BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.11.2017
CORAM:
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.R.C.(MD) No.576 of 2013

Special Public Prosecutor
Rep. by Asst. Commissioner of
Central Excise (Legal)
Madurai -2 ... Petitioner / Complainant

-vs-

1. M/s.Vasu Chemicals
151, Vallanandhapuram
Avaniyapuram, Madurai-12

2.V.Vasudevan

3.K.Udayakumar

4.K.Thangapandian

5.K.Jeyaprakash

6.S.A.Muthu @ Muthukrishnan

7.C.Rajendran

8.M.Sankar

9.P.Ramachandran

10.M/s.R.B.Traders
4A, Gandhi Road
Tirupur – 638 652

11.G.Boopathy

12.R.Ravi

13.K.Elango
Prop. M/s.Vasu Chemicals ... Respondents / Accused

PRAYER: The criminal revision is filed, under Section 377 (2) of the Code of Criminal Procedure to enhance the sentence passed by the learned Additional Chief Judicial Magistrate, Madurai, in C.C.No.4 of 2002, dated 17.02.2003.

For petitioner : Mr.Arul Adivel @ Sekar
Special Public Prosecutor
for Central Excise

For respondents : Mrs.S.Srimathy

O R D E R

The criminal revision has been filed by the petitioner / complainant seeking for enhancement of the following punishment imposed on the respondents / accused by the learned Additional Chief Judicial Magistrate, Madurai, vide Judgment dated, 17.02.2003, in C.C.No.4 of 2002:

Sl.No.	Respondents / Accused	Conviction	Sentence / Fine
1.	R1, R2 & R13 / A1, A2 & A13	Sections 9(1)(a)(i), 9(1)(b)(i), 9(i)(bb)(i) & 9 (1)(c)(i) of the Central Excise Act, 1944	Fine of Rs.1,000/- for each offence, in default, R2 & R3 / A2 & A13 to undergo 1 Month R.I. (in total Rs.12,000/-)
2.	R2 & R13/ A2 & A13	Sections 9(1)(a)(i), 9(1)(b)(i), 9(i)(bb)(i) & 9 (1)(c)(i) of the Central Excise Act, 1944	Simple imprisonment till raising of the Court
	R3 to R9, R11 & 12 / A3 to A9, A11 & A12	9(1)(d)(i) of the Central Excise Act, 1944	
3.	R3 to R12 / A3 to A12	9(1)(d)(i) of the Central Excise Act, 1944	Fine of Rs.1,000/-, in default, R10 being a Firm, R3 to R9, R11 & R12 / A3 to A9, A11 & A12 to undergo 1 Month S.I. (in total Rs.10,000/-)

2. The brief facts of the case is that the petitioner / complainant had filed the private complaint in C.C.No.4 of 2002, against the respondents / accused for the offences under various provisions of the Central Excise Act for having evaded payment of the central excise duty(during the period between 01.04.1993 and 11.10.1996) to the tune of Rs.46,58,289/- by non-observing the central excise procedures and formalities, mis-declaring the variety of the manufactured products, suppressing the value of bills made by them without payment of duty and willfully raising bogus invoices suppressing the value of goods. The first accused is a Firm engaged in the manufacture of detergent bars used for washing stainless steel vessels, the second accused is the Manager of the first accused / Firm, accused Nos.3 to 5 are the persons in-charge and responsible for the first accused / Firm, who had knowingly and willfully colluded in the offence and accused Nos.6

to 9 and 11 & 12 and 10th accused / Firm were the distributors and agents of the first accused / Firm, who had knowingly and willfully colluded with the accused in the tax evasion. After issuance of summons, during trial, fifteen witnesses were examined and 316 exhibits were marked on the side of the petitioner / complainant and the Trial Court found the accused guilty. However when the respondent/accused were questioned with regard to the award of sentence for they had submitted that they had been appearing before the Appellate Tribunal for several years and that their business was not doing good and had prayed for imposition of lesser fine amount. Though proviso to Section 9(1) of the Central Excise Act states that in the absence of special and adequate reasons to the contrary to be recorded in the Judgment of the Court, the court shall not impose punishment for a term of less than six months, the Trial Court had, by Judgment dated 17.02.2003, without assigning and recording special and adequate reasons to the contrary, imposed fine and sentenced the accused to undergo imprisonment till the raising of the Court. The said Judgment is under challenge before this Court in the present revision.

