

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

Reserved on: March 07, 2013

Pronounced on: April 02, 2013

+ CRL. M.C. 3572/2008

PREM PRAKASH CHAUDHARY Petitioner

Through: Mr. S.S. Gandhi, Senior Advocate
with Mr. Akshay Anand and Mr.
Deepak Kumar, Advocates

Versus

DIRECTORATE OF REVENUE INTELLIGENCE
....Respondent

Through: Mr. Satish Aggarwala, Advocate

**CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR**

JUDGMENT

1. Impugned order of 30th August, 2008 affirms trial court's order of 27th January, 2007 and the charge framed on 18th April, 2007 against petitioner and his co-accused for offence under Section 135 (1) (a) of the *Customs Act, 1962*.

2. Petitioner's co-accused-Ashwani was apprehended on 31st October, 1989 when he had come to Air Cargo Complex to take two packages which had arrived by Singapore Airlines and were

under surveillance. Upon search of Ashwani's car, pieces of watches, VCRs, etc., collectively valued at ₹60,77,000/- were recovered alongwith some documents and bill of entry, and the same were seized as they were liable to be confiscated under Section 111 (d) of the *Customs Act, 1962*. Vide impugned order, petitioner alongwith his co-accused have been called upon to face trial for fraudulent evasion of duty chargeable on imported recovered items.

3. The impugned order relevantly notes as under: -

"The perusal of the record clearly shows that there is not only statement of co-accused against the petitioner-accused but there is statement of Dinesh Kumar Ex.PW 5/B and Sh. Praveen Kumar Chaudhary, brother of the accused-petitioner Ex. 6/B involving the petitioner as one of the beneficiary of the goods smuggled from Singapore."

4. At the hearing, learned senior counsel for petitioner had contended that there is no legal evidence against petitioner and the statements of *Dinesh Khanna* and petitioner's brother-*Praveen K. Chaudhary* under Section 108 of the *Customs Act, 1962* and similar statement of co-accused are inadmissible in evidence as the same can be used only for reassurance of

substantive evidence, which is lacking in the instant case. In support of this contention, reliance is placed upon decisions in *Shri Chand Gupta Vs. Santosh Kumari* 2008 (IV) AD Delhi 478; *Jagdish & Anr. Vs. State & Anr.* 2010 VIII AD Delhi 330; *U.O.I. v. Bal Mukund & Ors.* 2009 (2) JCC [Narcotics] 76 and Crl. Rev. P.No.516/2008 titled *Krishan v. R.K. Virmani*, AIR Customs Officer, rendered on 24th April, 2012.

5. According to learned senior counsel for petitioner, in the absence of original documents on record, it would be pointless to call upon petitioner to face the trial after two decades, especially, when there is no independent evidence to connect petitioner with the offence in question. Thus, it is contended that not only impugned order ought to be set aside, but even the instant proceedings deserve to be brought to an end.

6. To the contrary is the submission of respondent's counsel, who supports the impugned order and had placed reliance upon decisions in *R.S. Nayak Vs A. R. Antulay*-AIR 1986 SC 2045 *Sunil Pandey Vs. Customs*, Crl. Revision Petition No.482/2003 decided on 30.07.2007 by this Court; *State of Orissa Vs Debendra Nath Padhi*-2003 II AD (Crl) S.C. 69; *State Vs. S. Bangarappa*- 2001 (1) CC Cases SC 1; *Subhandra Vs. State*-1996 JCC 665; *Ms. Soma Chakravarty Vs. State (Through CBI)*-

2006 (1) JCC 152 (DHC); *Sanjay Sharma & Ors. Vs. State (NCT) of Delhi*-2005(1) CC Cases 185; *V.K. Mehta Vs. State of Haryana & Anr.*-2005 (3) CC Cases (P&H) 269; *Paramjit Singh Vs. Commissioner of Customs & Ors.*- 2002(2) JCC 916 (P&H); *Jaswant Kumar alias Billa Vs. Directorate of Revenue Intelligence*-Crl. Misc. (M) No.2380 of 1998, decided on 19.03.1999 by this Court; *Vijay Kumar Ganju Vs. NCB*-Crl. Rev. No.214 of 1991 decided on 4.8.1993 by this Court; *NCB Vs. Yakub Khan*- Crl. Appeal No.105 of 2005 decided on 18.07.2008 by this Court; *Yudhister Kumar Vs. State & Anr.*- 1992 JCC 271 No.1613 of 1991; *Naresh J. Sukhawani Vs. UOI*- 1996 (83)- ELT 258 (SC) - SLP No.23708 of 1995, decided on 6.11.1995 to submit that apart from statement under Section 108 of the *Customs Act* of co-accused, there are similar statements of petitioner's brother-Praveen Kumar as well as of Dinesh Khanna and since petitioner is the beneficiary of the seized goods, so it cannot be said that it is a case of no evidence against petitioner. Thus, dismissal of this petition is sought by respondent's counsel.

7. Scrutiny of the material on record at the stage of framing of charge is quite limited one. Pertinent observations made on this aspect by a three judge Bench of Apex Court in

Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar, (1979) 4 SCC 274 are as under: -

"At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh, (AIR 1977 SC 2018), the truth, veracity and the effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied. At this stage, even a very strong suspicion founded upon materials before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged may justify the framing of charge...."

8. Apex Court in *Gulam Hussain Shaikh Chougule v. S. Reynolds, Supdt. of Customs*, (2002) 1 SCC 155 has dwelt upon the evidentiary value of statement under Section 108 of the *Customs Act* and has summarized as under: -

"We hold that a statement recorded by Customs Officers under Section 108 of the Customs Act is admissible in evidence. The court has to test whether the inculpatory portions were made voluntarily or whether it is vitiated on account of

any of the premises envisaged in Section 24 of the Evidence Act....."

9. The submissions advanced by both the sides, impugned order, the material on record and the decisions cited have been considered and thereupon, this Court is of the considered opinion that mere retraction of statement under Section 108 of the *Customs Act* by itself is not enough, as it is relevant to consider when and why it was retracted and in the instant matter, such a statement of co-accused cannot be excluded from consideration at the threshold of trial as its admissibility or inadmissibility under Section 30 of *the Indian Evidence Act, 1872* has to be considered after the evidence is led in relation to it. Apart from this, there is similar statement of independent person-Dinesh Kumar, whose evidentiary value cannot be prejudged at the initial stage.

10. This Court is conscious of the fact that aforesaid Dinesh Kumar is not a cited witness by the respondent, but on this technical ground, petitioner cannot get a clean chit as list of additional witnesses can be always filed by the respondent even now before the trial court. Due to whose fault the trial of this case has not begun, is a matter which is not required to be gone into in these revisional proceedings, as mere delay would not be

detriment because trial court record has been reconstructed. *Prima facie*, it appears that petitioner is the beneficiary of the seized goods and because applicability of Section 30 of *the Indian Evidence Act, 1872* cannot be altogether excluded from consideration at this initial stage of trial, therefore, on the strength of decisions relied upon, petitioner is not entitled to discharge.

11. In the light of the aforesaid, finding no illegality or infirmity in the impugned order, I dismiss this revision petition while refraining to comment upon the merits of this case lest it may prejudice either side at trial.

(SUNIL GAUR)
Judge

APRIL 02, 2013

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