

'REPORTABLE'
*** HIGH COURT OF DELHI AT NEW DELHI**
+ Crl.M.C. 3122/2007 and Crl.M.A. 11263/07 (stay)

Order reserved on : 15.05.2008
Date of decision : 23.05.2008

TRILOK NATH MITTAL PETITIONER
! Through : Mr. T.N.Mittal, Advocate with
Mr. Ramesh Gupta,
Mr. Akshay Anand,
Ms. Soonam Nagrath,
Advocates.

Versus

\$ CUSTOMS RESPONDENT
^ Through : Mr. Satish Aggarwal, Advocate
Ms. Pooja Bhaskar, Advocate.

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CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J.

1. Petitioner Trilok Nath Mittal is facing trial in complaint Case No.32/1/94 titled 'Customs vs. D.L.Anand & Ors.', as accused No.2 filed by respondent No.1 Inspector (Preventive) Customs Collectorate, Delhi.

The allegations against the Petitioner in the said complaint are that on 15.03.1992 a search was conducted in the godown at the ground floor premises of building No.12/21, Shakti Nagar, Delhi which was in possession of Darshan Lal Anand. As a result of search 252 video cassette players and ball bearings allegedly of foreign origin collectively valued at Rs.53,78,250/- and one bill book of M/s. Anand Auto Industries were recovered and seized. The Petitioner in the said complaint was prosecuted for offence punishable under Section 135 (1) (b) of the Customs Act, 1962. The complaint against the present petitioner was filed in the year 1994 and the learned Additional Chief Metropolitan Magistrate, (ACMM) New Delhi took cognizance of the complaint and fixed the case for pre-charge evidence. The Petitioner was summoned and pre-charge evidence was concluded on 21.07.2006. After hearing the parties order on charge was passed on 19.04.2007. Against this order petitioner filed a revision petition on 13.07.2007 being CR No.98/2007 which was dismissed by the learned Additional Sessions Judge, New Delhi on 16.07.2007. Consequently, present writ petition has

been filed by the petitioner seeking quashing of the order dated 19.04.2007 and 16.07.2007.

2. Mr. T.N. Mittal, learned counsel for the Petitioner has urged that the recovery of the alleged goods i.e. video cassette players and ball bearing has not been proved and there is not an iota of evidence against the petitioner and the statement of A. Sabastian recorded under Section 108 of the Customs Act was not voluntarily given and therefore no reliance could have been placed on the said evidence against the Petitioner. It is further submitted that the alleged goods were not recovered from the possession of the Petitioner and also that the impugned order of charge has been passed on the basis of no evidence as no documents supporting the statements of the witnesses as referred by them in their own statements were produced and that therefore prima facie there is no evidence on record against the Petitioner to frame him for an offence allegedly committed under Section 135 (1) (b) of the Customs Act, 1962. Learned counsel for the Petitioner has referred to ***'Siri Chand Gupta Vs. Santosh Kumari & Anr., 2008 III AD (Cr.) (DHC) 114.***

3. Mr. Satish Aggarwal, learned counsel for the respondent has refuted these submissions.

4. I have considered the submissions of Shri T.N. Mittal, learned counsel for the Petitioner as well as of the Senior Public Prosecutor for Customs Mr. Satish Aggarwal and have also perused the record.

5. It is admitted case of the respondent (Custom Department) that the original documents pertaining to this complaint like search memo, seizure memo, recovery memo, etc. prepared at the time of conducting raids, the slips of PNB in the name of Sh. A. Sabestian, Darshan Lal Anand, Trilok Nath, Roop Kumar and Lakhpat Singh all dated 22.12.1991 allegedly recovered from A-84, Ashok Vihar, New Delhi from possession of Mr. A. Sabestian, documents prepared regarding recovery memos, the seizure memo of the Maruti Van seized under Section 110 Customs Act and many other such documents including the statement of the accused persons recorded under Sections 108 of the Customs act were not placed on the record. This indicates callous and negligent manner of the Customs Department in

handling its inquiries and consequent filing of the complaints in the court of law without the original documents. Not only this, the original documents have been misplaced by the concerned officer and are not traceable.

6. The only pre-charge evidence available before the Magistrate for consideration for framing of charge was oral evidence not supported by any documentary evidence. It is clear that when the documents are prepared those documents have to be placed on the record to corroborate the oral evidence of the witnesses recorded by the court. It does not appeal to the reason that in the absence of documentary evidence, Magistrate could assess the oral evidence only to conclude that prima facie case was made out against the Petitioner.

7. Complainant had moved an application before the court seeking permission to lead secondary evidence on the ground that the original documents have been lost/misplaced by the department but the photocopies of those documents were on record. This application was dismissed vide order dated 16th July, 2005. Admittedly,

this order was never challenged in revision by the complainant and it has attained finality.

8. Learned Additional Sessions Judge while relying upon '***Union of India Vs. Prafulla***' **1979 SC 366 AIR**, failed to correctly apply the principle of law as laid down in the said judgment to the facts and circumstances of this case. For want of evidence in this case it cannot be said that a serious doubt is created in the mind of the court indicating that Petitioner had committed the alleged offence so as to frame a charge against him. True that at the time of framing of charge court is not to sift and weigh the evidence of the prosecution in a manner as if it was deciding the case on merits and has only to assess the evidence prima facie as to whether there was sufficient material on the record so as to indicate that the possibility of the Petitioner-accused having committed the alleged offence cannot be ruled out. As stated above, in the present case prosecution has not been able to make out any prima facie case against the Petitioner especially when the necessary documentary evidence could not be placed on the record.

9. Under these circumstances and considering the nature of oral evidence recorded by the court without any proper support from documents, the trial court as well as the revisional court erred in holding that prima facie case under Section 135 (1) (b) of the Customs Act was made out against the present Petitioner.

10. Hence, the findings of the trial court as well as of the revisional court being against the well settled proposition of law as discussed above that there should be strong suspicion created in the mind of the court from the material available on the record, the possibility of the Petitioner having committed the offence cannot be ruled out and need to be reversed.

11. Hence, petition is allowed. The orders dated 19.04.2007 and 16.07.2007 are hereby set aside. Attested copy of the order be sent to the concerned trial court as well as to the State.

**ARUNA SURESH
(JUDGE)**

**May 23, 2008
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