3. Initially, the present case was filed as a criminal appeal in Crl.A.No.907 of 2003 and by Order dated 17.07.2013, this Court, after hearing both the counsels for the petitioner / complainant and the respondents / accused and taking into consideration certain objections raised by the respondents / accused, directed the Registry to convert the criminal appeal into a criminal revision petition. Accordingly, the criminal appeal has been converted into a criminal revision and renumbered as Crl.R.C.(MD) No.576 of 2013.

4. During the pendency of this revision, the respondents / accused had also challenged the order of conviction and sentence imposed on them by the Trial Court, before the learned III Additional Sessions Judge, (P.C.R.Cases), Madurai, in C.A.No.69 of 2003, which was disposed of during the year 2012, confirming the Judgment of the learned Additional Chief Judicial Magistrate, Madurai, in C.C.No.4 of 2003.

5. The main point raised by the learned Special Public Prosecutor for Central Excise appearing for the petitioner/complainant is that the Trial Court had committed an error by imposing a lesser sentence of imprisonment i.e., till the raising of the Court, without following the mandatory provisions of Section 9(1)(d)(i) of the Central Excise Act, 1944, which prescribes that in the absence of special and adequate reasons to the contrary to be recorded in the Judgment of the Court, such imprisonment shall not be for a term of less than six months.

6. The learned Special Public Prosecutor appearing for the petitioner / complainant contended that inasmuch as when no special and adequate reason to the contrary having been recorded in the Judgment, it is an error apparent and thereby the revision has to be allowed and the case has to be remanded to the Trial Court to impose sentence in accordance with law.

7. At this juncture, it is relevant to refer to the provision of Section 9(1)(d)(i) of the Central Excise Act, 1944, which reads as follows:

> "*9.Offences and penalties (1) Whoever commits any of the following offences, namely:-*
>
> *[(a) contravenes any of the provisions of section 8 or of a rule made under clause (iii) or clause (xxvii) of sub-section (2) of section 37:]*
>
> *(b) evades the payment of any duty payable under this Act;*
>
> *[(bb) removes any excisable goods in contravention of any of the provisions of this Act or any rule made thereunder or in any way concerns himself with such removal;*
>
> *(bbb) acquires possession of, or in any way concerns himself in transporting, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under this Act or any rule made thereunder;]*
>
> *[(bbbb) contravenes any of the provisions of this Act or the rules made thereunder in relation to credit of any duty allowed to be utilised towards payment of excise duty on final products;]*
>
> *(c) fails to supply any information which he is required by rules made under this Act to supply or (unless with a reasonable belief, the burden of proving which sall be upon him, that the information supplied by him is true) supplies false information;*
>
> *(d) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) and (b) of this section;*
>
> *[shall be punishable,-*

> *(i) in the case of an offence relating to any*

excisable goods, the duty leviable thereon under this Act exceeds one lakh of rupees, with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;"

8. Further, the learned Special Public Prosecutor appearing for the petitioner / complainant contended that the Trial Court had stated that when the respondents / accused 2 to 9 and 11 to 13 were questioned with regard to the sentence, they had submitted that inasmuch as they have been approaching the Appellate Tribunal for a long time, their business has not been doing well and therefore, they sought for imposing of a lessor fine. Further, the learned Special Public Prosecutor submitted that though such a plea was made by the respondents / accused 2 to 13 at the time of questioning, no special or adequate reason had been recorded by the Trial Court in its Judgment for imposing the sentence less than six months as indicated in the proviso, which reads as follows:

