

Union of India (Uoi) and ors. Vs. Shri Sahib Dayal and anr.

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Court : Punjab and Haryana

Decided On : Aug-01-1984

Reported in : 1984(4)ECC38

Judge : Prem Chand Jain, Ag.C. and; J.M. Tandon, J.

Appeal No. : Letters Patent Appeal No. 1021 of 1980

Appellant : Union of India (Uoi) and ors.

Respondent : Shri Sahib Dayal and anr.

Disposition : Appeal dismissed

Judgement :

Prem Chand Jain, Ag. C.J.

1. The Union of India and others have filed this appeal under Clause X of the Letters Patent, against the judgment of a learned single Judge of this Court, dated 14th October, 1980, by which C.W.P. No. 3737 of 1978, was allowed and the impugned orders were quashed, with a further direction to the respondents to return the disputed sovereigns to the writ petitioners (respondents).

2. In order to appreciate the controversy, certain salient features of the case may be noticed:

On 13th February, 1973, the Customs staff, Jullundur, reached the residential premises of the respondents for conducting a search. When the search warrant were being a served upon them, it was observed that some fabrics along with rexine bag were thrown in the adjoining premises by Asha Rani, respondent. The said articles were taken possession of by the raiding staff and from the rexine bag 35 pieces of gold sovereign were recovered. A notice under Section 71 was issued to the respondents to show cause as to why the seized sovereigns should not be confiscated under Section 74 of the Gold (Control) Act, 1968, (hereinafter referred to as the Act). The stand taken by the respondents in response to the notice was that the ornaments and gold sovereigns possessed by them were far less than the prescribed limit of 4,000 grammes and no declaration was required to be made by them. The Deputy Collector, on consideration of the matter, came to the conclusion that the case of the respondents fell under Section 16(5)(a) of the Act, and therefore, ordered confiscation of the sovereigns and imposed a penalty of Rs. 8,000 on the respondents vide order dated 22nd May, 1975, copy annexure P3 to the writ petition. The appellate and the Revisional authorities confirmed the view of the Deputy Collector. Consequently, the respondents filed C.W.P. No. 3737 of 1978, which was contested on

behalf of the appellants.

3. On consideration of the entire matter, the learned single Judge came to the conclusion that at the time of search, the petitioners were in possession of gold ornaments and that the authorities under the Act had proceeded on the basis of a wrong fact and their orders suffered from an error patent on the face of the record. After arriving at the aforesaid findings, the learned single Judge further held that the provisions of Section 16(5)(b) of the Act were attracted and not of Section 16(5)(a). For this view the learned single Judge relied on the two judgments in J.A. Abdul Hamid v. Collector of Central Excise, Madras 1973 (1) MLJ 311 and in Jay Krishna Saha v. D.N. Lal : AIR1977Cal468 . On the basis of these findings, the learned single Judge quashed the impugned orders. Hence, the present appeal by the Union of India and others.

4. We have heard the learned Counsel for the parties and find no merit in this appeal.

5. Mr. Ashok Aggarwal, learned Counsel for the appellants, contends that the finding of the learned single Judge that the respondents were in possession of gold ornaments also at the time of search, is without any evidence and is based on conjectures. We are afraid, we are unable to agree with this submission of the learned Counsel. Cogent reasons have been given by the learned single Judge and in the circumstances of the case, we do not find any ground to take a contrary view.

6. It is next contended by the learned Counsel that the two authorities relied upon by the learned single Judge regarding the applicability of Section 16(5)(b), do not lay down the correct law. The learned Counsel for the appellants has not been able to substantiate this contention of his by quoting some other judicial pronouncement nor has he been able to develop the argument to some logical end.

7. No other point is urged before us.

8. For the reasons recorded above, this appeal fails and is dismissed, but without any order as to costs.