IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 101 OF 2016

Dawa Injung … Applicant

Versus

Investigating Officer, CBI, ACB
Colaba, Mumbai & Anr. … Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 100 OF 2016

Suresh Shetty … Applicant

Versus

Investigating Officer, CBI, ACB
Colaba, Mumbai & Anr. … Respondents

WITH
CRIMINAL REVISION APPLICATION NO. 99 OF 2016

Devendra Ramesh Verma … Applicant

Versus

Investigating Officer, CBI, ACB
Colaba, Mumbai & Anr. … Respondents

Mr. A. M. Sachwani for Applicant.
Mr. H. S. Venegavkar for Union of India.
Mrs. N. S. Jain, APP for State.

CORAM : NITIN W. SAMBRE, J.
DATE : APRIL 19, 2018.

P.C. :

. All these Revisions are arising out of the rejection of prayer of the Applicants – Public Servants seeking discharge from Special Case (CBI) No. 89 of 2011 vide impugned order passed by the Special Judge (CBI), City Civil & Sessions Court, Greater Bombay on 5th January 2016. All the Applicants are claiming to be the Accused in a crime punishable under Sections 120B read with Section 420 and 511 of the Indian Penal Code and Section 13(2) read with 13(1) (d) and 15 of the Prevention of Corruption Act, 1988.

2. The Applicants – Accused were chargesheeted on 7th December 2011. Since all the Accused persons are chargesheeted in the same crime and the role alleged to each of them is inter-connecting, the nature of allegations are almost similar, the Criminal Revisions are decided by this common order.

3. In Criminal Revision Application 99 of 2016 Applicant - Devendra Ramesh Verma is chargesheeted as Accused No.3 in the aforesaid crime. At the relevant time, the Applicant claimed to have posted as Superintendent of Customs (Prev.) and is a certifying Officer. So far as Criminal Revision No. 100 of 2016 is concerned, the Applicant in this Revision namely, Suresh Shetty was posted as Inspector, Central Customs (P.O.), who has made relevant entry without verifying the contents of the cargo, whereas the Applicant namely, Dawa Injung in Criminal Revision Application No. 101 of 2016 is concerned, he was posted at the relevant time as a Superintendent, Customs. The case of prosecution is Applicants in connivance with the Accused firms M/s. Amreen Impex of Mumbai, M/s. Nandi Overseas along with M/s M. D. Shipping Agency dishonestly and fraudulently cheated the Government exchequer by causing wrongful loss to the Revenue to the tune of Rs. 21,76,909/-.

4. According to the prosecution case, the goods in question were owned by M/s Nandi Overseas and M/s. Amreen Impex. The Customs preventive unit of Nhava Sheva intercepted the goods certified by all the

Accused persons. Upon physical verification, what is noticed is the weight of the goods on the shipping bills was declared 23,596 Kgms., whereas actual gross weight of the cargo was found to be 3392.9 Kgms. only. From the above serious discrepancy it is noticed that the Applicant Suresh Shetty, Inspector (PO) did not personally examine the goods physically, pursuant to the instructions given in the EDI System and fraudulently noted in the Examination Report in the computer system of having physically inspected, checked the goods. According to the prosecution, he concealed the fact that the said goods were mis-declared, as upon physical verification by Preventive Department, it was noticed that actual goods are altogether different than the one declared for charging the duty for export.

5. The Applicant Devendra Verma, Superintendent of Customs (Prev.) accepted the aforesaid Examination Reports and issued Let Export Order (LEO) on the basis of the said Reports. So far as the Applicant – Dawa Injung is concerned, at the relevant time he was Superintendent of Customs and both these applicants have abused their official position by dishonestly issuing Let Export Order for export of mis-declared goods. The

cargo which is sought to be actually exported are Rubber strips which are other than the goods declared. The weight of the goods is also concealed.

6. After considering the aforesaid factual background, the leaned Special Judge, C.B.I. Court rejected the prayer of the applicants/accused for discharge moved under Section 227 of Criminal Procedure Code by observing that the conduct of the present applicants can not be termed to be bona-fide. The learned Judge then proceeded to observe that the conduct of the present applicants in the backdrop of provision of Section 155 of the Customs Act can not be held to be in good faith and in discharge of their official duties. The learned Court below is further pleased to observe that the intention of the present applicants were bona-fide of conduct can be appreciated only after considering the oral evidence.

7. In the aforesaid background, the learned Counsel for Applicants would urge that the Applicants – Accused persons were appointed pursuant to the provisions of Section 3, 4, 5 of the Customs Act, 1962 (hereinafter be referred to as 'the Act' for the sake of convenience). According to them, sanction to prosecute the Accused persons was issued

in mechanical manner, though the criminal act alleged is arising out of discharge of official duty. According to Applicants the act formed to be basis for initiation of prosecution is in good-faith as such they are entitled for discharge in view of provision of Section 155 of the Customs Act.

