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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.REV.P. 305/2010

DIRECTORATE OF REVENUE INTELLIGENCE Petitioner
Through Mr Satish Aggarwala & Shirish Aggarwal, Advs.
Mr. Riaz Mohd, Mr. S.K. Sethi, Advocates.

versus

MOHD.ANWAR Respondent
Through Mr. S.K. Sethi Adv. for respondent

CORAM:
JUSTICE SHIV NARAYAN DHINGRA

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

% **ORDER (ORAL)**
25.10.2010

By the present petition, the petitioner has assailed order dated 20th April, 2010 passed by learned ACMM-01, New Delhi whereby the ACMM discharged the accused.

2. The accused was booked by the petitioner department under Section 135 of the Customs Act since the accused was found carrying fake Indian currency notes smuggled into India through Pakistan. The Customs Department had received specific intelligence and the accused was intercepted at ISBT Kashmere Gate. His search was conducted after following the procedure as prescribed under law. Fake Indian currency notes of

denomination ₹1000/- and ₹500/- having total value of ₹14,97,000/- were found in his possession. Since the case was to be filed by the customs department under Section 135 of the Customs Act, a sanction was obtained for prosecution of the accused under the Customs Act and a complaint was filed before the learned ACMM for prosecution of the accused for smuggling into India fake Indian currency notes. The petitioner after filing complaint case, in order to show that it was a good *prima facie* case for trial of the accused, examined PW-1 Devender Prasad, Intelligence Officer who had conducted the raid and recovered fake Indian currency notes. Statement of accused had also been recorded under Section 108 of the Customs Act wherein the accused admitted the aforesaid recovery. PW-2 S.K.Sharma Superintendent of Customs was examined before the learned ACMM. PW-3 Pankaj Sharma, Assistant Nodal Officer, Idea Cellular Ltd. had testified in Court in respect of mobile phone recovered from the accused and the call made from his phone.

3. All these witnesses were examined at the stage of pre-charge evidence. PW-1 proved *panchnama* of recovery as Exh. PW-1/B, he proved annexure to the *panchnama* as Exh. PW-1/C1 to C7. He proved notice issued to the accused for his search as Exh. PW-1/A. The fake currency notes recovered from the accused were produced in the Court in sealed position and seal was opened in the Court itself. The fake currency notes of ₹1000/- denomination was proved collectively as Exh. P-5 and ₹500/- denomination notes were proved collectively as Exh. P-6. The other seized material was also proved by the witnesses. The report from government treasury Nasik about notes being fake was also proved. These witnesses were cross examined on behalf of the accused. However except giving bald suggestion that the accused was falsely implicated and the case was a false case no other suggestion was given. PW-2

proved statement of accused recorded under Section 108 of the Customs Act and he also proved different summons sent by him to the accused for this purpose. The sanction obtained from the competent authority was placed on record by the petitioner and it was proved by PW-1.

4. The learned ACMM in his order dated 20th April, 2010 discharging the accused did not discuss any of the evidence placed before him by the witnesses and considered that the first and foremost requirement for conviction of accused was to prove a valid sanction, forgetting that the ACMM was not considering the evidence led before him to convict the accused and he was only to consider whether the pre-charge evidence led before him were sufficient to put the accused on trial for the offence committed by him.

5. There is no doubt that for taking cognizance of an offence sanction under Customs Act obtaining of sanction was necessary, but the sanction had been granted by the competent authority in this case. The ACMM however, considered that there seemed to be no application of mind by the competent authority at the time of granting sanction and therefore this was not a valid sanction. He also observed that *panch* witnesses of the recovery of fake currency notes had not been produced in the witness box.

