IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4340 OF 2016

Shri. Satyapriya Dirupdjam Das .... Petitioner

Vs.

1 The State of Maharashtra ..... Respondents
2 Satish Kanodia

Mr. C.K. Pendse a/w Mr. Sushant Narkar, Advocate for the Petitioner.

Ms. Anamika Malhotra, A.P.P. for the respondent- State.

Coram : Smt. R.P. SondurBaldota, J.
Date : 8th March, 2017

P.C.

1 This petition challenges the order dtd. 8th November, 2016, by which the Sessions Court allowed Criminal Revision Application No. 531 of 2011 and set aside the order of the trial Court discharging the petitioner and two other accused. The grounds of challenge before the Sessions Court were that the learned Magistrate failed to appreciate the statements of witnesses and documents filed by the investigating agency and Income-Tax returns filed by the petitioner herein indicating that he is concerned with accused no. 1-Company and he had received the various amounts from it. Also that the Magistrate

had failed to appreciate that the petitioner was looking after day-to-day business of accused no.1-Company. It is alleged that accused nos.3 and 4 in collusion with the petitioner had sold the metal scrap to the original complainant. When the scrap was received by the complainant, it was found to contain more of dust and plastic waste and there was hardly any metal in it. The trial Court allowed the application by it's order dtd. 15th February, 2011 by accepting the case of the petitioner that he had acted only as an employee of the Company and that he had not received any benefits from the transaction of sale. The benefit was in fact received by his employer. The trial Court wondered as to how the complainant will prove his case against the petitioner in respect of the percentage of wastage in the scrap material imported. It next observed:

> "Although the report of CA is on record or will produce on record, the same will also not be tendered any help to the complainant or to the Court to come to particular conclusion in respect of their agreement to supply the goods of a particular standard including the above said percentage of dust/rubber/wastage etc. Therefore, in my opinion even if the charge is framed against any of the accused, no any purpose will be served."

According to the trial Court, there was also unexplained delay in filing of the complaint.

2 The Sessions Court in the impugned order, after going through the entire record has noted that though there is no document to show that the petitioner had made any direct representation to the complainant as regards the contents of wastage in the scrap sold, the sale/ purchase agreement dtd. 19th April, 2004 is signed by him for S.M. International INC. The contract mentioned that the wire scrap bundle had 3 to 5% rubber attachments and foreign particles. When the complainant got the sample checked for the contents for the wastage, it was found that the metal scrap contained in, it was only 68.93% and the wastage was to the extent of 31.07%. The container was loaded and sent to the Port even before the sale contract was sent for execution. This would mean that the petitioner had knowledge that the material had 31.07% wastage while the contract stated that it would contain only 3 to 5 % wastage. This was the false statement made since at the beginning of the transaction. This would speak about the intention to cheat. This material according to the Sessions Court is prima facie sufficient to proceed against him and it was not the case for discharge. In my opinion, the above observations of the Sessions Court drawn from the material on record are correct and need no interference from this Court. Hence, the petition is dismissed.

(Smt. R.P. SondurBaldota, J.)