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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.L.P. 419/2010

UOI ..... Petitioner

Through: Mr. Pramod Bahuguna and Ms. Kavita, Advs.

versus

SANJEEV KUMAR & ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

O R D E R

% **24.03.2017**

By this petition under Section 378 (IV) of the Code of Criminal Procedure, 1973, petitioner has prayed for grant of leave to appeal against the acquittal of respondent no.1 under Sections 132 and 135(1)(a) of the Customs Act, 1962 (‘the Act’, for short) and acquittal of respondent no.2 under Section 135(1)(a) of the Act. It is noted that another accused Sukhdev Singh Minhas died during the pendency of trial.

As per the petitioner, Customs officers posted at IGI Airport, New Delhi recovered and seized 127 gold biscuits collectively weighing 14,696.600 grams valued at ₹69,07,402/-, medicinal powder weighing 18.205 kgs valued at ₹28,58,185/-, five video cameras and other electronic goods worth ₹2,46,000/- from the possession of respondents, who had arrived at Delhi Airport from Hong Kong via Bangkok. Respondents had not declared the goods, which they were carrying, to the Customs officers, in order to fraudulently evade the custom duty on the above-mentioned articles. Two independent witnesses were joined. Panchnama was prepared and statements of accused under Section 108 of the Act were recorded. It is noted that statements were later on retracted by the respondents. Statement of one Rajiv Kataria was also recorded, who was co-possessor and to whom respondent no.2 had assured that he would help him getting customs clearance.

Trial court has noted that petitioner had failed to examine the public witnesses except PW6 Rajiv Kataria who, in his cross-examination, stated that he had no idea as to whether he had tendered his statement Ex. PW2/A to customs officer on his own or at the request of customs officers. However, later, in his cross-examination, he admitted that whatever was recorded in his statement Ex. PW2/A was at the instance of Customs officers. Statement of PW6 is of no help to the prosecution since he has stated that it was at the behest of customs officers. As per the petitioner, a certified goldsmith was called at the spot, who weighed and tested the purity of 127 pieces of gold recovered from the baggage of respondent no.1, however, the said goldsmith was not produced in the witness box. In his absence it remained unproved whether the material recovered was in fact gold. In view of the above, it was unsafe to convict the respondents only on the basis of a retracted statement. I do not find any perversity in the view taken by the trial court.

For the foregoing reasons, I do not find it to be a fit case for grant of leave to appeal to the petitioner. Petition is dismissed.

A.K. PATHAK, J.

MARCH 24, 2017

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