

IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Crl.Rev.P. No. 17 of 2022

Union of India represented by Daso Modoli Assistant
Commissioner, Customs Division, P.O. Imphal, P.S.
Heingang, District Imphal East Manipur.

..... Petitioner/s

- Versus -

1. Sabir Ahamad, aged about 23 yrs., S/o Tura Ali, resident of
Near Lilong College, P.O. & P.S. Lilong, District – I/E,
Manipur.
2. Rafijuddin, aged about 28 yrs, S/o Md. Hafijuddin, resident of
Lilong Chaobak Mairenkun, P.O. & P.S. Lilong, District
Thoubal, Manipur – 795103.

.....Respondent/s

B E F O R E
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	::	Mr. Th. Sanachouba, Advocate.
For the respondents	::	None appeared
Date of hearing	::	19.04.2023
Date of Judgment and Order	::	02.05.2023

JUDGMENT AND ORDER (CAV)

[1] Heard Mr. Th. Sanachouba, learned counsel for the
petitioner. None appeared for the respondents even after due service.

[2] The petitioner (Union of India) through the Assistant
Commissioner, Customs Division, Imphal preferred the present revision

petition under Section 130D of the Customs Act, 1962 read with Section 377 (1) of Criminal Procedure Code (Cr.P.C) praying for enhancement of sentence awarded vide the impugned judgment and order dated 02.11.2020 passed by the Ld. Chief Judicial Magistrate, Chandel in Cril. (C) Case No. 10 of 2019. By the Impugned judgement and order, the Ld. CJM, Chandel convicted the respondents, accepting plea of guilty, under Section 135 (1)(b)(ii) of the Customs Act, 1962 and considered the submission of the Ld. SPP (Special Public Prosecutor) for the Custom to take a lenient view and given the nature of the case, sentenced the respondents (convicts) to imprisonment till the rising of the Court and to pay a fine of Rs. 10,000/- each and on default of payment of fine, they shall undergo imprisonment of 15 days. The convicts also deposited the fine amount.

[3] Vide order dated 28.07.2022 in MC(Crl.Rev.P.) No. 3 of 2022, this Court condoned the delay of 98 days in filing the revision against the impugned judgment and order. In spite of due service of notice, none of the respondents appeared before this Court during the consideration of application for condonation of delay nor in the main petition.

[4] The brief fact of the case is that from the possession of the respondents, 14 gold biscuits weighing 2.324 kgs. of foreign origin were recovered. Accordingly, the case under Section 135 of the Customs Act, 1962 was lodged against the respondents after getting due sanction for prosecution-cum-authorization for filing complaint dated 23.04.2019. During

the trial, both the respondents pleaded guilty. The respondents were convicted under Section 135 (1)(b)(ii) of the Customs Act, 1962 by the impugned order dated 02.11.2020 and on the submission of the Ld. SPP for the customs for taking a lenient view and also the learned counsel for the convicts, the Ld. CJM, Chandel sentenced both the respondents/convicts to imprisonment till the rising of the day and to pay a fine of Rs. 10,000/- each and on default, to undergo imprisonment of 15 days as stated above. Both the convicts deposited the fine amount on the same day.

[5] The main ground of revision is that the sentence imposed by the Ld. CJM, Chandel is too lenient and without considering all the facts and circumstances of the case and will serve a bad precedent. While hearing for the admission of the revision petition, vide order dated 18.10.2022, this Court observed that it would not be open to the custom authority to seek enhancement of the sentence when the same was passed as per the suggestion of the Ld. SPP to take a lenient view. Mr. Th. Sanachouba, learned counsel for the Customs, sought some time to get instruction as to whether Ld. SPP was instructed to make such a suggestion to the Ld. CJM and if not, whether any action was initiated against him. The order dated 18.10.2022 passed by this Court is reproduced herein below:

“Heard Mr. Th. Sanachouba, learned counsel for the petitioner.

Perusal of the order under challenge reflects that it was the learned Special Public Prosecutor, who appeared for the custom authorities, who had suggested to the learned Chief Judicial Magistrate, Chandel, that a lenient view should be taken by the Court in so far as sentencing was concerned, given the nature of the case. Having made such a suggestion to the learned Magistrate through their counsel, it is not open to the Custom authorities to now seek enhancement of the sentence.

Mr. Th. Sanachouba, learned counsel, seeks time to get instructions in this regard and also ascertain as to whether the learned Special Public Prosecutor was instructed to make such a suggestion to the learned Magistrate and if not, whether any action has been initiated against him.

Post on 23.11.2022.”

[6] Thereafter, the learned counsel for the petitioner took 7 (seven) adjournments to file an additional affidavit in terms of the order dated 18.10.2022. On 11.04.2023, the petitioner filed an additional affidavit. On perusal of the additional affidavit dated 11.04.2023 containing 6 (six) pages, explanation was given as to the maintainability of the revision petition for enhancing sentence and nothing is stated regarding the specific instruction as to whether any instruction was given to the Ld. SPP to suggest leniency in sentence.

