

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Orders reserved on :28.02.2017

Order pronounced on: 13.10.2017

CORAM

THE HON'BLE MR.JUSTICE S.BASKARAN
Crl.R.C.Nos.112 to 115 and 149 of 2017
and
Crl.M.P.Nos.1255 and 1256 of 2017
in Crl.R.C.No.112 of 2017
and
Crl.M.P.Nos.1257 and 1258 of 2017
in Crl.R.C.No.113 of 2017
and
Crl.M.P.Nos.1259 and 1260 of 2017
in Crl.R.C.No.114 of 2017
and
Crl.M.P.Nos.1261 and 1262 of 2017
in Crl.R.C.No.115 of 2017
and
Crl.M.P.Nos.1668 and 1669 of 2017
in Crl.R.C.No.149 of 2017

M.Rathakrishnan ... Petitioner/Accused-5 in all Crl.RCs

-Vs-

State through
the Inspector of Police,
Central Bureau of Investigation,
ACB, Chennai. .. Respondent/Complainant in all Crl.RCs

Common Prayer : Criminal Revision Cases filed under Section 397
r/w 401 of the Code of Criminal Procedure, to call for the
records pertaining to the orders dated 30.11.2016 made in
Crl.M.P.Nos.2853, 2850, 2852, 2851 and 2849 of 2016 in
C.C.Nos.9681, 9661, 1270, 1271 and 10189 of 2014 respectively,
passed by the Additional Chief Metropolitan Magistrate, Egmore,
Chennai and set aside the same.

In all Crl.Rcs:

For Petitioner : Mr.V.Viswanathan
For respondent : Mr.K.Srinivasan.
Special Public Prosecutor

C O M M O N O R D E R

These Criminal Revision Cases have been filed by the
petitioner/A-5 against the orders dated, 30.11.2016 passed in
Crl.M.P.Nos.2853, 2850, 2852, 2851 and 2849 of 2016 in
C.C.Nos.9681, 9661, 1270, 1271 and 10189 of 2014, respectively,

passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, in and by which the petitions filed by the petitioner/A-5 seeking to discharge him from the above said cases were dismissed.

2.Since the petitioner/accused named in all the above cases are one and the same and the facts are also identical in all these cases, these criminal revision cases are disposed of by way of a common order.

3.The brief facts of the prosecution that cover the issues involved in the present five criminal revision cases are as follows:

(i)The petitioner herein has been arrayed as fifth accused in all the above cases. The petitioner is working as a licensed Customs House Agent (CHA) and he is the Managing Director of M/s.Vee Vee Clearing & Forwarding Private Limited, Chennai. The petitioner/A-5 is mainly involved in the work of enabling the importers/business people, filing the bills of entry through the EDI system (online), based on the documents produced by the importers/business people. The petitioner/A-5 along with the co-accused/A-1 to A-4 namely M.Saibudeen/A-1, J.Sheik Parith (A-2), B.Senthil Jagannath /A-3 and Shri J.Basheer Ahmed/A-4 (all private individuals), entered into a criminal conspiracy with the intention to cheat the Customs Department in the matter of payment of customs duty in the import of air conditioners and LED/LCD TV by misdeclaring the goods and under-invoicing the value of the goods and concealed the imported consignment and thereby caused loss to the Government of India to the tune of Rs.1,25,70,443/-. During investigation, it was revealed that A-1 / Shri M.Saibudeen and other co-accused had cheated the Customs Department, Government of India, in the matter of duty evasion to the tune of Rs.11 crores on 84 bills of Entries of past/already cleared consignments.

