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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : September 07, 2016

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CRL.M.C. 412/2013

CUSTOMS

..... Petitioner

Represented by: Mr.Pramod Bahuguna, Advocate with
Ms.Kavita Baimad, Advocate

versus

SURENDER KUMAR JAIN & ORS.

..... Respondents

Represented by: Ms.Binisa Mohanty, Advocate for
R-1
Mr.Naveen Malhotra, Advocate for
R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. Five accused were named in the complaint filed by the Customs Department alleging that they had committed an offence punishable under Section 135(1)(a) of the Customs Act, 1962. They were : (i) Ganji Satyanarayana Dasu; (ii) Padmanabhan; (iii) Naresh Jain; (iv) Surender Jain; and (v) Prakash.

2. The case of the customs was that on June 22, 1995 Ganji Satyanarayana Dasu (A-1) attempted to smuggle gold into India from Dubai. Upon arriving at IGI airport, he declared 42 gold biscuits weighing 4.914 kgs and 3 silver bricks weighing 99.97 kgs, however, upon inspection of the silver bricks in the preventive room by custom officers it was found that the silver bricks contained gold, which had not been declared. The custom

officers allowed Ganji Satyanarayana Dasu to exit the arrival hall and followed him in plain clothes. He was approached by A-2 to A-4 and thereafter all 4 accused were apprehended. A-1 to A-3 gave their statements under Section 108 of Customs Act, 1962 but these were later retracted. A-5 was supposed to be the driver of the car in which A-1 to A-4 had to leave the precincts of the airport.

3. After recording pre-charge evidence, the learned ACMM discharged the accused observing that the sanction Ex.PW-1/B was not valid because the sanctioning authority had not been examined; there was a material omission in not presenting the retraction of the accused persons before the sanctioning authority at the time of grant of sanction; the panch witnesses who had witnessed the recovery of gold from Ganji Satyanarayana A-1 had not been examined and offence under Section 135(1)(a) of the Customs Act, 1962 was not made out against A-2 to A-5.

4. In the revision filed, three issues have been discussed by the learned Additional Sessions Judge:-

- i) Whether sanction Ex.PW-1/B granted by the Commissioner of Customs was proved given that the sanctioning authority was not examined as a witness.
- ii) Whether the retraction of the accused persons were placed before the sanctioning authority at the time of grant of sanction.
- iii) Whether a prima-facie case of commission of offence under Section 135(1)(a) of the Customs Act, 1962 was made out against A-2 to A-5.

5. Regarding the first issue, relying on the judgment of this Court reported as 2010 (4) JCC 2986 (Delhi) Directorate of Revenue Intelligence Vs. Mohd. Anwar, the learned Judge has held that the only requirement at the

stage of framing of charge was to prove that the sanction was granted by the sanctioning authority after due application of mind. The learned Judge has relied upon the judgment of the Supreme Court reported as 2006 CrI.LJ 518 (SC) State through Inspector of Police, AP Vs. K. Narsimhachary to hold that where the authenticity of the sanction by the State is not questioned, it is a public document within the meaning of Section 74 of the Indian Evidence Act, 1872 and could be proved as per Sections 76 to 78 of the Indian Evidence Act, 1872. The learned Judge has held that even though the sanctioning authority has not been examined, it has been proved through the testimony of R.K.Duwan, Inspector, ICD, PW-1 that the sanction Ex.PW-1/B had been duly accorded by the sanctioning authority.

6. Regarding the second issue, the learned Judge has held that the contention of the accused that the sanction Ex.PW-1/B had been granted by the Commissioner of Customs without due application of mind, since the retraction of the accused was not placed before the sanctioning authority at the time of grant of sanction, could not be accepted. According to the learned Judge, whether the sanction was granted by the Commissioner of Customs after due application of mind was a matter of evidence and was not relevant at the stage of framing of the charge.

7. As regards whether a prima-facie case of commission of an offence under Clause (a) of Sub-Section (1) of Section 135 of the Customs Act, 1962 was made out against the accused, the learned Judge noted that given the recovery of undeclared gold by A-1 for which no duty had been paid, which had been duly proved by the panchnama Ex.PW-3/A as well as the testimony of A.M. Sidharthan PW-2, a prima-facie case was made out against Ganji Satyanarayana A-1. As regards Padmanabha Manon Rajaram

A-2 the learned Judge has noted that he had admitted in his statement under Section 108 of the Customs Act, 1962 that he had escorted Ganji Satyanarayana A-1 from Dubai to India and had acted as a guard to the consignment of gold being smuggled. The learned Judge has also noted that this role of A-2 had been mentioned in the statements under Section 108 of the Customs Act by A-1 and A-3. The learned Judge has noted that Section 135(1)(a) of the Customs Act, 1962 provides that any person '*knowingly in any way concerned*' in the evasion of payment of duty would be liable under the section. The learned Judge has held that in light of the statements of A-1 to A-3 as well as the testimony of the prosecution witnesses, a prima-facie case had also been made out against A-2.

8. As regards Naresh Jain A-4, the learned Judge has held that the no incriminating evidence against him had been brought on record. As per the learned Judge, the statement of the co-accused Surender Jain (A-3) under Section 108 of the Customs Act, 1962 was to the effect that the statement of Surender Jain A-3 that it was he i.e. Naresh Jain who suggested A-1 and A-2 to smuggle gold, and this was insufficient to frame the charge.

9. As regards Surender Jain A-3, the learned Judge has noted that as per the statements of Ganji Padmanabha, Padmanabha Manon Rajaram and Surender Jain himself, the smuggled gold was to be delivered to Surender Jain outside the airport. Relying upon the judgment of the Supreme Court reported as AIR 1965 SC 1072 Radha Kishan Bhatia Vs. Union of India, the judgment of the Bombay High Court reported as AIR 1960 Bom. 478 Gopal Mavaji Parab Vs. T.C. Seth and the judgment of the Madras High Court reported as AIR 1960 Madras 281 Devichand Jestimal and Co. Vs. Collector of Central Excise, the learned Judge has observed that in order to be held

liable for smuggling a person must have arranged for the import of the smuggled goods or abetted the import or received it immediately after the import. The learned Judge has further noted that every person found handling smuggling goods could not be held liable for its import. The learned Judge has held that even if the statements of the accused persons were accepted in totality no prima-facie case of an offence under Section 135(1)(a) could be made out against A-3 since it was evident from the statements of the accused that Surender Jain was to deal with the smuggled gold only after it had been imported.

10. In light of the findings above, the learned Judge has set aside the order discharging A-1 and A-2 while upholding the same qua A-3 to A-5.

11. Having perused the pre-charge evidence I agree with the view taken by the learned Additional Sessions Judge and would simply record that learned counsel for the petitioner has not been able to show as to on what account the impugned order suffers from an infirmity. Except for reading the evidence which has been noted and discussed by the learned Additional and Sessions Judge, and which I have succinctly narrated nothing more has been done or attempted to be done in Court today.

12. The petition is accordingly dismissed.

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 07, 2016

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