation and must receive strict construction, and in case of any doubt such construction which is favourable to the citizens.

7. Having regard to the language used therefore, we are unable, to accept the contention that in case the family possesses both articles as well as ornaments the limit of the articles possessed must be 50 grammes. The view we are taking is in consonance with the view of the Division Bench of the Madras High Court in the case of Abdul Hamid vs. The Collector of Central Excise, Madras, reported in 1973 (1) Madras Law Journal 311.

8. The learned advocate for the appellants contended that the application under Article 226 was premature because the show cause notice had only been issued but as we find that the impugned notice is without any jurisdiction as such we are of the opinion that the learned Judge was right in quashing the notice. Furthermore it appears that in this case the sanction to prosecute had been given by the person who had issued the notice for adjudication and was the adjudicating officer. In the aforesaid background it cannot be said that the challenge to the notice on the ground that the appellants had made up their mind is premature.

9. In the aforesaid view of the matter this appeal fails and is accordingly dismissed. There will be no order as to costs.

10. Let the operation of this order be stayed till two weeks after the Easter Vacation as prayed for by the learned Advocate for the appellant. F.M.A.T. 407 of 1977

11. In view of the judgment passed by us in the other appeal namely F.M.A.T. 406 of 1977 this appeal is also dismissed. There will be no order as to costs. Let the operation of this order be stayed till two weeks after the Easter Vacation. There being printing mistakes in the writ petition in the Paper Book of this appeal the correct copies of the petition filed in court today by the respondents be kept on record.

M.M. Dutt, J.

I agree.