6. I consider that the ACMM in this case seemed to be determined to discharge the accused - come what may. He gave a complete go-bye to the law and the facts. In the teeth of facts of recovery of large amount of fake currency notes placed before the ACMM, it is strange that the ACMM did not discuss a single fact of possession of the fake currency by the accused. A criminal Court is meant to dispense justice not only to the accused but also to the society and the Nation. In all criminal cases mostly the State or the State agencies are prosecutors because an offence under penal law is considered

an offence against the Nation. While the Judge is supposed to protect the interest of innocent persons, a Judge cannot be oblivious to the interest of the State and cannot be hyper technical and be determined to acquit the accused persons on such technical grounds which do not exist. It seems that in the present case, the Court of ACMM seemed to be determined to discharge the accused on such hyper technical reasons.

7. The accused had opportunity to cross examine the witnesses who proved sanction. No question was asked by the counsel for the accused to the witnesses about the illegality of sanction. The sanction granted by authority on the face of it showed that the authority had considered all the facts as the sanction order contained a narration of the facts of the case showing recovery from the accused person of fake currency notes and after considering these facts, the sanctioning authority granted sanction. When the facts were narrated by the sanctioning authority, I fail to understand how the learned ACMM could arrive at a conclusion that there was non-application of mind. Another factor which learned ACMM did not consider was that even if there was no sanction under Customs Act, the evidence produced before him disclosed commission of an offence under Section 489-C IPC beyond doubt. The learned ACMM was supposed to be aware of provisions of Section 489-C of IPC and was supposed to take cognizance of this offence, commission of which was revealed during evidence. However, the learned ACMM in this case seemed to be oblivious of legal position and did not even think of proceeding against the accused under Section 489-C IPC for which no sanction was required at all.

8. The observations made by the learned ACMM in respect of sanction order have no justification and support of law. The learned ACMM ignored all rulings cited before him. In Assistant Commissioner v. Velliapa Textiles Ltd. [2003]132TAXMAN165(SC),

Supreme Court observed that narration of facts on the face of sanction was desirable but not essential. If no such narration of facts is given on the face of the sanction, prosecution must in course of trial by extraneous evidence prove that those facts were placed before the sanctioning authority, who applied its mind before grant of sanction. In the present case, the facts are narrated in the order itself and sanction was granted after narration of facts. It is a clear proof that the sanctioning authority applied its mind before granting sanction. Moreover, grant of sanction is purely an administrative act. The provisions for sanction are made in Statute only to ensure that the innocent persons are not harassed. This Court in *Gurbachan Singh v. State* AIR 1970 Delhi 102 observed that it was not the object of the sanction provisions that a public servant who is guilty of the particular offence mentioned in the sanction order should escape the consequences of his criminal act by raising the technical plea of invalidity of sanction. The sanction is a safeguard for the innocent and is not a shield for the guilty. In *State through Inspector of Police, AP v. K.Narasimhachary* 2006 CrLJ 518(SC), it was observed by the Apex Court that the order of sanction was an executive action of a State. The authenticity of the said order had not been questioned. It was, therefore, a public document within the meaning of Section 74 of the Indian Evidence Act and a public document can be proved in terms of Section 76-78 of the Indian Evidence Act. A public document can be proved otherwise also. The High Court was not correct in invoking provisions of Section 47 of the Indian Evidence Act, as it was not called upon to form an opinion as to by whom, the said order of sanction was written and signed.

9. I find that the learned ACMM had failed to apply his mind on the legal position as prevalent in respect of sanction and grossly erred in holding that there was non-application of mind in passing the sanction order.

10. The learned ACMM also seemed to be oblivious of value of statement under Section 108 of the Customs Act. A statement made by the accused under Section 108, unless it is shown that it was not voluntary statement, is an admissible piece of evidence against the accused and cannot be rejected lightly. The learned ACMM did not devolve upon this aspect altogether.

11. The order passed by the learned ACMM is patently an illegal order, based on base reasoning and is liable to be set aside. The order dated 20th April, 2010 is hereby set aside. The accused is liable to be charged for offences if any, committed under the Customs Act and also under Section 489-C of IPC. The learned ACMM is directed to act in accordance with law and proceed with the trial.

The respondent shall appear before the Trial Court on 15th November, 2010.

SHIV NARAYAN DHINGRA,J

OCTOBER 25, 2010
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