

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-No.515-SBA OF 2002
DATE OF DECISION : 21st NOVEMBER, 2017

Assistant Collector of Customs and Central Excise, Patiala

.... Appellant

Versus

M/s. Buta Singh and Company

.... Respondent

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Sanjeeva Kumar, Advocate for
 Mr. Saurabh Goel, Advocate for the appellant.

 None for the respondents.

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A. B. CHAUDHARI, J. (Oral)

Being aggrieved by the judgment dated 09.02.1999 passed in Case No.180-3 of 1993 arising out complaint under Sections 9 and 9-AA of the Central Excise and Salt Act, 1944, the present appeal was filed by the Assistant Collector of Customs and Central Excise, Patiala, in this Court against the acquittal of the respondents-accused.

The appeal against respondents No.5 and 9 already stands dismissed vide order dated 28.03.2017.

Heard learned counsel for the appellant.

In support of the appeal learned counsel for the appellant, vehemently argued that the trial Court went wrong in acquitting the accused when as a matter of fact there was trustworthy evidence produced by the prosecution. But the trial Court ignored the same and has wrongly acquitted the respondents-accused.

I have perused the grounds of appeal raised by the original complainant i.e. the present appellant. Numbers of grounds have been raised in support of the appeal by the appellant. However, I find that the trial Court observed in its order that though the witnesses had appeared at the stage of pre-charge evidence but when they were summoned for cross-examination, none chose to appear before the trial Court and therefore, their evidence could not be considered as it did not have any evidentiary value or sanctity. In other words, after filing of the complaint case before the trial Court the complainant and its witnesses shied away and did not turn up to the Court for cross-examination after pre-charge evidence were recorded. The finding recorded by the Court below in para 6 reads thus:

“6. The witnesses examined by prosecution in the pre-charge evidence were ordered to be summoned for further cross-examination but when no witness came present for some dates, accused made statement not to conduct further cross-examination of the witnesses and in view of that the standing counsel of the department closed evidence on behalf of the complainant.”

Learned trial Court further found that the case was one based on documentary evidence as stated in para 10 & 11 of the impugned judgment. Hence, the trial Court has recording its finding that the prosecution miserably failed to prove its case. I quote para 11 as under:

“11. The submissions of both the sides have been considered. No doubt as per statement Ex.P2 accused Buta is alleged to have named other

persons also as partners with him but other accused have denied any concern with the matter and no partnership deed or any document of any type regarding that point has come on the file. Even there is no proof of hiring any Saw mill or payment of any electricity charges by the alleged company. In pursuance of the statement of Buta Singh of recorded on 15.11.1989 nothing has been recovered from the accused to connect them with the offence for which they were charge-sheeted. Therefore, it is to be held that prosecution failed to prove guilt home to the accused free from any reasonable shadow of doubt, so accused are acquitted giving the benefit of doubt.”

It appears that after filing of the criminal case before the trial Court the complainant and its witnesses did not turn up to the Court for their cross-examination. There was no alternative for the trial Court except to dismiss the complaint and to acquit the accused. The reasons given above are good enough to record the order of acquittal. In the result, I find no merit in the present appeal. Hence the same is dismissed.

21st NOVEMBER, 2017
‘raj’

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>