(ii)It is further alleged by the prosecution that in pursuance of the said conspiracy, the accused Nos.2 and 4, in collusion with A-1 and A-3 and with the help of petitioner/A-5 fabricated the original invoices and the original packing list sent by M/s.Super Soft Private Limited, Singapore in the form of soft copy/electronic form to the E-mail ID of the second accused viz., J.Sheik Parith. Thereafter, the fourth accused used to amend the quantity, description and value of the goods in the said documents contained in the e-mail received from M/s.Super Soft Private Limited, Singapore for their convenience and take print outs in the purported blank letter head of the M/s.Super Soft Private Limited. After fabricating the invoices and packing list purportedly in the name of M/s.Super Soft Private Limited, the accused Nos.2 and 3 handed over the said forged documents to the Customs House Agent (CHA). The petitioner/A-5

herein, in turn submitted the same to the Customs Department, Chennai, knowing fully well that the said documents are forged and fabricated one. The petitioner/A-5 in conspiracy with A-1 to A-4 fabricate the statement of bills of entry for taking delivery of imported goods to A-2 to A-4, based on forged documents submitted by them. The petitioner/A-5 is alleged to have facilitated A-2 to A-4 in clearing the consignments by evading payment of customs duty and facilitating the commission of offence by cheating the Customs Department. By adopting the said modus operandi, the petitioner/A-5 helped A-1 to A-4 to import various electronic goods of different models through M/s. Super Soft Private Limited, Singapore by undervaluing the said goods and thereby cheated the Customs Department in payment of customs duty to the tune of Rs.11 crores on 84 bills of entries.

iii) It is alleged by the prosecution that the petitioner/A-5 Radhakrishnan is a close friend of Jahangir, who is the father of A-2 and A-4 and the petitioner knew very well that Import and Export Code (IEC) and R-22 gas licence issued by the Assistant Director General of Foreign Trade (ADGFT) was non-transferable, but in collusion with A-2 and A-4, the petitioner filed the bills of entry involved in this case in the name of different persons and facilitated A-2 and A-4 to import goods without paying actual customs duty. The petitioner/A-5 being the Customs House Agent (CHA), deliberately failed to ascertain and verify the basic details and colluded with A-2 and A-4 in cheating the Customs Department. A-2 and A-4 were introduced to the petitioner/A-5 by their father and A-5, who knew very well that A-2 and A-4 were running business in the name of M/s. Emerald & Co., S.D Impex and M.S. Trading & Co allowed them to file bills of entry in the name of M/s. Majestic Impex and M/s. SSP Enterprises and in such circumstances, A-5 has deliberately colluded with A-2 and A-4 in filing fabricated documents by them and causing huge revenue loss to the Customs Department. By the above said acts, the petitioner/A-5 along with other accused persons committed offences punishable under Sections 120-B r/w 420, 468 and 468 r/w 471 I.P.C. Hence, the above said case was registered against the accused persons. After completion of investigation, charge-sheet has been filed before the concerned Court. In such circumstances, the petitioner/A-5 herein filed petitions to discharge him from the cases before the trial court, but the said petitions were dismissed by the trial court, as per the impugned orders. Aggrieved over the same, the petitioner/A-5 has come forward with the present criminal revision cases before this Court.

4. The learned counsel for the petitioner contended that originally, the case was registered by including the Customs Officials also and they were arrayed as A-1 and A-2 by invoking the provisions of Prevention of Corruption Act. However,

subsequently, when the charge-sheet was filed, they were dropped, as no substantial evidence to prove the allegations against them was available. It is further stated that the petitioner/A-5 has no knowledge about the tampering of invoices given to him by the co-accused. It is further alleged that in the report filed by the Investigating Officer also, it is not stated that the petitioner/A-5 had knowledge about the fabricating the nature of invoices and no material is placed to link the petitioner with the alleged criminal conspiracy, entered into by all the accused. It is pointed out that the accused 2 and 4 are brother-in-laws of the first accused. On 30.10.2011, a power of attorney was executed by the first accused in favour of his brother-in-law/second accused and taking advantage of the same, the second accused along with 4th accused manipulated the invoices and other documents and the petitioner is totally unaware of the same. The petitioner contends that for the criminal act committed by A-2 and A-4, this petitioner/A-5 cannot be held responsible.

