

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. No.24016 of 2016  
and CrI.M.P.No.11430 of 2016

1.T.Mokanraj  
2.Chandrasekaran  
3.C.Raja  
4.R.S.Guru Bahadur  
5.Suresh S.Samuel  
6.V.S.Stalin

Petitioners/ Accused

Vs

Deputy Commissioner of Central Excise  
Headquarters Legal Cell  
6/7 ATD Street, Race Course Road  
Coimbatore.

Respondent/ Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings made in CMP No.809 of 2015 in C.C.No.37 of 2005 on the file of the Chief Judicial Magistrate, Coimbatore dated 09.05.2016 and set aside the same.

For petitioners :Mr.S.Senthil Nathan

For Respondent :Mr.C. Emalias  
Additional Public Prosecutor

ORDER

This petition has been filed to call for the records relating to the proceedings made in CMP No.809 of 2015 in C.C.No.37 of 2005 on the file of the Chief Judicial Magistrate, Coimbatore dated 09.05.2016 and set aside the same.

2. The petitioners are facing trial in C.C.No.37 of 2015 for offence under the Customs Act. The gravamen of the allegation against the petitioners is that they had supplied inferior quality of goods and had unjustly claimed duty drawback. The prosecution was launched in the year 2005 and it moved in a snail's pace. In a case of this nature, the prosecution will be under Chapter XIX-B Cr.P.C. - Cases instituted otherwise than on police report. This means that, the prosecution will have to examine the witnesses first u/s

244 Cr.P.C., where the accused gets an opportunity to cross examine the witnesses. Thereafter, charges are framed and thereafter, one more opportunity is given to the accused to recall the witnesses, if he had not already cross examined them during pre-charge proceedings. Thus, the prosecution completed their examination of the witnesses and the accused were questioned under Section 313 Cr.P.C, for which they simply denied the allegations.

3. Thereafter, the accused filed an application to examine one Mr.Madhavan, retired Deputy Commissioner of Customs as D.W.1. When examined, it is seen that Mr.Madhavan had stated that, he does not know the facts of the case without looking into the official records. At that juncture, the petitioners/accused filed an application in C.M.P.No.809 of 2015 u/s 91 Cr.P.C. calling for the proceedings that is said to have been passed by Mr.Madhavan - D.W.1, when he was in service. It may be relevant to state here that the petition does not even contain any other details of the records, including the date. The respondent filed the counter resisting the petition and the trial Court by impugned order dated 09.05.2016 has dismissed the petition, against which the petitioners/accused are before this Court.

4. Heard Mr.S.Senthil Nathan, learned counsel for the petitioners/ accused.

5. Learned counsel for the petitioners submitted that the documents sought for are very much relevant for the just decision of the case, as that will prove the innocence of the petitioners.

6. This Court gave its anxious consideration to the submissions made by the learned counsel and perused the records.

7. In State of Orissa vs. Debendra Nath Padi [2004 AIR SCW 6813] the Supreme Court has held that, a petition u/s 91 Cr.P.C. cannot be pressed into service for making a fishing or roving enquiry. The petitioners must first make out a prima facie case that the document that is called for is in existence and that it is available with the concerned Department. That apart, the petitioner should also explain as to how that said document would be just and relevant for the enquiry or trial at hand.

8. On a reading of the petition filed by the petitioners it is seen that, the petition is bereft of the minimum particulars for the Court to issue a subpoena. That apart, the petitioners have also not stated as to how those documents would improve their case. It is also seen that the petitioners made an application under Right to Information Act, to the Public Information Officer, Central Excise Department, Coimbatore calling for the order passed in

connection with Shipping Bill nos.198, 199 and 200 dated 15.07.2003 that was referred to in the show cause notice dated 03.02.2004 issued by the Department. The Central Public Information Officers of Customs, by letter dated 27.04.2015 provided the petitioners with the details, including the order passed by the Deputy Commissioner, dated 14.12.2004. Not satisfied with it, Suresh [A1] who is one of the petitioners, has given another application dated 01.06.2015, requesting for a copy of the order that is said to have been passed by Mr.Madhavan, Deputy Commissioner of Customs, ICD, in respect of Shipping Bill nos.198, 199 and 200 dated 15.07.2003. This application was rejected by the Department, because the petitioners were already furnished with certified copies of the Shipping Bill nos.198, 199 and 200 dated 15.07.2003.

