

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.473 OF 1998

The Assistant Collector of Customs,
Bombay

.. Appellant

Versus

Imran Abdealli and others

.. Respondents

None for the appellant.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 7th SEPTEMBER, 2015

ORAL JUDGMENT:-

- 1 None appears for the appellant when called out.
- 2 It is noticed that none had appeared for the appellant on 27th July 2015 also when the matter was listed on board, and was called out.
3. In these circumstances, when upon going through the impugned judgment, it does not appear to be suffering from any infirmity or error, I am not inclined to interfere with the finding of acquittal as recorded by the learned Magistrate.

4 The Appeal is dismissed.

(ABHAY M. THIPSAY, J)

Later on :-

5 Mentioned by Smt.Mane who submits that the order of dismissal be recalled and the matter be decided afresh after hearing her.

6 Since the order is not yet signed, I have granted this indulgence to the learned counsel for the appellant and I have heard her.

7 It is not in dispute that the emphasis of the prosecution during the trial was on the statements allegedly made by the respondents which were recorded under the provisions of section 108 of the Customs Act and which were of incriminating nature. The Magistrate observed that when the other evidence adduced during the trial, suffered from infirmities, the accused persons could not be held guilty only on the basis of the incriminating statements allegedly made by them before the Customs Authorities. The Magistrate was of the view that when the evidence of PW Nos.1, 2, 5 and 6 was unbelievable, unsupported by independent witness, the accused were entitled to be acquitted. The Magistrate observed that the tendency of the Investigating Agency to bank only upon the statements of the accused to prove their case was deplorable.

8 The view of the matter, as taken by the Magistrate is certainly a possible view. It is well settled that in such circumstances, this Court does not interfere with the view so taken, leading to acquittal.

9 The Appeal is dismissed.

(ABHAY M. THIPSAY,J)