5.The learned senior counsel for the petitioner also stated that the allegation namely the petitioner failed to obtain necessary authorization from A-1 and A-3 and thereby violated Rule 13 of CHALR is unsustainable, since no one has stated that the authorization to A-1 from A-3 was not filed by the petitioner herein. Further in the said circumstances, unless and until the petitioner is called upon to produce the said authorization and if he fails to comply with the same, then only violation of Rule 13 can be alleged and in this case, no such violation has been committed and on this ground also, the prosecution has to fail.

6.The learned senior counsel also pointed out that the allegation namely the first accused handed over IEC and R-22 gas licence in favour of A-2 is per se not an offence under the provisions of Foreign Trades (Development and Regulations) Act, 1992 and the rules made thereunder. The learned senior counsel also pointed out that A-2 had necessary authorization from the respective IEC holders and A-3 has agreed to furnish IEC for imports in his name to A-2 and A-4. Further, the bills of entry in dispute were filed only in the name of IEC holders in whose name, R-22 licence was issued and the same was accepted by the Customs also. In that connection, the learned counsel for the petitioner relied upon the decision of the Kerala High Court reported in 2012 (276) ELT 505 (Kerala), (Proprietor, Carmel Exports & Imports Vs. Commissioner of Customs, Cochin), wherein, it has been held as follows:

"15.Coming to the submission that the appellant is only a "name lender" for the import of goods by one Anwar, we shall presume for the time being that the appellant is only name lender, bu the actual beneficiary of the import is one Anwar. We called upon learned

counsel for the respondents to place the relevant provision which prohibits such an activity on the part of an Import Export Code Number holder. Learned counsel for the respondents categorically made a statement that he is not able to place any such prohibition in law except Section 7 of the Foreign Trade (Development and Regulation) Act, 1992, which reads as follows:-

"7.Importer-exporter Code Number:- No person shall make any import or export except under an Importer-exporter Code Number granted by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General."

The expression "import" occurring in the said section means bringing into India of goods as defined under Section 2(e). There is nothing in the law which requires an importer to be either the consumer or even the buyer of the goods also. Even otherwise, we are of the opinion that it is a matter of common sense that no importer would consume all the materials imported. Necessarily, the goods imported are meant for sale to the consumer, in which case, if an importer, who enjoys the facility of I.E Code imports certain goods in the normal course of business on the strength of a contract entered by such importer with either a consumer or a trader who eventually sells the imported goods to consumers. We do not understand what can be the legal objection for such a transaction especially where the import of such goods is otherwise not prohibited by law. At any rate, if the respondents have any tenable legal objection on that count, the respondents must pass an appropriate order indicating the legal basis on which the action is proposed and also the nature of the action proposed for such perceived violation of law on the part of the respondents after giving reasonable opportunity to the importer to meet the case against him. Instead of proceeding to determine the duty leviable on the imported goods by following the appropriate procedure or passing an order of confiscation if they believe that indefinitely detaining the goods without any appropriate order being passed thereon. Such a course of action, in our opinion, is absolutely illegal."

7.Relying upon the above said ruling, the learned senior counsel for the petitioner contended that there is no prohibition under the law to transfer the IEC and ODS licence. It is further contended by the petitioner that in the instant case, the IEC and ODS licence were not transferred to any third

party and as such, the prosecution is not entitled to maintain the criminal charge against the petitioner/A-5 herein.

8.The learned counsel for the petitioner further stated that the respondent initially filed the case against the public servants and also the private individuals, but in the final report filed in the month of August, 2014, the public servants originally arrayed as A-1 and A-3, were not included for want of evidence and the petitioner/A-5 is alleged to have violated the provisions of Customs Brokers Licencing Regulation, Act, 2013.

