IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.946 OF 2002

The Asst. Commissioner of Customs (AIU),	]
Chatrapati Shivaji International Airport,	] …. Appellant /
Sahar, Mumbai – 400 099.	] (Org. Complainant)
Versus	
1. Shri. Shamsher Ali,	]
46, Nazampura, Bohrawadi,	]
Udaipur, Rajasthan.	]
	] …. Respondents /
2. State of Maharashtra	] (Resp.1/Org. Accused)

None for the Appellant.

Ms. R.M. Gadvi, A.P.P., for Respondent No.2.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 16TH OCTOBER, 2015.

ORAL JUDGMENT :

1. The State has preferred this Appeal seeking enhancement of punishment imposed by the Additional Chief Metropolitan Magistrate, IIIrd Court, Esplanade, Mumbai for the offences punishable under Sections 135(1)(a)(i) and 135(1)(b)(i) of the Customs Act. By the impugned

Judgment dated 10th August, 1999, the Trial Court has convicted Respondent No.1 for the said offences and sentenced him till rising of the Court on each count and to pay fine of Rs.25,000/- on each count, in default of payment of fine, to suffer S.I. for three months on each count.

2. As per learned A.P.P., the offence for which Respondent No.1/Accused was prosecuted and held guilty was that of smuggling the gold bars. It was a serious offence in the sense that Respondent No.1 had entered into conspiracy with one Abdul Kasim and others to smuggle gold into India. He has smuggled twenty one gold bars of ten tolas each by wearing a special cloth belt around his waist while leaving Kuwait by Air India flight and arriving at Sahar International Airport, Mumbai. According to learned A.P.P., for such a serious offence, the punishment imposed by the Trial Court is a trifle and meager one. The lenient approach adopted by the Trial Court is not at all justified and hence, the said quantum of punishment be enhanced, so as to act as deterrent.

3. The perusal of the Judgment of the Trial Court, however, reveals that, in paragraph No.8 of its Judgment, the Trial Court has given various reasons as to why it was adopting the lenient approach. The Trial Court has heard Respondent No.1 in person and on the basis of his

submissions, the Trial Court found that he has brought gold to celebrate the marriage of his own sister. Moreover, he was also eligible NRI to carry the gold. The only offence committed by him was non-declaration and non-payment of the custom duty, which he has already paid to the tune of Rs.55,000/- and, therefore, the Trial Court found that the aspect of payment of custom duty was already covered. Moreover, Respondent No.1 was in Jail from 14th May, 1996 till he was released on bail on 28th May, 1996. The Trial Court further noticed that Respondent No.1 was regularly attending the Court since the prosecution during his trial and hence considering all these aspects and the value of the gold, which he had brought to India without disclosing the same, the Trial Court found that it was a fit case to award minimum punishment. The Trial Court, as already stated, has imposed fine of Rs.25,000/- on each count and default punishment for the same.

4. In my considered opinion, therefore, no reasons are made out to disturb the finding of the Trial Court, which is arrived at after considering all the relevant facts. Moreover, the incident is of the year 1996. The Judgment of the Trial Court is of the year 1999. Now after the lapse of more than 16 to 17 years, it would not be justified also to make any interference. Hence, the Appeal stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]