

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

CRIMINAL APPEAL NO. 954 OF 2001

Shri D. V. Indergith	]			
Assistant Collector of Customs,	]			
Preventive, Mumbai	]	...		Appellant

V/s.

1.	Shri Purushottaman Mohan,	]		
	R/o. 9/ K.B. Nivas, Kopregaoon,	]		
	Dombivali (West), Dist. - Thane,	]		
	Maharashtra State.	]		
2.	State of Maharashtra	]	...	Respondents

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None for the Appellant.
None for Respondent No.1.
Mr. Deepak Thakare, Advocate for Respondent No.2.

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CORAM : S.B. SHUKRE, J.

DATED : AUGUST 26, 2015.

ORAL JUDGMENT :

This is an Appeal preferred against the order dated 31st March, 2001, passed by the Additional Chief Metropolitan Magistrate, III Court, Esplanade, Mumbai in Case No. 119/CW/1991, thereby acquitting the respondent (accused no.3) of the charge of commission of offence together with other

accused persons relating to illegally brining into India contraband articles of foreign origin in violation of the provisions of the Customs Act, 1962 and the Imports and Exports (Control) Act, 1947.

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

In all seven accused including respondent - accused no. 3 were prosecuted for having committed offences punishable under Sections 135(1)(a)(i), 135(1)(b)(i) read with Section 120 B and 34 of the Indian Penal Code and under Section 5 of the Imports and Exports (Control) Act, 1947. The allegations against them were that these accused persons in pursuance of criminal conspiracy entered into by them, illegally imported into India the contraband articles consisting of gold bars and wrist watches in violation of the provisions of the Customs Act and Imports and Exports Act.

3 The learned Magistrate while passing the impugned order, found that the sanction was defective and, therefore, the prosecution of the accused could not be allowed to be continued and thus, acquitted the respondent and discharged the remaining

accused. Not being satisfied with the same, the Custom Department has preferred the present Appeal.

4 The Appeal is of the year 2001 and is pending for its final disposal for last several years. The Board listing the present Appeal for final hearing has been duly notified. Yet, nobody has remained present on behalf of the Appellant before this Court. The Appeal being very old and due notice of its being listed for final hearing having been given, this Court decided to proceed with the final hearing of the Appeal by following the provisions of Section 386 of the Code of Criminal Procedure. Accordingly, this Appeal is being considered and decided on its own merits.

5 I have carefully gone through the record of the case including the Memorandum of Appeal and the impugned order. It is seen from the impugned order that the learned Magistrate found that the sanction to prosecute the respondent and other accused persons was defective and therefore, decided not to continue the prosecution of the accused persons and accordingly acquitted the present respondent. It is seen from the record that page 10 of the sanction order shows that Shri Biswas had fully examined the material and circumstances of the record whereas

the sanction Exhibit-P-36 shows that it was accorded by Shri Arora, the then Additional Collector of Customs. Therefore, it is obvious that there is no cogent evidence available on record showing as to who had applied mind for according sanction. The sanction order has been signed by Shri L. D. Arora. It does not show that Shri. L. D. Arora who signed the sanction had applied his mind before according his sanction. The said sanction, therefore, cannot be said to be validly accorded and this fact destroys the very foundation of the prosecution case against the respondent. Therefore, the learned Magistrate has rightly concluded that prosecution of respondent - accused no. 3 could not be allowed to continue. The acquittal of respondent - accused no. 3 recorded by the learned Magistrate thus, cannot be faulted with.

6 In the result, this Appeal fails.

7 The Appeal stands dismissed.

(S. B. SHUKRE, J.)