9.The learned senior counsel for the petitioner contended that absolutely, no material to rope in this petitioner in the case under Section 120-B I.P.C is produced. According to him, meeting of mind of two or three persons who are illegally acting is a sine quo non for charging a person with criminal conspiracy. The learned senior counsel further contended that in the present case, the prosecution has not brought any evidence to show that the petitioner/A-5 had knowledge of fabrication of documents by A-2 and A-4 and import being made on the basis of forged documents. It is further submitted by the learned counsel that the materials placed before the Court by the prosecution does not satisfy the basic ingredients to bring the petitioner/A-5 to be charged for criminal conspiracy, but the material available only raises possibility of two views in this matter. In support of the same, he relied upon the ruling reported in 2003 (5) SCC 257, (Hira Lal Hari Lal Bhagwati Vs. CBI, New Delhi) wherein, it has been held as follows:

"In the present case, there is no prima facie case made out in respect of the alleged offence under Section 120-B read with Section 420 IPC and, therefore, the charge-sheet and the process issued thereunder has to be quashed. To bring home the charge of conspiracy within the ambit of Section 120-B IPC, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. It is difficult to establish conspiracy by direct evidence."

He also relied upon another ruling reported in 2014 (4) MLJ (Cr1) 279, (Additional Superintendent of Police, CBI, Anti Corruption Bureau, CBI/ACB, Chennai), wherein, it has been held as follows:

"Merely levelling charge of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy is not sufficient to mulct criminal liability on the Respondents. There is nothing in the allegations or in the statements of witnesses which can be construed to show that there was a meeting of minds amongst the authorities of the College to commit an

offence. Therefore, this Court is of the considered view that the conclusion arrived at by the learned Additional Chief Metropolitan Magistrate that there was no prima facie evidence to frame charges under Section 420 read with 120B of IPC is fully justified in taking the view and there is no perversity or illegality in the order of discharge passed by the said Court warranting interference by this Court."

10.By relying upon the above said decisions, the learned senior counsel for the petitioner submitted that in the instant case, there is no material to proceed against the petitioner and sought for discharge of the petitioner/accused from the case.

11.Per contra, disputing the claim of the petitioner, the learned Special Public Prosecutor appearing for the respondent/CBI, by filing detailed counters, would contend that there is a prima facie case against the petitioner herein to frame charges. It is further contended by the prosecution that the materials produced by them are sufficient to frame charges against the petitioner/A5. It is also pointed out that L.Ws.1 to 14 have clearly stated about the role of the petitioner in the alleged offence. The petitioner/A-5 who is Customs House Agent is alleged to have conspired with A-1 to A-4 and facilitated submissions of bills of entry to take delivery of imported goods to A-2 and A-4, on the basis of forged documents, submitted by them. The petitioner/A-5 allegedly facilitated A-2 and A-4 in carrying the illegal consignments and also colluded with the co-accused in cheating the Customs Department. It is further alleged by the prosecution that the petitioner/A-5, who was functioning as Customs House Agent (CHA), a close friend of Jahangir, father of A-2 and A-4. Further the petitioner/A-5, who knew very well that the import and export, R-22 gas licence issued by ADGFT was non-transferable in connivance with A-2 and A-4, filed subject bills of entry and thereby facilitated to commit misdeclaration, concealment of imported goods and ultimately causing revenue loss to the Customs Department. The prosecution further contended that A-2 and A-4 were introduced to A-5 by their father and the petitioner/A-5 being a CHA deliberately failed to ascertain and verify with necessary bills in connivance with A-2 and A-4 so as to cheat the Customs Department. The learned Special Public Prosecutor further pointed out that A-2 and A-4 used to come to the petitioner/A-5's office regularly for filing bills of entry in respect of M/s.SSP Enterprises and Majestic Impex for the clearance of imported goods at Customs, Chennai, even though the petitioner knew very well that A-2 and A-4 are not actual proprietors of M/s.Majestic Impex and M/s.SSP Enterprises respectively. It is further pointed out by the prosecution that the petitioner/A-5 knew very well that A-2 used to visit his office for filing the bills of entry of his own firm M/s.Emerald & CO, M/s.S.D Impex

and M.S.Trading Company. It is further contended by the prosecution that there is sufficient evidence available against the petitioner/A-5 to prove that the petitioner colluded with the co-accused and facilitated him to import goods, illegally causing wrongful loss to the Government of India and wrongful gains to the accused persons.