> "*Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for a term of less than six months;"*

9. Mrs.S.Srimathy, learned counsel appearing for the respondents / accused submitted that they had preferred an appeal in Appeal Nos.C/960 to 971 / 1998, challenging the Order-in-Original No.1 of 1998, dated 29.01.1998, passed by the Commissioner of Central Excise, Madurai, and that the Customs, Excise and Service Tax Appellate Tribunal, Southern Region Bench, Chennai, by order dated, 27.01.2005, had remanded all the matters to the Jurisdictional Adjudicating Authority to examine the aspect of violation afresh and against that order, the Department had filed Civil Miscellaneous Appeals, which were dismissed by the Hon'ble Division Bench of this Court and that the matters are now pending for adjudication before the Commissioner of CGST and Central Excise, Madurai and prayed that this court may take into consideration the long lapse of time and thereby instead of remanding the matter may accept the reasons given by the respondent/accused and confirm the Judgement of the Trial Court.

10. With regard to the above submission of the learned counsel for the respondents / accused, the learned Special Public Prosecutor for the petitioner submitted that the above said adjudication is in respect of recovery of duty, whereas the conviction is in respect of criminal offences committed under the provisions of the Central Excise Act and therefore, it may not be taken as a special reason or adequate reason for imposing a lesser sentence much less that when no special or adequate reason to the contrary is recorded in the Judgment, the Judgment is bad in law. The learned counsel for the petitioner / complainant, in support of his contentions, placed reliance upon the following decisions:

(i) ***State of M.P. vs. Munna Choubey and another***, reported in ***(2005) 2 Supreme Court cases 710;***
(ii) ***State of M.P vs. Bala alias Balaram,*** reported in ***(2005) 8 SCC 1***; and
(iii) ***Savarala Sai Sree vs. Gurramkonda Vasudevarao and others***, reported in ***(2014) 2 SCC 485.***

11. In ***Munna Choubey***'s case (cited supra), it has been held as follows:

> *"12. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a singly grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportional punishment has some very undesirable practical consequences.*
>
> *....*
>
> *....*
>
> *15. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. Where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences of taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence*

inbuilt in the sentencing system.

...

...

20. In order to exercise the discretion of reducing the sentence the statutory requirement is that the court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and not straitjacket formula can be indicated. What is applicable to trial courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The only reason indicated by the High Court is that the accused belonged to rural areas. The same can by no stretch of imagination be considered either adequate or special. The requirement in law is cumulative.

21. Considering the legal position as indicated above the High Court's order is clearly unsustainable and is accordingly set aside. The respondents are directed to surrender to custody forthwith to serve the remainder of the sentence. The appeal is allowed to the extent indicated."

12. In ***Bala alias Balaram***'s case (cited supra), it has been held as follows:

"15. This Court has on a number of occasions indicated that the punishment must fit the crime and that it is the duty of the court to impose a proper punishment depending on the degree of criminality and desirability for imposing such punishment. In Earabhadrappa v. State of Karnataka this Court observed: (SCC p.341, para 14)

"A sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders."

In Rajendra Prasad v. State of U.P Justice Sen stated: (SCC p.708, para 195)

"Judges are entitled to hold their own views, but it is the bounden duty of the court to impose a proper punishment, depending upon the degree of criminality and the desirability to impose such punishment as a measure of social necessity, as a means of deterring other potential offenders."

16. It is not necessary to multiply authorities. In a recent decision in State of M.P. v. Munna Choubey this question has again been dealt with. This Court observed: (SCC p.716, para 15)

"15.Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. Where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences of taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."

