IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.201 OF 1999

Shri R.V.Panse,
Sup. Of Customs,
Pune ....Appellant
V/s.

1 Shri D.S.Bhopani
B-Block, 31, Room No.21,
Pimpari, Pune 411 017

2 The State of Maharashtra ....Respondents

Ms. Ameeta Kuttikrishnan, Advocate for Appellant.
Ms. J. Menezes i/by Shri K.S.Patil, Advocates for Respondent No.1.
Mrs. A.S.Pai, APP for the Respondent No.2-State.

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CORAM :- SANDEEP K. SHINDE, J.

DATE :- 5TH FEBRUARY, 2018.

ORAL JUDGMENT :-

1 The Superintendent of Central Excise and Customs (Preventive) Head-quarters, Pune has preferred this appeal against the judgment and order dated 16.1.1998 passed by the Chief Judicial Magistrate at Pune in Regular Criminal Case No.6 of 1991 whereby the Respondent-Accused was acquitted of the offence punishable under Section 135(1)(b)(i)(ii) of the Customs Act, 1962.

2 Heard the learned counsel for the Appellant. Perused the records and proceedings. That after obtaining the sanction as required under section 173 (1) of the Customs Act, 1962, one Mr. M.P.Kulkarni filed a complaint in the Court of Chief Judicial Magistrate, Pune for the contravention of Section 111 of the Customs Act, 1962 which came to be registered as Criminal Case No.6 of 1991. It is the complainant's case that on the basis of information, the Central Excise and Customs Officer (Preventive), Head-quarter Pune kept surveillance in the morning of 27.4.1988 on the Mumbai-Pune highway and intercepted one Maruti Car bearing No.MVM-9151 and Maruti Van bearing No.9001. On inquiry, it was learned that accused and other occupants travelling in the said vehicles were carrying in their baggage goods of foreign origin and as such, they were brought to the Customs Office situated at Pune. It is the complainant case that on the examination of baggage produced by the accused who travelled by Maruti car bearing No.MVM 9151, goods of the foreign origin were recovered from the personal baggage which were found to be possessed by him illegally and without valid and proper documents valued at Rs.64,145/-. The officers, therefore, held reasonable belief that the goods seized under the seizure panchanama were smuggled goods which were

transported in Maruti Vehicle bearing No.MVM 9151 worth Rs.75,000/- and accordingly, seizure panchanama was drawn with annexures A and B. It is the Complainant's case that the accused had imported said contraband goods in commercial quantity for commercial purpose under the guise of personal use under the Baggage Rules and as such, contravened provisions of Sections 11 and 111 of the Customs Act, 1962. It is the complainant's case that the accused had illegally acquired the said goods of foreign origin which he knew or had reason to believe that the said goods were of foreign origin were liable to confiscation under Section 111 of the Customs Act, 1962 punishable under Section 135(1)(b)(i)(ii) of the Customs Act, 1962.

3 It appears that the adjudication proceedings were concluded and the penalty of Rs.1 Lakh was imposed by confiscating all the goods and the car was released on payment of redemption fine of Rs.25,000/-.

4 That on the aforesaid premise, subject complaint was filed.

5 Prosecution in support of its case examined P.W.1, Mr. Waval who had drawn the panchanama. It is the defence of the accused that he had paid necessary custom duty amounting to

Rs.14,680/- on 27.4.1988 issued by the Customs Bombay Airport a day on which his car was intercepted by the officers of the Complainant. As it appears the case of the prosecution is that accused had imported foreign goods by escaping customs duty. It is the evidence of the PW.1 that the accused could not give satisfactory explanation about the possession of the excess goods than what he had declared to the Customs and the Airport and as mentioned against the receipt at Exhibit 36 dated 27.4.1988.

6 The learned trial Judge acquitted the accused principally on two grounds. Firstly, that along with the accused, three other persons who were occupants of the Maruti vehicle were also interrogated and goods of the foreign origin were recovered from them; however, panchanama which was drawn was common and, therefore, goods of foreign origin recovered from the accused herein were mixed with the goods recovered from the other accused and as such, the Prosecution has failed to give correct account of the excess goods allegedly found in possession of the present accused.

7 That with the assistance of the learned APP, I have gone through the Exhibit 36, i.e., declaration-cum-receipt showing the duty of Rs.14,680/- paid by the accused on 27.4.1988 to the Customs Bombay Airport and the Exhibit 38 a common panchanama

drawn by the officers of the Complainant. It appears from the panchanama and annexures appended thereto that the goods of the foreign origin recovered from each of the persons, who were travelling in the said motor vehicles were distinctly identified. In other words, so far as the the present accused is concerned, goods recovered from his possession were distinctly identified in annexure A and B to the said panchanama at Exhibit 38. In view of this fact, the observation and conclusion drawn by the learned trial Judge that the officers could not identify the quantity of the goods recovered from the accused is incorrect.

8 The question to be answered is, whether the Complainant has proved that the accused had imported foreign goods in excess of the customs duty. The Complainant has relied on the two documents; the first one is Exhibit 36, a receipt issued by the Customs, Bombay Airport dated 27.4.1988 describing certain goods imported by the accused and another at Exhibit 38 panchanama drawn by the officers of the complainant, on the same day i.e. 27.4.1988 after interception while travelling from Mumbai to Pune.

The Complainant simply produced and relied upon the receipt at Exhibit 36 without examining the author of the said receipt and/or proving contents thereof. It is an admitted fact that Airport Custom Officer who had drawn the receipt at Exhibit 36 was not examined by the Complainant. In fact, the said receipt at Exhibit 36 has laid the foundation of prosecution's case and, therefore, the Prosecution ought to have examined the customs officer, who was the author of the said receipt at Exhibit 36. No doubt that the panchanama at Exhibit 38 and particularly annexure B shows as many as 18 items possessed and seized from the accused as against 8 items for which duty was paid by the accused at the Customs Bombay Airport. With the assistance of the learned APP for the Complainant, I have gone through the receipt at Exhibit 36. One column in receipt quantifies number of goods. This receipt does not show quantity of goods imported against three articles. One of the items as described in Exhibit 36 is “Miscellaneous Goods” of which valuation was shown at Rs.500/- and rate of duty 245%. Yet another item described in Exhibit 36 is textiles of which valuation is Rs.400/- and the rate of duty is 345%. Prosecution has not explained kind of miscellaneous goods imported by the accused against which custom duty was paid. In fact, the prosecution ought to have examined the author of the Exhibit 36 which could have facilitated the prosecution to draw correct amount of the goods imported by the accused of which he gave declaration to the Customs Bombay Airport. Having not examined the author of the said receipt, the view taken by the learned Trial Judge that the Exhibit 38 annexure B itself was not sufficient to prove that the accused had imported goods in excess of the goods cannot be faulted with.

9 Thus, I am of the view that no case is made out for interference with the order of the acquittal passed by the learned trial Court. That even otherwise, the view taken by the trial Court in ordering the acquittal was plausible and reasonable one and as such, the Court sitting in the appeal is not expected to substitute its own view having found the view taken by the learned trial Court was plausible and reasonable one. I am not inclined to interfere with the order of the acquittal passed by the learned trial Court.

10 In the result, the Appeal is dismissed and disposed of accordingly.

(SANDEEP K. SHINDE, J.)