

(1983) 02 CAL CK 0001

Calcutta High Court

Case No: Criminal Appeal No. 65 of 1977

Union of India (UOI)

APPELLANT

Vs

Subodh Kumar U. Mehta

RESPONDENT

Date of Decision: Feb. 21, 1983

Acts Referred:

- Customs Act, 1962 - Section 135, 137

Citation: (1984) 3 ECC 180

Hon'ble Judges: N.G. Chaudhuri, J; B.C. Chakraborti, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

N.G. Chaudhuri, J.

This appeal at the instance of the Union of India represented by the Assistant Collector of Customs, West Bengal, is directed against the order of acquittal dated 30th November, 1976, u/s 135 of the Customs Act, 1962, passed in Case No. C/2019 of 1969 by the Metropolitan Magistrate, 4th Court, Calcutta. The prosecution case was that at the material time accused Subodh Kumar Mehta was a tenant in respect of room No. 25 in premises No. 150A, Lower Chitpore Road, Calcutta. On receipt of secret information regarding storage of wrist watches of foreign origin in the aforesaid room, the Customs Officers under authority of search order issued by the Assistant Collector of Customs went to search the room. The raiding party after keeping watch on the room for sometime caused the padlock of the said room to be opened on 22nd November, 1966, in the presence of the police officers, representative of the landlord and independent witnesses, searched the room and recovered 329 pieces of wrist watches of foreign origin. The Assistant Collector of Customs of West Bengal filed a petition of complaint in the Court of the then Chief Metropolitan Magistrate on the allegation that the respondent had committed an offence u/s 135 of the Customs Act. Sanction for prosecution granted by the Collector, Central Excise, u/s 137 of the Act was pleaded and proved. Initially process

was issued against respondent Subodh Kumar Mehta and also against Sashi Kanta Khara. After the case was transferred to the 4th Court of the Metropolitan Magistrate, the said Magistrate discharged Khara and framed charge against the respondent only u/s 135 of the Act. The accused pleaded not guilty to the charge. His defence was that although the tenancy in respect of the room in question stood in his name, at the relevant time he had made over possession of the room to one Puttarmal Jain and Narayan Chandra Kothari. In brief his defence was that he was not in actual possession of the room and others were in possession of the room and using the same. The customs department examined as many as 16 witnesses to prove their case. But the learned Magistrate held that although the respondent's tenancy in respect of the room in question was undisputed, yet the evidence of the Customs Officers P.WS. 1-5, 7 and 12 indicated that Sashi Khara since discharged also lived in the room at the relevant time. The learned Magistrate further concluded from the testimony of R.N. Pandey, P.W. 8, the durwan and Rajdeo Misra, P.W. 13, the caretaker of premises No. 150A, Lower Chitpore Road, that in November, 1966, besides respondent Subodh, discharged accused Sashi Khara, and 3-4 others used to reside in room No. 25. As a matter of fact P.W. 13 deposed that the landlord of the premises had served a notice of ejectment on the respondent on the ground of subletting the room to others, filed a suit for ejectment and the suit terminated with a decree in favour of the landlord. From the aforesaid evidence the learned Magistrate inferred that exclusive actual possession of the respondent in respect of the room was not affirmatively established. Further from the evidence it transpired that the padlock attached to the door of the room was opened in the presence of the police officers and other witnesses with the help of a key maker and after the said door was opened and the raiding party entered into the room they found a bunch of keys kept inside a drawer of a table lying in the room. The raiding party also found a locked steel almirah inside the room. With the help of a key kept inside the said drawer of the table the said steel almirah was opened and 329 wrist watches of foreign origin were found and seized. The learned Magistrate concluded that if the respondent was in actual physical possession of the wrist watches found inside the steel almirah he would not have kept the key of the almirah inside the drawer, on the contrary he would have kept the key of the almirah with himself in view of the value of the wrist watches and to prevent any theft or other acts in respect of the watches. Upon considerations noted above the learned Magistrate was satisfied that the guilt of the accused was not proved beyond reasonable doubt and accordingly acquitted him.