[7] The case was heard on 19.04.2023 for admission. During the admission hearing, Mr. Th. Sanachouba, learned counsel for the Union of India/Customs, relies upon the judgment passed by the Hon'ble Supreme Court in the case of **Alamgir vs. State of Bihar**

reported as **AIR 1959 SC 436** to impress upon the point that the High Court can exercise revisional power to interfere with the sentence. During the course of hearing, this Court has pointed out to Mr. Th. Sanachouba, learned counsel for the petitioner, as to whether how a revision petition has been filed against the order for enhancement of the sentence. However, Mr. Th. Sanachouba, learned counsel, clarifies by referring to the above noted judgment of the Hon'ble Supreme Court and various other judgments mentioned in the additional affidavit that a revision petition is maintainable to examine the sentence and prays this Court that the matter may be treated as a revision petition praying for enhancement of sentence.

[8] Considering the submission, this Court proceeded with the present revision petition and the matter was heard on 19.04.2023 and reserved for order.

[9] On mere perusal of the cause title in the first page of the revision petition, the same is filed under Section 130D of the Customs Act, 1962 read with Section 377(1) of Cr.PC. In the first para of the revision petition, it is filed under Section 130 of the Customs Act, 1962 read with Section 377(1) of the Cr.PC. In the additional affidavit dated 11.04.2023, the petition was stated to be filed under Section 130A of the Customs Act, 1962 read with Section 377 of Cr.PC. Further, on mere perusal of letters dated 16.09.2021 and 08.12.2021 sent by the Superintendent, Customs Division, Imphal to Mr. Th. Sanachouba,

learned standing counsel for the customs, the instruction was for filing the appeal.

[10] There is total non-application of mind in filing the present revision petition/appeal before this Court. It may be noted that Section 130, 130A and 130D of the Customs Act were repealed with effect from 28.12.2005 by Act 49 of 2005. The present revision/appeal has been filed under the provisions which are no longer in the statute book as on the date of filing, i.e. 29.07.2022.

[11] The present petition has been filed against the sentence on the plea that a too lenient view was taken by the Ld. CJM but on plain reading of the impugned order dated 02.11.2020, the leniency was taken by the Ld. CJM, Chandel on the specific submission of the Ld. SPP for the custom. As such, the petitioner has no right to agitate the same before this Court. In the order dated 18.10.2022, this Court specially directed the petitioner to file an affidavit as to whether the Ld. SPP of custom was instructed to make a suggestion to the Ld. CJM for taking a lenient view in sentencing and if not, any action was taken. After seeking 7 (seven) adjournments, an additional affidavit dated 11.04.2023 was filed explaining about the maintainability of the revision petition against the inadequacy of sentence. However, nothing is stated about the specific query of this Court as to whether any instruction was given to the Ld. SPP to take a lenient view in the sentence and if not, what action has been instituted against the Ld. SPP.

[12] Since no specific denial is made in additional affidavit by the Customs, this Court is bound to presume that an instruction was given to the Ld. SPP by the custom officials to take a lenient view, if any, while considering of sentencing to the respondents/convicts.

[13] Considering all these facts into account, materials on record and additional affidavit dated 11.04.2023, this Court is of the opinion that there is no error in the order of sentence passed by the Ld. CJM, Chandel in the impugned order dated 02.11.2020. It may be noted that Section 135 (1)(b)(ii) of Customs Act, 1962 prescribes imprisonment for a term which may extend to 3 years or with fine or with both.

[14] In the peculiar facts and circumstances of the case, this Court is not inclined to interfere with the impugned order. Accordingly, the revision petition is dismissed with cost of Rs. 10,000/- for wasting valuable time of this Court and public money by filing frivolous petition. The amount of cost is to be deposited in favour of High Court Legal Services Committee (HCLSC). The cost of Rs. 10,000/- shall be deposited within one month from the date of receipt of a copy of this order.

[15] This Court is constrained to express its displeasure in the manner the appeal/revision has been filed in the present case by the Union of India. The revision petition is badly drafted and is not expected from the Union of India. The appeal, which was vehemently argued by the learned counsel for the petitioner to be treated as a

revision relying on various judgment of the Hon'ble Supreme court, is filed under repealed provisions, i.e. Sections 130/130A/130D of the Customs Act 1962, which were repealed with effect from 28.12.2005 by the Act 49 of 2005.

[16] In the opening page of the revision petition, the main Section quoted is 377(1) of Cr.PC, which is an appeal against the sentence and in the additional affidavit dated 11.04.2023, it was filed under Section 130A of the Customs Act read with Section 397 Cr.PC, which is a revision case. This Court expects the Union of India to be mindful under which provisions the appeal/revision is filed.

[17] Send a copy of this order to the Assistant Commissioner, Customs Division, Imphal for information and necessary compliance.

JUDGE

FR/NFR

joshua

KH. JOSHUA
MARING

Digitally signed by KH.
JOSHUA MARING
Date: 2023.05.02
15:19:40 +05'30'