

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.L.P.216/2007**

% Date of reserve : 09.11.2009
Date of decision : 02.12.2009

DIRECTORATE OF REVENUE INTELLIGENCE ...PETITIONER
Through: Mr.Satish Aggarwala, Advocate

Versus

MONI & ANR. ...RESPONDENTS
Through: Mr.Ajay Kumar and Mr.S.C.Puri, Advocates
For Respondent No.1
Ms.Sangita Bhayana, Advocate for Respondent No.2

CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

MOOL CHAND GARG, J.

1. This petition under section 378(IV) Cr.P.C has been filed for leave to appeal by the DRI officials against the judgment dated 15.06.2007 passed by Ld. ACMM, Delhi in complaint case number 295/1/88 under section 135(1)(b) of Customs Act, whereby the Ld. ACMM has been pleased to acquit the accused persons/respondents of the aforesaid charge.
2. The case of the prosecution/petitioner is that a maruti car bearing no. DDQ -6910 was intercepted on 28.09.1988 by the officers of the Delhi Zonal Unit of DRI near Delhi –Haryana Border at Sarai Khwaja Check Post near Faridabad and escorted to the DRI office at Paryavaran Bhavan, Delhi. On being checked, 200 foreign marked gold biscuits of 10 tolas each were recovered from the cavity of the car which were in the possession of Diwan Singh Verma and Narender Pal Singh and further 79 Gold Busciuts, were also recovered from the premises of Diwan Singh Verma. It is

also submitted by the petitioners that from the residential premises of Diwan Singh some incriminating documents and Indian Currency amounting to Rs.49,656/- were also seized. A complaint in this regard has been filed against the respondent under section 135 of the Customs Act.

3. It is also the case of petitioners that during the course of proceedings, Diwan Singh Verma (accused no. 1 in the complaint), Raghubir Prasad Sharma (accused no. 3 in the complaint) and Moti Lal (accused no.8 in the complaint) have expired. However Mohd. Din, a resident of Pakistan declared as Proclaimed offender. The accused no. 9 to 11 in the complaint were discharged. Then Charges were accordingly framed and prosecution examined 14 witnesses. The trial court vide impugned judgment convicted Narendra Pal Singh (accused no. 2 in the complaint) Vinod Kumar (accused no.4 in the complaint) and acquitted Moni and Kanchan Aggarwal (accused no. 6 and 7 in the complaint). It is against the said order of acquittal the petitioners have filed the present petition.
4. It is the case of prosecution that the judgment of acquittal is bad in law as well as on facts because of the following grounds:
 - (a) That the statements tendered under section 108 of the Customs Act, 1962, constitute cogent and legally acceptable evidence and even conviction can be based upon such statements.
 - (b) That in his statement under section 108 of the customs Act, the respondent no. 1, Moni has stated that he had brought Rs.60,000/- from M/s. Kanchan Jewellers and handed over to Diwan Singh Verma who was involved in the smuggling of gold biscuits and therefore mere retraction of the said statement is of no help to the respondent.
 - (c) That as regards to respondent no.2, Kanchan Lal Aggarwal, on 29.2.88, Rs.49,656/- being the sale proceed of smuggled gold were recovered along with six loose documents, which were the account of transaction of gold and payment through hawala.
 - (d) That because respondent no. 2, Kanchan Lal Aggarwal, had deposited Rs.50,000/- with Sansar, which was adjusted to hawala transaction. One document showed the details of Rs.60,000/- which was brought by Moni from Mathura, which fact was corroborated

by the statement of Moni. Kanchan lal Aggarwal in his statement denied his concern with Diwan Singh verma, accused no. 1.

- (e) That on enquiries conducted from telephone department, Mathura, revealed that a trunk call had been made from telephone No.4473, installed at the shop of Kanchan lal Aggarwal, to Hathras telephone No.968 on 06.11.1997, which on enquiries revealed that the same was installed at the residential premises of Raghbir Prasad Sharma, accused No.3 in the complainant and this fact shows that the statement dated 29.4.88 of the respondent no. 2 was incorrect to the extent that he did not know Raghbir Prasad Sharma, accused no. 3 in the complaint.
- (f) That the trial court has ignored the fact that PW-14, Sh. Dev Singh though had been declared as hostile had admitted his signature on the panchnama as Ex.PW-9/A.
- (g) That the seized documents along with the statements tendered under section 108 of the customs Act, 1962 were sufficient to convict the respondents too.

- 5. The respondents have opposed the present petition by filing a reply. Respondent no. 2 in the written synopsis filed by him has stated that the Id. ACMM had acquitted both the respondents on the ground that respondent no. 1 had retracted from his so called voluntary statement under section 108 of the Customs Act, 1962 and in fact he has appeared as a defence witness before the Ld Trial Court where he stated that he never delivered any silver or gold or any other item to any Kanchan Lal Aggarwal i.e. respondent no. 2 or at the firm M/s. Kanchan Jewellers. He also stated that he did not know respondent no. 2 or his family. The respondent no. 1 also submitted that he never brought Rs.60,000/- from Kanchan Lal, Respondent no. 2.
- 6. It is the case of respondents that Shri Bulaki Das Aggarwal, the President of Sarafa Committee in Mathura, was examined as DW -1 before the Ld. Trial Court wherein he categorically stated that the father of respondent no. 2 had a shop named M/s. Kanchan Jewelers in Mathura, dealing only in silver ornaments and which did not deal in gold. He also stated that respondent no. 2 is doing business in Bombay in the name of M/s. Kanchan Jewelers since 1987. He also stated that Respondent No.2

has never done any illegal work and never dealt in gold at his shop. It is also stated that respondent no. 2 had made an exculpatory statement wherein he stated that he did not know Sh. Diwan Singh Verma, Raghubir Prasad Sharma and he also stated that on 27.04.88 he left Mathura by train and reached Bombay on 28.04.88.