12.The learned Special Public Prosecutor, who appears for the respondent also contended that it is not necessary that there should be express proof of agreement to enter into the criminal conspiracy and the agreement can be inferred from the conduct of the parties. Thus, the learned Special Public Prosecutor contended that in the case on hand, the existence of criminal conspiracy can be inferred on the basis of overt act committed by the petitioner/accused herein.

13.The learned Special Public Prosecutor for CBI submitted that arguments advanced by the petitioner's counsel may be taken as a defence during the trial and the same cannot be considered at this stage to discharge the petitioner. The learned Special Public Prosecutor also contended that as per Section 239 of Cr.P.C, only if the charge against the accused is found to be groundless, the accused can be discharged and not otherwise. In support of his contention, he relied upon the ruling of the Apex Court reported in AIR 1970 SC 45, (Mohammed Hussain Umar Kochra etc., Vs. K.S.Dalipsinghji and another etc.), wherein, it is held as follows:

"In order to constitute a single general conspiracy, there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy through he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient."

14.Similarly, he relied upon the ruling reported in 2001 M.L.J (Cr1) 117 (State of Delhi Vs Gyan Devi and Others) to contend that at the stage of framing of charges, duty of the court is not to examine and assess in detail the materials placed before it and it is to examine the materials only to satisfy that a prima facie case of commission of offence has been made out against the accused person.

15.By relying upon the above said decisions, the learned Special Public Prosecutor, submitted that in the instant case, there is ample material to prove that the petitioner/A-5 along with co-accused A-1 to A-4 is involved in hatching criminal conspiracy. Thus, the learned Special Public Prosecutor sought for dismissal of the revision petitions.

16.As stated above, the petitioner/A-5 along with the co-accused is alleged to have cheated the Customs Department, Government of India, in the matter of custom duty evasion to the tune of about Rs.11 crores on 84 bills of entry/already cleared consignment, as per the criminal conspiracy entered into by them. The period of conspiracy was between 2010 and 2011, as per the charge sheet filed in the case. The fact that the petitioner/A-5 is carrying on business as Managing Director of M/s.Vee Vee Clearing and Forwarding Private Limited and working as Customs House Agent is admitted. Similarly, he was acting as agent for A-2 and A-4 is also not disputed. The relationship between A-1 as well as A-2 and A-4 and the fact that A-1 along with A-2 and A-4 used to come regularly to the office of the petitioner/A-5 to file the bills of entry is also admitted. As stated earlier, A-2 and A-4 who are brother-in-laws of A-1 allegedly conspired together and started importing electronic goods from M/s.Super Soft Private Limited, Singapore, which used to send invoices and packing list in the form of electronic form /soft copy, which facilitated A-2 and A-4 in manipulating those documents as they wish.

17.It is contended by the petitioner/A-5 that he merely filed bills of entry submitted to him by A-2 and A-4 and he has no prior knowledge of any manipulation done by the other two accused and his role in submitting the papers to the customs authorities is similar to that of an advocate and he cannot be held responsible for any of the misdeeds committed by A-2 and A-4.

18.The learned senior counsel for the petitioner further contended that the documents handed over to the petitioner/A-5 by his clients/A-2, A-4 was submitted to the Customs Authority and it is only those officers has done assessment and this petitioner's role is only that of a messenger, who is only carrying over the documents handed over by his customers to the customs Authorities and as such, he cannot be held responsible for any of the omission and commission done by importers. In support of his contention, the learned senior counsel relied upon the ruling of the Apex Court reported in (2012) 9 SCC 512, (Central Bureau of Investigation, Hyderabad Vs. K.Narayana Rao), wherein, it is held as follows:

"Therefore, the liability against an opining

advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-2 was abetting or aiding the original conspirators. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 I.P.C along with other conspirators without proper and acceptable link between them."

