

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 262 OF 2002

Union of India]
(at the instance of Collector of]
Customs, Marine & Preventive]
Wing, Bombay)]

V/s.

1. Manohar Mahadev Baile]
Residing at Mazda Mansion,]
2nd Floor, Ganesh Lane,]
Colaba, Bombay - 400 005.]
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2. Damodar Mahadev Baile]
Residing at Mazda Mansion,]
2nd Floor, Ganesh Lane,]
Colaba, Bombay - 400 005.]
]]
3. Javed @ Faiz Mohamed]
@ Usman Hippy]
Residing at Flat No.403,]
4th floor, "C-Block",]
La-Chappelle Building,]
Evershine Nagar, Marve road]
Marve road, Malad (W),]
Bombay - 400 064.]
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4. Mahadeo Kashinath Bhagat]
Residing at Murud Koliwada]
At Post Murud, Dist.-Raigad.]
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5. Jairam Kashinath Bhagat]
 Residing at Murud Koliwada,]
 At Post Murud, Dist.-Raigad.]
6. Satish nathuram Patil,]
 Residing at Bhanderwada]
 Murud Janjira, Dist.-Raigad.]
]
7. The State of Maharashtra] ... Respondents

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Mrs. Anuradha Mane, Special P.P., for the Appellant.
None for the Respondents.

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CORAM : S.B. SHUKRE, J.

DATED : SEPTEMBER 14, 2015.

P.C.

This is an Appeal preferred against the judgment and order dated 26th June, 2001, passed in Case No.306/CW/1996 by the Chief Metropolitan Magistrate at Esplanade, Mumbai, thereby acquitting the respondents of the offences punishable under various sections of different Acts such as Section 120-B of the Indian Penal Code, Section 13(1) of the Foreign Exchange Regulation Act, 1973 (FERA), Section 11 of the Customs Act, 1963, Imports Control Order 17/55 read with Section 8(1) of the Gold (Control) Act, 1968,

Section 135(1)(a) and 135(1)(b) of the Customs Act and Section 8 of the Gold Control Order, 1968 read with Section 85(1) of the Gold (Control) Act, 1968.

2 Briefly stated, the facts of the case are as under:

The respondent nos.1 to 6 were respectively accused nos.3, 4, 5, 8, 9 and 10 in the prosecution that was launched against them by the Assistant Commissioner of Customs, on behalf of the Union of India for various offences such as Section 120-B of the Indian Penal Code, Section 13(1) of the Foreign Exchange Regulation Act, 1973 (FERA), Section 11 of the Customs Act, 1963, Imports Control Order 17/55 read with Section 8(1) of the Gold (Control) Act, 1968, Section 135(1)(a) and 135(1)(b) of the Customs Act and Section 8 of the Gold Control Order, 1968 read with Section 85(1) of the Gold (Control) Act, 1968.

The allegations against respondent nos.1 to 6 (hereinafter referred to as accused nos.3, 4, 5, 8, 9 and 10, respectively, for convenience) were that they entered into

conspiracy with the remaining accused i.e. accused no.1 Shaikh Mohammed, accused no.2 Shaikh Gaffar (absconding), accused no.6 Shaikh Mohammed (absconding) and accused no.7 Janardhan (absconding) for illegally smuggling in to India primary gold in substantial quantity, for its illegal distribution and sale in Indian markets. The entire action was taken on receipt of a secret information by Inspector of Customs on 13th May, 1985 to the effect that primary gold and wrist watches in substantial quantities would be carried by a bullock cart and then loaded onto a jeep, which would then transfer them to some destination in Mumbai. On receipt of information, necessary arrangements were made for intercepting the vehicles and the vehicle i.e. the jeep being registration No.MAS 6231 was indeed found near Roha Police Chowky. It was intercepted and search for presence of primary gold and wrist watches was taken. Search of this vehicle led to recovery of six gunny bags containing 1200 gold bars of 10 grams each wrapped in packets together valued at Rs.3,06,16,200/- in the year 1985. Accused no.1 Shaikh Mohammad was found to be

driving the jeep. So far as the present respondents i.e. accused nos. 3 to 5 and accused nos. 8 to 10 are concerned, their names were taken by one of the other accused and that is how they were also impleaded in the present case. These accused persons along with accused no.1, were tried, with the trial of absconding accused i.e. accused no.2 Shaikh Gaffar, accused no.6 Shaikh Mohammad and accused no.7 Janardan Bhagat having been already separated and were found to be innocent and, therefore, were acquitted by the learned Chief Judicial Magistrate by judgment and order dated 26th June, 2001. Being aggrieved by the same, Customs Department has preferred the present Appeal.

3 I have heard Mrs.Anuradha Mane, the Special P.P. for the Union of India. Nobody has appeared on behalf of respondent nos.1 to 6 and respondent no.7 - State of Maharashtra. I have carefully gone through the impugned judgment and order and also the record of the case.

4 The learned Special P.P. has submitted that finding of respondent nos.1 to 6 as not guilty by the trial

Court is absolutely incorrect and illegal as the learned Magistrate has not considered and appreciated properly the evidence brought on record. However, I am not inclined to accept her contention for the reason that the evidence available on record does not show any inculpatory material against respondent nos.1 to 6 or accused nos. 3, 4, 5, 8, 9 and 10.

5 P.W. No.1 Vinodkumar Kohali, Inspector of Customs has nowhere stated in his evidence about the presence of accused no.5 Javed @ Faiz Mohammed. He has also not in fact stated that he along with accused no.2 Shaikh Gaffar (absconding) had gone to police chowki. Although, at the time of interception of the jeep in question and its search, police from Roha Police Station were present on the spot, no police from that police station has been examined to point out the presence of accused no.5 Javed @ Faiz Mohammed in the jeep. Therefore, even though accused no.1 Shaikh Mohammad has stated in his statement recorded under Section 108 of the Customs Act about

presence of accused no.5 along with him, it cannot be accepted that this has not been rightly appreciated by the learned Magistrate, when he found that there is no satisfactory evidence pointing out the involvement of accused no.5 Javed in the present crime.

6 As regards the remaining respondents or accused namely:- accused no.3 Manohar Baile, No.4 Damodar Baile, No.8 Mahadeo Bhagat, No.9 Jairam Bhagat and No.10 Satish Patil, I must say no independent evidence to show their involvement and explain their respective roles in commission of crime was brought on record. During the course of investigation, no statements showing what role did they play respectively were recorded under Section 108 of the Customs Act. Therefore, the learned Magistrate was right when he found that there was no legally admissible evidence against these accused in order to hold them guilty of the offences charged against them.

7 The above referred discussion of the evidence would show that no case for making any interference with

the impugned judgment and order has been made out. The Appeal deserves to be dismissed.

8 The Appeal stands dismissed.

(S. B. SHUKRE, J.)

CERTIFICATE

Certified to be true and correct copy of the original
signed judgment.