9. Learned counsel for the petitioners, from the reply, submitted that the Public Information Officer has not denied the existence of the document, but has only stated that it is not traceable. Be that as it may, for maintaining a petition under Section 91 Cr.P.C., it is the duty of the petitioner to give entire description of the document for the Court to issue a subpoena. In the absence of those particulars, by merely relying upon the reply given by the Public Information Officer, which is indeed vague, one cannot come to the conclusion that the said Madhavan had passed an order as contended by the petitioners/accused. Therefore, the trial Court was perfectly right in dismissing the petition with observation that the same has been filed only to protract the proceedings. Mr.Senthilnathan, learned counsel sought leave of this Court to file a fresh petition u/s 91 Cr.P.C. before the trial Court. In the opinion of this Court no leave can be granted because a party cannot be permitted to repeatedly invoke Section 91 Cr.P.C. for the same document as that will clearly be an abuse of process of law.

10. In the result, this petition is devoid of merits and the same is dismissed. Consequently, connected miscellaneous petition is closed. The trial Court is directed to proceed with the trial and if the accused do not co-operate in the trial, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If thereafter the petitioners abscond, the trial Court shall direct registration of an FIR against them u/s 229-A IPC.

Sd/-  
Asst.Registrar (CS II )

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Sub Asst. Registrar

To

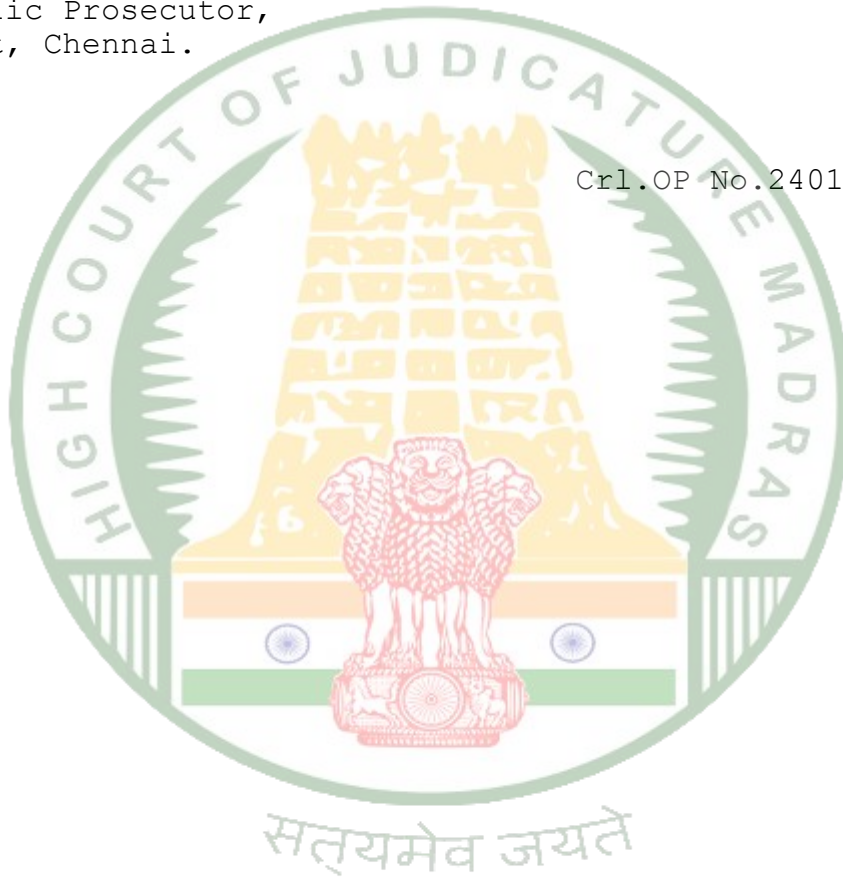
1.The Chief Judicial Magistrate,  
Coimbatore.

2.The Deputy Commissioner of Central Excise  
Headquarters Legal Cell  
6/7 ATD Street, Race Course Road  
Coimbatore.

3.The Public Prosecutor,  
High Court, Chennai.

Cr1.OP No.24016 of 2016

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