19. However, refuting the same, the learned Special Public Prosecutor contended that the petitioner/A-5 being the CHA deliberately failed to ascertain and verify the basic required details from the importers and the same was done deliberately in connivance with A-2 and A-4, who have been introduced to him by their father Jahangir. The learned Special Public Prosecutor also contended that as per regulation 13 of Customs House Agents Licensing Regulations, 2004 (CHALR), a duty is cast on CHA to verify the antecedents, correctness of IEC Code, identity of his client and the functioning of the client/importer at his declared address by using reliable, independent authentic documents, data or information. Thus, the prosecution contends the petitioner/CHA is duty bound to verify the date of entry before presenting the same to the customs authority, but the petitioner has not done so. Thus, the respondent contends that the petitioner/CHA cannot be treated on the same footing of an advocate, who is merely giving legal opinion.

20. It is further contended that under the above said regulation, an obligation is cast on CHA to obtain authorisation from each of the companies/firms or individuals by whom he is for the time being employed as CHA and produce such authorisation whenever required by authorities. It is also pointed out that CHA is supposed to verify the genuineness of the IE Code holders and obtain the authorisation of the importers and also to check the IE Code and description of the importers. Thus, it is evident from the regulation relied upon by the prosecution that CHA cannot be equated with an advocate. Since the CHA is duty bound under the above said regulations to verify the genuineness of the details that is being presented to him by the importer and also about the identity of the importer

himself. In the case on hand, when the prosecution claims that A-2 and A-4 were introduced to A-5 by their father, who is a close friend of A-5 and as such, the petitioner/A-5 was very well aware of the details of the above said accused persons. The prosecution alleged that the petitioner/A-5 was very well aware that A-2 and A-4 are not actual proprietors of M/s.Majestic Impex and M/s.SSP Enterprises. But, they were allowed to file bills of entry in respect of the said concern by the petitioner/A-5. This according to the prosecution was consequent to the criminal conspiracy entered into by the accused 1 to 4 with this petitioner. Further, the prosecution also pointed out that the statements given by L.W.1, L.W.2, L.W.13 and L.W.15 will clearly establish the alleged conspiracy and constitution of offence committed by the accused in this case.

21.Refuting the same, the learned counsel for the petitioner contended that A-2 was having necessary authorisation from the respective IEC holders and A-3 has agreed to furnish the IEC for imports in his name to A-2/A-4 and this has not been considered by the customs authorities properly. The learned senior counsel also pointed out that the bills of entry in question were filed only in the name of IEC holders and not otherwise. Thus, the petitioner contends the said fact has not been considered properly by the court below.

22.Refuting the same, the learned Special Public Prosecutor pointed out that in a similar petition filed by A-1 /Sibudeen, this Court, by an order dated 26.09.2016, passed in CrI.M.P.Nos.297 to 301 of 2016 in CrI.R.C.Nos.47 to 51 of 2016, has categorically held as follows:

"18.But, on a perusal of the charge sheet, I find that the entire transaction was done by the accused 2 & 4 only in the name of M/s.Majestic Impex. According to the learned senior counsel for the petitioner, by misusing the Power of Attorney executed by the petitioner in favour of the 2nd accused, the accused 2 & 4 were involved in the alleged offence; hence, as the principal, the petitioner cannot be held liable. But, as contended by the learned Special Public Prosecution, I find that the said Power of Attorney does not contain any clause authorising the 2nd accused to deal with the IEO & ODS license issued in favour of the petitioner by the Foreign Trade Authorities. Moreover, the said Power of Attorney was given a month prior to the obtaining of license by the petitioner from the Foreign Trade Authorities. According to the prosecution, by the acts of the accused persons, they have caused loss to the tune of Rs.11 crores to the Government. Therefore, in the absence of any specific

power authorising the 2nd accused to deal with the IEO and ODS license issued in favour of the petitioner, I am of the opinion that the contention of the petitioner that for the act of his agent, the petitioner cannot be held responsible, cannot be accepted."