2. Mr. Surathi Sanyal, the learned Advocate for the appellant, contends that there was overwhelming evidence on records that the tenancy in respect of the room searched stood in the name of the respondent. He emphasizes that the aforesaid fact was not disputed. He places before us the testimony of P.W. 8, Ram Murti Pandey, an employee of the landlord, to the effect that in November, 1966, the respondent was a tenant in room No. 25 on the second floor. He further deposed

that exhibit 6, the rent receipt, was given to the respondent on 11th October, 1966, acknowledging receipt of rent for the month of September, 1966. Emphasizing that the room was searched on 22nd November, 1966, Mr. Sanyal contends that a reasonable inference can be drawn that the respondent was in actual possession of the room. To strengthen his argument Mr. Sanyal places before us the testimony of P.W. 5, Inspector of Customs, who was present at the time of the search. The said witness deposed that besides finding 329 wrist watches of foreign origin from the almirah kept inside the room, some vital documents like rent receipts of the room standing in the name of Subodh Mehta, two photographs of Sashi Khara and Subodh Mehta, some life insurance premium receipts showing payment of premium by Sashi Khara, one registered cover addressed to the respondent Subodh Mehta and one inland letter addressed to Subodh Mehta were found inside the drawer of the table and from inside the almirah. These documents were exhibited in the Court below. Mr. Sanyal argues that the documents noted above found inside the room clearly indicated that the respondent was in actual possession of the room and as such an offence u/s 135 of the Customs Act was proved. We cannot, however, accept the above contention of Mr. Sanyal. There is no dispute that the respondent Subodh Mehta was the recorded tenant in respect of the room in question and used to possess the room initially. Against the above background it is only natural that his photographs and letters addressed to him left inside the room would be found there. It is the positive testimony of P.W. 8 that Subodh Kumar Mehta and 5 others including his brother-in-law used to stay in the room. In cross-examination after framing of charge the witness deposed that 3-4 persons were also staying in room No. 25 and as they were so staying the landlord served an ejectment notice upon the accused Subodh Mehta for subletting the said room to others and filed an ejectment suit in the City Civil Court and the landlord won the said suit and got a decree for possession. The notice was marked exhibit A. From a perusal of the said notice it becomes clear that the landlord knew fully well that some persons besides Subodh were residing in the room and he was anxious to know their names and in exercise of what kind of right they were using the room. The conclusion is thus irresistible that persons other than the respondent Subodh Mehta were also residing or using the room in question at the relevant time. It cannot, therefore be urged that the respondent was in exclusive actual possession of the room. If that element is missing the offence u/s 135 of the Customs Act cannot be brought home to the respondent. After all there were 329 wrist watches of foreign origin inside the steel almirah. The market value of the said wrist watches would on a modest estimate, at the relevant time, be around Rs. 3,500. If Subodh Mehta was in actual possession of the room certainly he would not have kept the key of the steel almirah inside the drawer to enable intruders into the room to open the almirah and to remove the watches, rather he would have kept the key of the almirah with himself. We mean to say that to safeguard his possession in respect of the offending wrist watches he would have taken double safeguards, he would have locked the room from outside and he would have kept the key of the steel almirah with himself. The

last safeguard was perhaps more important than the first. But Subodh did not manifestly keep the key of the almirah with himself. This deals a death blow to the prosecution case.

3. Mr. Dutta, the learned Advocate for the respondent, further raises a point regarding the competence of the appeal. It is to be noted that the petition of complaint was filed in the Court below by one Mr. Narsinh, Assistant Collector of Customs, West Bengal. In the memorandum of appeal the appellant has been described as the Union of India represented by the Assistant Collector of Customs, West Bengal. The vakalatnama has been executed by one Kalipada Gupta, Assistant Collector of Customs, West Bengal, as distinguished from Mr. Narsinh who had filed the complaint. A similar point arose for decision in the case of Union of India on the complaint of Assistant Collector of Customs for Prevention, Calcutta v. Remo-Morgani, Carlton Hotel, reported in [1984] 2 ECC 359 : (1980) 1 CHN and in the Division Bench judgment delivered by N.C. Mukherji, J., it was held that the appeal not having been filed by the complainant and the complainant who filed the complaint having not been authorised by the Union of India to file the the appeal, the appeal was not maintainable. The instant case is on all fours with the case relied upon by Mr. Dutta. We have therefore no hesitation to hold that in point of law the appeal is not maintainable. Further we find no material to hold that the findings arrived at by the learned Magistrate are perverse or contrary to the evidence adduced. This also makes us reluctant to interfere with his judgment in exercise of our appellate powers. Considering the appeal from the different aspects, namely, merits, legality and otherwise, we are satisfied that there is no merit in the appeal and the appeal should be dismissed. Accordingly the appeal is dismissed on contest. The judgment appealed against is affirmed.

B.C. Chakraborti, J.

I agree.