

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

CRL.A.No. 350 of 2014 () IN CrI.L.P.34/2014

AGAINST THE JUDGMENT IN CC 15/2008 of ADDL.C.J.M.(E&O), ERNAKULAM
DATED 30-10-2012

AGAINST THE ORDER IN CrI.L.P. 34/2014 of HIGH COURT OF KERALA DATED
14-03-2014

APPELLANT(S)/COMPLAINANT:

ASSISTANT COMMISSIONER
AIR CUSTOMS, CALICUT AIRPORT, KARIPUR.

BY ADV. SRI.SALISH ARAVINDAKSHAN (SPECIAL P.P)

RESPONDENT(S)/ACCUSED:

1. SHRI.KALLIDUMBIL ABDUL RAHIMAN
MANAKODIYIL HOUSE, KODIYATHUR P.O
VIA MUKKAM POYIL, KOZHIKODE.

2. STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.M.A.SAJI ROSHAN
R2 BY PUBLIC PROSECUTOR SMT.M.G.LISHA

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON
22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Pn

SUNIL THOMAS, J.

Crl. Appeal No. 350 of 2014

Dated this the 22nd day of December, 2015

J U D G M E N T

The appellant is the complainant in C.C. No.15/2008 filed under the provisions of the Customs Act, 1962.

2. The case of the complainant was that, on 21.06.1997 at about 4.15 p.m. they intercepted one Veerankutty who was to travel in a flight of the Indian Airlines from Calicut to Sharjah. On search of his luggage, foreign currency worth ₹19,11,041/- was recovered from the bag. In the course of the interrogation of the said Veerankutty, he gave a statement in writing under Section 108 of the Customs Act narrating the entire incident and *inter alia* alleging that currency was entrusted to him by the 1st respondent herein on a promise to pay a sum of ₹20,000/-. Thereupon, the complaint was laid against the said Veerankutty and the 1st respondent herein for offence punishable under Section 135(1) (II) of Customs Act. Veerankutty alone faced the trial since the 1st respondent herein was not available. Ultimately, the case against the 1st respondent herein was split up and refiled. Later he surrendered before the Customs authorities and after initial proceedings faced the trial before the learned Additional Sessions Judge. On the side of the prosecution, PW1 to PW6 were

examined and Ext.P1 to P3 were marked. The trial Judge, on an evaluation of the available materials concluded that, the prosecution failed to prove the allegation against the 1st respondent herein and acquitted him. This is challenged at the instance of the Air Customs in this appeal.

3. Heard both sides and examined the records.

4. The materials before the Court below show that the prosecution though tendered evidence in the form of oral testimony of PW1 to PW6, nothing incriminating was brought out through the oral testimony of the six witnesses except making a complete reliance on Ext.P2, alleged confession statement given by Veerankutty on 21.06.1997. The certified copy of confession statement was marked in this proceedings as Ext.P2. The Court below held that, since the 1st respondent herein did not face the trial along with the said Veerankutty, the provision under Section 30 of Indian Evidence Act cannot be called in aid. It was further held that, since a confession statement of Veerankutty was proposed to be relied on by the prosecution, for proceeding against the 1st respondent herein, Veerankutty ought to have been examined. The third reasoning given by the Court below was that, since Veerankutty had retracted from his own statement

no much reliance can be placed on that.

5. The learned Prosecutor for the Air Customs vehemently contended that, the Court below went wrong in all the above three main grounds and contended that merely because one of the accused kept away himself from the proceedings before the trial Court and evaded the proceedings, it cannot be said that Section 30 of the Indian Evidence Act cannot be called in aid. It was further contended that Veerankutty though claimed to have retracted from the version by another statement on 30.06.1997 in the proceeding against Veerankutty, the Court below relied on his retracted confession and after having found sufficient corroboration, convicted him. However, the fate of the case against Veernakutty is not available on record.

6. At the risk of repetition, it is to be reiterated that, the prosecution is exclusively relying on Ext.P2 confession statement. No other corroborating evidence was called in aid by the prosecution. The Hon'ble Supreme Court in **K.I.Pavunny V. Asstt. Collr.(HQ), C.Ex. Collectorate, Cochin (1997 (3) SCC 721)** had held that a confession can be the sole basis for confession. However, it was cautioned that there must be sufficient corroboration regarding the reliability of the statement.

The Hon'ble Supreme Court had dealt with by the principle laid in the earlier decisions holding that, if the confession is proved by unimpeachable evidence and if it is of voluntarily nature and when it retracted is entitled to a high degree of value as its maker is likely to face the consequence of confession by a statement affecting his life, liberty or property. In the case of a retracted confession, the Court held that the burden is on the accused to prove that the statement was obtained by threat, duress or promise or like any other as held in **Bhagvan Singh V. State of Punjab (AIR 1952 SC 214)**. However, in that regard also the Hon'ble Supreme Court reminded that rule of prudence and practice require the Court to seek assurance by corroboration of the retracted confession from other evidence. It was held that there need not be independent or separate corroboration on each inculcating or exculpatory factor, but there must be a general corroboration. It was further held that in case of a confession which is found to be corroborated can be called in aid against the co-accused. Dealing with the question whether a part of a confession statement is inculpatory and other part exculpatory and the one part being admissible in evidence, whether the remaining part can be automatically dealt with in evidence, the

Hon'ble Supreme Court ultimately held that it depends on the reliability of that part of the statement.

7. The above decision in which all the situations were elaborately dealt with, concludes that even for a retracted confession, there must be some assurance on the basis of evidence on attending circumstances.

8. In the case at hand, there were few incriminating statements touching upon the complicity of the 1st respondent herein. In none of the above materials, there was a corroboration from external sources or from the internal sources. In the above circumstances, even assuming that all other contentions are not sustainable, still Ext.P2 cannot be exclusively and independently relied on by the prosecution to sustain a conviction.

9. Having regard to these facts, I feel that there is no reason to deviate from the ultimate conclusion arrived at by the Court below.

The appeal fails and it is dismissed.

Sd/-

SUNIL THOMAS, JUDGE.

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P. A. to Judge