23. In the light of the above said discussion, the contention of the petitioner that there was proper authorisation and there was no failure on his part in discharging his duties as CHA cannot be accepted at this stage and the same is to be decided only at the stage of trial on the basis of available evidence before the court.

24. The learned senior counsel for the petitioner further contended that even assuming that there was forged documents submitted by petitioner/A-5 and there was no proper authorisation and there was discrepancy in the procedure adopted by the petitioner/A-5, the same cannot be held to be violation of regulations under Regulation 14(d) of CHALR, 1984 and as such, no criminal conspiracy can be alleged against him. It is also stated that there is nothing on record to show that the petitioner/A-5 was aware at the time of filing the bills of entry that it was forged document and on that ground also, the petitioner cannot be held as an accused under Section 120-B I.P.C. In support of the said contention, the learned senior counsel also relied upon the order passed by the CESTAT, South Zonal Bench, Chennai, reported in 2004 (177) ELT 1051 (Tri. - Chennai), wherein, it is held as follows:

"6. We have carefully considered the submissions and examined the case law. The ld. Commissioner found against the appellant breach of obligations under Clauses (a), (b), (d) and (1) of Regulation 14 of CHALR, 1984. With reference to Clause (a), it was found that the appellant had filed Customs documents without getting authorisation from the importer. We find that there is no dispute of the fact that the Bill of Entry, which was filed in the name of the appellant - CHA, was duly signed by the importer. According to the Tribunal's decision in P.P.Dutta Case (supra), filing, of a Bill of Entry duly signed by the importer, without importer's written authorisation, is not to be treated as breach of obligation under Regulation 14(a). Following the decision in P.P.Dutta's case, we reject the Commissioner's finding that the appellant had failed to comply with Regulation 14(a). As regards the Commissioner's finding, against the appellant, of non-compliance with Regulation 14(b), we have to affirm it as it has not been challenged in this appeal. On the other hand, the finding (b), we have to affirm it as it has not been challenged in this appeal. On the other

hand, the finding has been accepted by the appellant. The Commissioner has found non-compliance with Regulation 14(d), against the appellant. This conclusion is, apparently, based on the following findings contained in the impugned order:-

"The CHA has indulged in the illegal activities by signing Customs documents and filing Customs documents/Bank Guarantee in the name of a fictitious firm. The Customs documents are found filed by Maruti Transports, the CHA in the name of M/s.Galaxy Exports and it was the duty of the CHA to advise the importers to comply with the provisions of the Customs Act."

We have found nothing on record to show that the appellant was aware of the forged nature of the Bank Guarantees at the time of filing of the documents. Apparently, it was the Customs Authorities, who first came to know, through a communication received from the Bank, that the Bank guarantees were fake. The appellant came to know the forgery only subsequently. Hence the charge framed against the appellant with reference to Regulation 14(d) cannot be sustained. As regards the Commissioner's finding that the documents prepared and filed on behalf of the appellant were not in accordance with the departmental orders relating to presentation of such documents, we observe that this finding is non-speaking inasmuch as it does not specify the departmental orders relating to presentation of import documents and also does not disclose as to how, and to what extent, the preparation and filing of the Bill of Entry and other documents were contrary to any departmental orders or instructions."