7. It is further submitted that Ld. Trial Court had rightly held that the only incriminating evidence against respondent no. 1 is his own disclosure statement which has already been retracted and therefore, in the absence of any other evidence available on record a person cannot be penalized solely on the basis of his retraction confession without any independent corroboration and in fact the statement made by respondent no. 1 cannot be used against respondent no. 2 unless the same is corroborated by some independent evidence in material particulars. Counsel for the respondents has also made reliance upon the judgment delivered by this Court in *Vinod Kumar Sahadev Vs. Union of India 2009(4) JCC 2636*.
8. I have given my thoughtful consideration to the rival submissions. Merely because there is a serious offence alleged against the respondents, it cannot be a ground to appeal against the order of acquittal passed by the Id. ACMM concerned after taking into consideration all the facts and circumstances of the case as well as the statements made by witnesses. The Ld. ACMM has rightly observed that:

PW14, Sh. Dev Singh this witness was declared hostile. However, he had admitted his signature on the panchnama. During his cross-examination by the prosecution, he has specifically stated that he had not made any complaint to the police or any other agency regarding obtaining his signatures forcefully by the officers on the panchnama Ex.PW9/A.

I have considered the testimonies of defence witnesses i.e. DW1 Bulaki Dass and DW2 Moni who is also accused no. 6 before this court. Coming first to the sanction and authorization which is Ex.PW1/B given by the collector of customs, Sh. B.S.Rastogi the record reveals that there is no dispute with regard to the same. It is settled law by the Supreme court in the case of **State through Anti Corruption Bureau Vs. Government of Maharashtra, (1996) 4 SCC 472** *is that the court must also presume until the contrary is established that the said authority will act fairly and objectively and accord the sanction only where he satisfies that the charges against the public servant is required to be inquire*

into by a court.

It is settled law that the sole disclosure statement cannot be the basis of conviction and hence it was necessary for the prosecution to have connected the accused Moni and Kanchan Lal Aggarwal with the offence and to have ascertained the correctness of the statement made to them. Rather on contrary PW6 N.N.Sinha categorically stated that he did not make any investigations against Kanchan Lal Aggarwal and Moni. He cannot say whether the documents recovered were in any manner connected with the present case or not.

Further PW9 Y.S.Sharma also in his cross –examination dated 29.3.2005 admitted that the gold had not been recovered from the premises in his present but through the Indian Currency amounting to rs. 49,656/- were recovered as embodied in the panchnama. According to him the seized documents is relating to the smuggling of gold but he is not aware in whose hands the said documents were. Further PW14 has turned totally hostile and has not supported the prosecution case. Hence it is apparent that the prosecution has not been able to connect the accused Kanchan Lal and Moni at all with any of the documents so recovered and hence the statement recorded by the customs officers under section 108 of the Customs Act which was later on retracted cannot form the basis of conviction in so far as these two accused are concerned. Accordingly the benefit of doubt is being given to the accused Kanchan Lal Aggarwal and Moni who are hereby acquitted. Their sureties stands discharged.

9. It is after taking into consideration all these circumstances the trial court has been pleased to observe that the case of prosecution against both the respondents is highly doubtful and cannot be relied upon in the absence of any other independent evidence corroborating the statement made by respondent no. 1 and hence acquitted both of them.
10. This Court in the case of Vinod Kumar Sahdev Vs. Union of India 2009 (4) JCC 2636; in the case of Abid Malik Vs. U.O.I. 2009 (5) AD (Delhi) 749; in the case of Harpreet Singh Bahad Vs. D.R.I. Bail.App.2211/08 decided on 23.09.2009 as well as in the case of Vikas Mohan Singhal Vs. D.R.I. Crl.M.C. 1815/2005 decided on 12.08.2009 has taken a consistent view that if the case of the prosecution whether launched by Custom Authorities, FERA Authorities or by Directorate of Revenue Intelligence is solely based upon the statement of the accused recorded by the

Department pursuant to issuance of a notice given by them only, which stands retracted and there is no corroboration of the same, then the said statement cannot be the basis of conviction of the accused whether it is a statement recorded under Section 40 of the Foreign Exchange Regulation Act or under Section 67 of the NDPS Act or under Section 108 of the Customs Act.

11. In the present case, no recovery has been effected from the respondents. The car from where some seizure of contraband has taken place does not belong to either of the respondents. The case of the petitioners is solely rest upon the statement of the accused recorded under Section 108 of the Customs Act which stands retracted and which is not supported by any other evidence led by the prosecution, I do not find any infirmity in the order passed by the Learned ACMM and hold that the opinion formed by the Ld. ACCM is fully justified and does not call for any interference. Moreover, when two views are possible, the view which favours the accused persons is required to be adopted in terms of the legal position which stands well settled. Accordingly, I do not find any reason to grant leave to appeal to the State in this case. The petition is accordingly dismissed.

MOOL CHAND GARG, J.

December 02, 2009
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