IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 18 OF 2014

The Assistant Commissioner of
Customs, (Appraising),
Customs House,
Mormugao Harbour,
Mormugao – Goa 403 803. ... Appellant

Versus

Shri Deepak Bajaj,
Proprietor of M/s Seasons
International, 114,
Old Hanuman Lane,
Dhirubhai Parikh Marg,
Kalbadevi Road,
Mumbai 400 002. ... Respondent

Shri Carlos Ferreira, Advocate for the Appellant.

Shri Siddesh Shet, Advocate holding for Shri Arun Bras De Sa, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

DATE:- 23rd MARCH, 2015

ORAL JUDGMENT:

Heard Shri Ferreira, learned Counsel for the appellant and Shri Shet, learned Counsel for the respondent.

2. In view of the submissions advanced by the learned Counsel for the parties at the bar, this appeal can be disposed of on a short issue.

3. On a complaint lodged by the appellant, the respondent was prosecuted for an offence punishable under Section 135 of the Customs Act, 1962, in Criminal Case No. 2/C/2002/A, before the learned Chief Judicial Magistrate, Margao. By judgment and order dated 10.12.2012, the respondent came to acquitted for the offence as charged. Feeling aggrieved, the appellant-original complainant has come up in appeal.

4. The learned Counsel for the appellant submits that there were two issues before the learned Magistrate, namely:

Whether the sanction under Section 155(2) of the Code of Criminal Procedure (Cr.P.C. for short), of the learned Magistrate was necessary, before investigation into a non-cognizable offence can be conducted.

Secondly, in this case, the order of adjudication has been set aside by Central Excise Sales Tax Appellate Tribunal (CESTAT) and in that view of the matter, whether anything survives in the case.

5. It is fairely submitted by the learned Counsel for the appellant that in view of the fact, that the order of adjudication has been set aside by CESTAT, nothing would survive in the proceedings, even if the finding on the first issue is reversed. He however submitted that said finding recorded by the learned Magistrate may affect other prosecutions, which are lodged by the complainant. He therefore submitted that, finding of this Court is necessary.

6. The learned Counsel for the appellant has relied upon two constituted Bench decisions of the Hon'ble Supreme Court, in the case of **"Om Prakash Vs. Union of India"**, reported in **2011(272) E.L.T. 321 (S.C.)** and in the case of **"Badaku Joti Svant Vs. State of Mysore"**, reported in **(1966) 3 SCR 698**, in order to submit that the 'Customs Officer' cannot be said to be a

'Police Officer', in order to attract the provisions of Section 155 of Cr.P.C.

7. On behalf of the respondent, it is submitted that appropriate orders may be passed in the matter. It is submitted that as long as the appellant is not seeking any relief for interference with the order of acquittal, the respondent has nothing much to say in the matter.

8. I have considered the rival circumstances and submissions made by the learned Counsel for the parties. It is trite that the Courts do not embark or attempt to decide questions, which are purely of academic nature. In view of the submissions made by the learned Counsel for the appellant, even if the view taken by the learned Magistrate, insofar as the requirement of sanction under Section 155 of Cr.P.C is reversed, the fact that the order of adjudication is set aside by CESTAT would come in the way of the appellant. As such, I do not find that the question, which for the present purpose is of academic nature needs to be gone into and decided. However, in order to

redress the apprehension on behalf of the appellant, it would be sufficient to observe that the said point about necessity of sanction/permission for investigation under Section 155 of Cr.P.C. is expressly kept open, for future purposes. Whenever such issue arises, the parties would be at liberty to address their respective contentions before the appropriate Court.

9. In this view of the matter, the appeal is disposed of.

C. V. BHADANG, J.

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