25.The learned senior counsel for the petitioner further contended that the goods covered under the bills of entry in the present case have already been cleared, after paying customs duty and handed over to importer and in such circumstances, no criminal liability could be fixed on this petitioner and in support of the same, he relied upon the judgment of the High Court of Bombay reported in 2015 (326) ELT 548, (Bom.) (Commissioner of Customs (General) Vs. Sainath Clearing Agency), wherein, it is held as follows:

"14.As far as Charge III is concerned, the transportation of the goods diverted by the importer is a matter of post importation. The goods were cleared after completion of Customs formalities. There is nothing which can, then, visit the Customs

House Agent, according to the Tribunal, with any consequence once the cleared goods are handed over to the importer. The operations like transportation of goods post clearance as a matter of practice was not done by the Customs House Agent. In the present case, one Mr. Shantaram Dongre who was the employee had arranged for such transportation but, according to the Tribunal, that was not enough to hold that it is the Customs House Agent's obligations under the Regulations and which have been discharged through the employee. In the circumstances, the act of Mr. Shantaram Dongre should not visit the Customs House Agent with an adverse consequence is the conclusion reached."

26. However, disputing the same, the learned Special Public Prosecutor contended that the above said ruling relied upon by the petitioner cannot be considered at this stage and it is to be seen only at the time of trial, since there is enough material to establish prima facie the allegation against the petitioner/accused No.5 in this case.

27. Admittedly, in this case, as stated above, the petitioner/A-5 knew the co-accused and acted on their behalf as CHA. Whether the petitioner/A-5 was aware of the fabrication of bills of entry at the time of filing or not is a fact to be considered at the time of trial. Likewise, whether there was prior authorisation given to A-2 to A-4 and other consequential factual things are to be considered only at the time of trial and not at this stage.

28. The learned Special Public Prosecutor has also relied upon the ruling reported in 1996 Cri.L.J 1125 (State of Maharashtra and others Vs. Som Nath Thapa and others), wherein, it is held as follows:

"If on the basis of materials on record, a Court come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record by the prosecution has to be accepted as true at that stage."

Similarly, he relied upon the ruling of the Apex Court reported in AIR 2013 Supreme Court 52 (Sheoraj Singh Ahlawat and others Vs. State of Uttar Pradesh and another), in support of his contention.

29. It is therefore clear that if strong suspicion is found on the materials placed before the Court with regard to the offence committed by the accused that will justify framing of charge against the accused. In the instant case, as stated above, the petitioner has acted as CHA on behalf of the A-2 and A-4, who are familiar to him. Further, the material placed before the Court namely the statements of L.W.1, L.W.2, L.W.13 and L.W.15 and the documents produced by the prosecution clearly establish that sufficient materials are available to frame charges against the petitioner herein. As stated earlier, the transactions took place over a period of one year. As stated earlier, the regulations covering the functioning of CHA clearly cast burden on him to verify the genuineness of the bills of entry being filed by him. In such circumstances, the contention of the petitioner that he is not aware of fabrication of the bills by A-2 and A-4 and he merely filed the bills of entry, as per the details furnished to him and as such, he cannot be held criminally liable cannot be accepted at this stage. As stated above, the fact of innocence of the petitioner is to be established by evidence only at the time of trial and the same cannot be adjudicated in the discharge petition.

30. The learned Special Public Prosecutor also contended that at the time of framing of charges, this court is not required to go deep into probative value of the materials available on record and it is not to evaluate the sufficiency of the evidence to convict the accused.

31. On a perusal of the records, it is clear that in the instant case, the court below has considered the available material on record and particularly the statement of witnesses of L.W.1, L.W.2, L.W.13, L.W.15 and has rightly arrived at the conclusion that there are enough materials to frame charge against the petitioner herein and only on examination of witnesses, the question as to whether the petitioner has committed offence as alleged by the prosecution can be decided. In such circumstances, I do not find any valid ground to interfere with the impugned orders passed by the court below. The point is answered accordingly. In view of the said reasons, all the revisions are liable to be dismissed.

WEB COPY

32. Accordingly, all the criminal revision cases are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai
2. The Inspector of Police,
Central Bureau of Investigation,
ACB, Chennai.
3. The Special Public Prosecutor,
CBI Cases,
Chennai.

+1 cc to Mr.N.Viswanathan Advocate sr 74102

Crl.R.C.Nos.112 to 115 and 149 of
2017

gjII(co)
aa13/11/2017

सत्यमेव जयते

WEB COPY