13. In ***Savarala Sai Sree***'s case (cited supra), it has been held as follows:

"7. *In view of the above, we are not able to understand as to under what circumstances without recording any reason whatsoever it was permissible for the trial court to award the sentence of less than five (5) years. Awarding of punishment of 3 months by the trial court was hopelessly disproportionate particularly in view of the fact that no mitigating circumstance has been pointed out by the trial court. The High Court failed in its duty to take up the matter in its revisional power under Section 401 read with Section 386(e) of the Code of Criminal Procedure, 1973 and enhance the punishment commensurate to the offence committed by them. We are appalled that the High Court reduced the sentence to four days.*

8. In State of U.P.v.Shri Kishan, this Court has emphasised that just and proper sentence should be imposed. The Court held: (SCC p.423, paras 8-9)

> *"8.....Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.*
>
> *9. The Court will be failing in its duty if appropriated punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'."*
> *(emphasis supplied)*

9. In State of Rajasthan v.Vinod Kumar, this Court while dealing with the issue of minimum sentence provided under the statute held: (SCC pp.780-81, paras 21-24)

> *"21. Awarding punishment lesser than the minimum prescribed under Section 376 IPC is an exception to the general rule. Exception clause is to be invoked only in exceptional circumstances where the conditions incorporated in the exception clause itself exist. It is a settled legal proposition that exception clause is always required to be strictly interpreted even if there is a hardship to any individual. Exception is provided with the object of taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded.*

> *22. The natural presumption in law is that but for the proviso, the enacting part of the*

section would be generally given such a construction which would make the exception carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide S.Sundaram Pillai v.V.R.Pattabiraman, Union of India v.Wood Papers Ltd., Grasim Industries Ltd. v. State of M.P.Laxminarayan R.Bhattad v.State of Maharashtra, IRDP v.P.D.Chacko and CCE v.Hari Chand Shri Gopal.)

23. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate / commensurate to the gravity of offence....The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused.... and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case.

24. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation ....The court while exercising the discretion in the exception clause has to record 'exceptional reasons' for resorting to the proviso. Recording of such reasons is sine qua non for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straitjacket formula can be laid down."

14. Heard the arguments of both side counsels and carefully and consciously gone through the records on file.

15. It is seen that the Trial Court having found the respondents / accused guilty under the relevant provisions of the Central Excise Act failed to ensure compliance with mandatory requirement, but awarded the punishment till raising of the Court, which is lesser than the minimum prescribed under the Act. In order to exercise desertion of reducing the sentence, the statutory requirement is that the Court has to record special and adequate reason in the Judgment, which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be special, but also adequate. In this case absolutely no reason has been recorded by the Trial Court for awarding such a sentence. Such an order is violative of the mandatory requirement of law and has defeated the legislative mandate.

16. Undoubtedly, the imposition of sentence is in the realm of the discrimination of the Court. However, when law prescribes that there shall not be a lessor sentence than what is prescribed in the absence of special and adequate reasons to the contrary, which has to be recorded in the judgement, the order of imposing sentence till the raising of the Court without recording any special or adequate reasoning is an order violative of the mandatory requirement of law.

17. In view of the above, the criminal revision petition is allowed and the matter is remanded back to the file of the Trial Court to determine the quantum of sentence / punishment afresh. However, it is open to the petitioner to place relevant materials before the Trial Court with regard to the mitigating circumstances in respect of seeking lesser sentence and the learned Trial Judge shall pass orders after examining the submissions made by the petitioner in the light of the discussions made above and decide the matter on merits in accordance with law. The learned Trial Judge is directed to issue summons to the respondents / accused within a period of two weeks from the date of receipt of a copy of this order and thereafter, complete the hearing in respect of the quantum of sentence within a period of two months from the date fixed for hearing.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To:
The Additional Chief Judicial Magistrate,
Madurai.

Copy to

The section Officer,
Criminal Side Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Arul Adivel @ Sekar, Advocate Sr.No.85006
+1.C.C.to M/S.S.M.S.JOHNY BASHA,Advocate SR.No.33733

IA

VB/SKN/RSK/SAR2/22/11/2017/12P/5C

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