IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 700 OF 2000

Assistant Commissioner of Customs
Marine and Preventive Wing,
Everest House, Marine Lines, Mumbai ...Appellant

: V E R S U S :

1. Mohammed Sultan Abdul Rehman
Mapari, Address : Room No.15, 3rd
Floor, Nasir Palace, Dockyard Road,
Mumbai-400 010.

2. Ali Wajiuddin Parkar,
Address : Mumbai, Add : R.No.9, 3rd
Floor, Abdulla Mansion, M.A. Sarang
Marg, Mumbai-400 009.
Other Address :Chiweli Village,
Post : Chiweli, Taluka-Chiplun,
Dist : Ratnagiri (Appeal abated against
Respondent no.2 as per Court's order
dated 09/10/2015.

3. State of Maharashtra
(represented by the Government
Pleader (A.S.) High Court, Bombay ....Respondents
(Respondent no.1 & 2)
Original Accused nos.1
and 3 respectively)

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Mrs. Anuradha A. Mane, Special Public Prosecutor for the appellant.

Mr. Ashok B. Tajane, Advocate for respondent no.1.

Mr. K.V. Saste, Additional Public Prosecutor for respondent no.3, State.

CORAM :- SANDEEP K. SHINDE, J.

DATE :- 6TH FEBRUARY, 2018.

JUDGMENT :-

1. Assistant Commissioner of Customs, Marine and Preventive Wing, Bombay has preferred this Appeal against the judgment and order dated 11th October, 1999 passed by the Additional Collector of Customs, 8th Court, Esplanade, Mumbai in C.C. No. 15/CW/88 whereby the accused nos. 1 and 3 were acquitted of the offences punishable under Section 135(1)(a) and 135(1)(b) of the Customs Act, 1962 and 5 of the Imports Exports (Control) Act, 1947 read with Sections 34 and 120-B of the Indian Penal Code.

2. It appears from the record that the case of original accused no.2 was then separated. It also appears

from the record that, in terms of the order dated 9th October, 2015 passed by Hon'ble Dr. Shalini Phansalkar-Joshi, J, Appeal stood abated against respondent no.2.

3. It is the complainant's case that, accused no.1 imported goods of foreign origin at the instance of accused no.2 under the Transfer of Residence (T & R) facility. The complainant, however, found that, though the said goods landed in India, none came forwarded to claim the said goods. That while carrying out the investigation in another case of contraband goods, the Officers of Marine and Preventive (Wing) of Customs located two containers which had come on the ship, Lakoti Express Voy No.25E. One of these containers among other packages contained seven packages having marking "MAPARI BOMBAY". All these packages were booked at Dubai in the name of accused nos.1 and 2. Among these goods, were electrical items like Refrigerator, Air-Conditioner etc. which according to the complainant were absolutely brand new and were not used items. The total value of the goods

recovered from the said unclaimed packages was Rs.7,81,540/-. Since all the goods constituted contraband and no one came forwarded to claim the said goods, the same were seized by Officer, S.B. Karmalkar in the reasonable belief that, they were smuggled into India and as such liable for confiscation under the Customs Act, 1962.

4. The investigation revealed that, the goods so seized were consigned to accused no.1 purporting to be under the T.R. facility and as such he was directed to remain present before the Superintendent of Customs , C.I.U., M & P Wing, Bombay with all the relevant papers and documents relating to the consignment goods in his name from Dubai.

5. In the course of the investigation, the statement of accused no.1 was recorded and after collecting the evidence, complaint came to be filed alleging that all the accused had conspired to import the seized goods in contravention of the provisions of Import

(Control) Order and in pursuance of the said conspiracy, the said goods which belonged to accused no.2 were consigned in accused no.1's name and accused no.1 agreed for the same for the monetary consideration and in pursuance of the said conspiracy, accused no.3 was to receive the said goods at Bombay after they were cleared from the customs. Therefore, all the accused were prosecuted for committing the offence punishable under Section 120B of the Indian Penal Code, as also, for the offence under Section 5 of the Imports and Exports (Control Act), 1947, as well as, for the offence punishable under Section 135(1)(a) of the Customs Act, 1962.

6. The complaint was registered as Criminal Case No. 15/CW/88. The Learned trial Judge after appreciating the oral, as well as, documentary evidence, acquitted accused nos.1 and 3 of all the offences for which they were charged, by judgment and order dated 11th October, 1999.

7. Aggrieved by the said judgment and order

of acquittal, this Appeal is preferred. The Appeal was admitted and notices issued to the respondents.

8. Heard Learned Counsel, Mr. Mane for the appellant and Mr. Tajane, Learned Counsel for respondents no.1 and 3.

9. Perused the evidence and the records and proceedings. It appears from the evidence that on the basis of the investigation carried out in another case, Intelligence Officers, Marine and Preventive Wing of Customs, located two containers which had come on the ship, Laktoi Express Voy No.25E, wherein two containers containing seven packages marked as "MARINE BOMBAY" were booked at Dubai in the name of accused no.1. P.W.3, Inspector of Central Excise, Babu Bhanushankar Pandit stated in his evidence that on 6th February, 1985 he went to unaccompanied baggage centre at Indira Dock and on 7th February, 1985 removed the packages which were lying in the warehouse of the Indira Dock which had come on the ship, Lakotoi Express

No.25 from Dubai. He, however, stated that these packages had markings, "MAPARI-BOMBAY" and were booked in the name of the accused no.1, Mohammed Sultan. His evidence shows that, he removed those packages from Indira Dock to Customs Godown which is known as "Todi Godown" at Lower Parel. Thus, the evidence of this witness, proves the fact that, on 7th February, 1985 he removed the subject goods from Indira Dock to Customs Warehouse.

10. The complainant had examined, Umesh Palav, P.W.4 who was working as a custodian of a Customs Warehouse of Todi, Lower Parel. He had produced the register of the seized goods and disposed of goods in the trial Court and deposed that the goods seized in the case no. CIU/II-27/85 (the goods in question) were deposited in the godown on 5th March, 1985.

11. The evidence of the P.W.3 has proved the fact that goods have been removed on 7th February, 1985 and P.W.4 in evidence asserted that these goods were

deposited in the Customs Godown on 5^{th} March, 1985. He had also produced the Register on Record. The question, that arises is, with whom the subject goods were lying between 7^{th} February, 1985 to 5^{th} March, 1988. The prosecution has neither answered this issue, nor clarified it by placing on record, evidence of any kind. At the same time, the evidence of P.W.1 who had inspected the goods would be relevant. P.W.1, Karmakar, Inspector of Central Excise would say that he examined the subject goods in the godown at Lower Parel on 9^{th} April, 1985. It is difficult to conceive a fact that, he would examine the goods on 9^{th} February, 1985 at Customs House as the evidence of P.W.3 has proved that the goods were deposited in the Customs House on 5^{th} March, 1985. The prosecution has not explained this anomaly, either in evidence or otherwise. Nobody knows who was in the custody of the subject goods from 7^{th} February, 1985 till 5^{th} March, 1985.

12. In the circumstances, I do not see any reason

to hold that the trial Court has committed any error in appreciating the evidence and recording the order of acquittal against accused nos.1 and 3. The view taken by the Learned trial Judge is a plausible and reasonable and as such no interference is called for. In the result, the Appeal fails and is dismissed accordingly.

(SANDEEP K. SHINDE, J)