

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th May, 2016

+ **CRL.A.80/2011 & CRL.M.A.13383/2014**

DRI Petitioner

Through: Mr. Satish Aggarwala,
Advocate

versus

KHURSHEED ALAM & ANR Respondents

Through: Ms.Sangita Bhayana, Advocate

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

: SUNITA GUPTA, J. (ORAL)

1. Challenge in this appeal is to the judgment dated 20.04.2010 passed by learned ACMM, New Delhi in CC No.129/1/89 whereby the respondents were acquitted.

2. Prosecution case, in nut shell against the accused persons is, that accused Khursheed Alam was intercepted by the officers of DRI on 23.09.88 at Ghaziabad while he was driving the truck bearing No.UHM 1682 and the said truck was escorted by the officers and it was found to contain 99 packages containing synthetic yarn of foreign origin total weighing 3564 kgs collectively valued at Rs.6,23,700/- and 70 another gunny bags of Maize of Indian Origin collectively weighing 4550 kgs. valued at Rs.7000/-. Accused Kamrul Huda was also intercepted by the officers of DRI on 23.09.88 at Ghaziabad while he was

driving the truck bearing No. URD 8811 and said truck was escorted by the officers and it was found to contain 84 packages containing synthetic yarn of foreign origin total weighing 2969 kgs collectively valued at Rs.5,19,575/- and 58 another gunny bags of Maize of Indian Origin collectively weighing 3770 kgs. valued at Rs.5880/-. On demand they both failed to produce any evidence for the lawful possession of the said goods and the same were seized under the reasonable belief that the same were liable to confiscation and they were knowingly concerned in fraudulent evasion of the prohibition imposed on the import of the aforesaid goods and were knowingly concerned in carrying, keeping and dealing with the abovesaid goods which they knew or had reasons to believe the same were liable to confiscation under Section 111 of the Customs Act, 1962.

3. After the conclusion of enquiries, complaint for offence punishable under Section 139 of the Customs Act, 1962 was filed against the respondents, pre-charge evidence was led, charges were framed thereafter evidence was led. Statements of the respondents were recorded under Section 313 Cr.P.C. The respondents, however, did not prefer to lead any defence evidence. The learned Trial Court acquitted the respondents primarily on two grounds:

- (i) Prosecution has not proved sanction for prosecution against either of the accused which is a mandatory requirement as per Section 137 of the Customs Act and for observing so, reliance was placed on *Doki Sriramulu*

vs. Assistant Collector of C.E & Co. 1988 (36) E.L.T.247 (Orissa). It was further observed that mere proving of signatures on the sanction do not amount to grant of valid sanction. Prosecution failed to prove on record the sanctioning authority or the persons who were aware of the facts of the case and subsequently briefed the sanctioning authority about the case;

- (ii) There was no territorial jurisdiction as the truck containing the alleged smuggled article was intercepted at Ghaziabad, outside the jurisdiction of Delhi court, as such, accused could not be prosecuted at Delhi.

4. Mr.Satish Aggarwala, learned counsel for the appellant submits that the learned Trial Court fell in error in relying upon the order of Single Judge of Orissa High Court in ***Doki Sriramulu*** (supra) instead of relying upon the judgment of this Court in ***Gurbachan Singh vs. State*** AIR 1970 Delhi 102. Moreover, if the Court felt that it was necessary for the sanctioning authority to enter the witness box, the Trial Court was empowered under Section 311Cr.P.C to summon the sanctioning authority. Even otherwise, there was a valid and legally accepted sanction for prosecution which was proved in accordance with law. Even otherwise, if the Court had reached the conclusion that there was no valid sanction for prosecution, the Court could have dropped the proceedings but could not have acquitted the respondent on that account.

5. As regards absence of territorial jurisdiction, counsel submits that if according to the Trial Court, there was lack of territorial jurisdiction, the only option available was to return the complaint and it had no authority to acquit the respondent. This is without prejudice to his plea that Delhi courts had territorial jurisdiction to entertain the complaint. In any event, no such objection was taken by the respondent after taking cognizance of the offence, framing of charges during the course of trial and it was only at the final stage such a plea was taken which could not have been entertained unless some prejudice was caused to the respondent. As such, it is submitted that the impugned judgment be set aside.

6. Ms.Sangita Bhayana, learned counsel for the respondents submits that the respondents are senior citizens and resident of Bihar. Under the circumstances, in case the complaint is ordered to be returned to Ghaziabad Court, it will be difficult for them to pursue the proceedings, as such, counsel submits that the matter be remanded back to the Trial Court where necessary submissions will be made. Counsel for the appellant has no objection to the same. Under the circumstances, the impugned judgment dated 20.04.2010 is set aside. The matter is remanded back to ACMM, New Delhi who will decide the same after considering the rival submissions of learned counsels for the parties. Keeping in view the fact that the complaint was filed as far back as in the year 1989, it is impressed upon the learned

ACMM to dispose of the matter as expeditiously as possible but not later than three months from the date of receipt of this order.

Trial Court Record alongwith with copy of the judgment be sent back immediately.

(SUNITA GUPTA)
JUDGE

MAY 10, 2016

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