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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1860/2014
UNION OF INDIA Petitioner
Through: Mr. Satish Aggarwala, Adv.
versus

HARBHAGWAN WADHWA & ORS Respondents
Through: Mr. Pradeep Jain, Mr. V.S. Negi and
Mr. Ashish Batra, Adv. for R-2 & 3.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **05.05.2015**

Present petition has been filed under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 whereby the petitioner has challenged the order dated 4th January, 2013 passed by ACMM, New Delhi and the order dated 9th July, 2014 passed by the Additional Sessions Judge, New Delhi.

Though the grounds taken in the petition do not disclose as to on what basis the order of ASJ has been challenged but still order of the learned ASJ has been considered in this petition.

At the outset learned counsel for the petitioner contends that this petition be treated only under Section 482 Cr.P.C.

On 30th August, 1993, the officers of Directorate of Revenue

Intelligence seized 1,98,000 pieces of LCD modules of foreign origin valuing ₹59,40,000/- (as per the petitioner) from the respondents. The complaint under Sections 132 and 135 of the Customs Act, 1962 was filed before the learned ACMM in Delhi. Trial continued for 19 years. At the stage of recording of statement under Section 313 Cr.P.C, respondents pleaded guilty and were convicted under Sections 132 and 135 of the Customs Act, 1962.

While considering the question of sentence, trial court has noted that after the amendment in the Customs Act, 1962 vide Amendment Act, XXII of 2007, sentences as prescribed under Section 135 of the Customs Act had been toned down, minimum sentence was done away with and the maximum sentence was prescribed up to three years or fine or with both. The trial court has held that the legislative benevolence can be extended to the convicts who have committed the offence prior to this amendment but convicted subsequent thereto. In this context, reliance was placed on Narcotic Control Bureau vs. Parash Singh 2008 (13) SCC 499 and on the order dated 14th October, 2011 passed by a learned Single Judge of this Court in Crl.Rev.No.441/2008 titled as Sanjay Verma vs. State. Reliance was also placed on a judgment of the Supreme Court titled as K.I. Pavunny

vs. Assistant Collector (HQ), Central Excise Collectorate, Cochin 1997 SCC (Crl.) 444 wherein by taking a lenient view, only fine of ₹10,000/- was imposed though 200 gold biscuits were recovered from him.

By placing reliance on aforementioned judgments, Trial court convicted the respondents No.1 and 3 equivalent to the period already undergone by them which was three months besides imposing fine of ₹20,000/- each under Section 132 and 135 of the Customs Act, 1962. As regards respondent No.3, he was also handed down sentence equivalent to the period already undergone by him which was more than two months besides fine of ₹10,000/-.

Aggrieved by the sentences handed down to respondents by the ACMM, petitioner preferred an appeal being CA No.59/2013 before the Additional Sessions Judge but the same was held not maintainable since it was not filed by the person authorized by the Central Government to file such appeals under Section 377 Cr.P.C. The petitioner prayed for treating the appeal as a revision but this prayer was declined.

That is how petitioner is before this Court.

Respondent No.1 is aged about 66 years, respondent No.2 is aged about 71 years and respondent No.3 is aged 61 years. All of them are senior

citizens. They had pleaded guilty and were convicted by the trial court and sentences as detailed hereinabove were awarded to them. The value of LCD modules was about ₹59 lacs. It was less than one crore. By way of amendment the provision of minimum sentence for the goods valuing less than one crore was done away with. After the amendment no minimum sentence is provided, if the value of the goods seized is less than one crore. In Parash Singh (supra) it has been held that if the sentence is toned down by way of amendment benefit of such legislative benevolence can be extended to the accused, who have been convicted after such amendment. Similar is the view taken by a learned Single Judge in Sanjay Verma (supra).

For the foregoing reasons, I do not find any perversity in the view taken by the learned ACMM so as to interfere with the same in exercise of inherent powers of this court under Section 482 Cr.P.C.

Petition is dismissed.

A.K. PATHAK, J

MAY 05, 2015
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