8. A submission is also made that pursuant to the provisions of Section 155(2) of the Act, the prosecution should have been initiated within a period of three months from the accrual of cause of action. Since the said provision bars, the initiation of such proceedings after the expiry of period of three months, in absence of service of one month notice in writing of present proceedings. According to them, apart from above, since the act done by the Accused persons is in discharge of their official duty, the provisions of Section 136 of the Act are very much available to them and as such they are entitled for discharge.

9. *Per contra*, Mr. Venegaonkar, the learned Counsel for the Respondent – Union of India, has tried to justify the prosecution of the Accused persons by relying upon the certain documents which are part and parcel of the chargesheet. According to him, Gurmit Singh, Asif Kachhi, Sameer Sehgal, Deepak Joshi and Ramesh Singh attempted to

cheat the Revenue by false declaration of goods for export and the present Applicants – Accused have helped the other Accused persons in achieving their illegal goal. He would then urge that the prosecution is initiated against the Accused persons within the statutory period. There is a strong, prima facie evidence against the Accused of their involvement in the crime in question. He would then urge that whether the act is done by the Accused persons in good-faith and in discharge of their official duty are the issues which can be appreciated only after recording and appreciating the oral evidence recorded in the trial. He sought dismissal of all the Criminal Revision Applications.

10. Considered rival submissions. Perused the panchanama dated 30th August, 2008 and 11th September 2008. The Customs (Preventive), Mumbai intercepted certain goods about which they had secrete inputs about furnishing incorrect declaration. It was noticed that the present Accused persons have in connivance with the other private exporters made entries of incorrect declaration and secured the goods for export.

11. The most glaring factor of which at this stage, the Court must take judicial note of, the goods which were declared for export upon

physical verification found in the cargo are Rubber strips. So far as the weight of the said cargo is concerned, the prosecution has noticed that the declared weight of the goods to be exported was 23,596 Kgms as against the actual weight of 3392.9 Kgms. As such, the actual weight is almost seven times less than the weight declared. As such, it is really difficult to accept that the goods were verified and were found to have been matching with the declaration made for levying the customs duty. This conduct of the accused of deliberately accepting the false declaration i.e. about physical weight, nature of goods to be exported in any case can not be termed asan act in discharge of statutory duty, performed in good-faith.

12. It is not in dispute that all the Applicants before this Court have in their official capacity certified the said goods to be fit for export knowingly by accepting the false declaration given by the exporter. The fact remains that though required under official instructions, and shown on record, the applicants neither have physically verified the goods as required in discharge of their official duty which is considered to be a mandatory nor the superior officials checked the same diligently. From the investigation, it can be noticed that all the applicants/accused have

intentionally shown latitude for their personal gain by causing loss to the Revenue. This Court has already noted herein above that nature of goods and weight of the goods in the declaration with that of the actual one is varying to a great extent which speaks voluminous about the conduct of the present Applicants. The variance in weight can be noticed by naked eye.

13. In the aforesaid background, the material brought on record during the investigation, leave no doubt to this Court to infer at this stage, that the act of the Applicants of certifying the false declaration cannot be termed to be arising out of discharge of their official duty and is in good-faith. That being so, the privileges claimed by the Applicants under the provisions of the Act, in my opinion, are not available at this stage particularly when it cannot be inferred from the record viz – the chargesheet that the act of the Applicants is *bona fide* and was in discharge of their official duties and is in good-faith. Rather their conduct referred above smack *mala fide* approach and also smacks *mens rea*.

14. The next contention of the present Applicants is, they are entitled for discharge in view of the fact that the prosecution was not

initiated within the time stipulated i.e. within three months from the date of accrual of cause of action and notice of one month as contemplated under Section 155 (2) of the Customs Act was not served. If the aforesaid submissions are to be appreciated, once this Court having noted that the Applicants - Accused cannot be termed to have carried out alleged act of clearing the goods for export in discharge of official duty, the said contention of the Applicant that the prosecution initiated against them is barred by limitation i.e. initiated beyond period of three months from the date of the accrual of the cause of action is also liable to be rejected.

15. The learned Counsel for the Petitioner has relied upon the Judgment of the Apex Court in the matter of ***Public Prosecutor, Madras V/s R. Raju and Another***, ***decided on 8th August 1972 in Civil Appeal Nos. 194 and 195 of 1969***. The submission of the learned Counsel for Applicants is under the Central Excise and Salt Act, 1944. Sub-section 2 of Section 40 is *pari materia* with Section 155 of the Act.

16. So far as the facts of the said case are concerned and the submissions made with the facts of the present case, in my opinion, the Applicants have failed to demonstrate the date of accrual of actual of

cause of action as contemplated under Section 155 of the Customs Act. In the wake of above, the said Judgment, in my opinion, is hardly of any assistance to the Applicants. The Act of accepting false declaration with criminal intention, in my opinion, cannot be termed as an act purporting to be done in pursuance of the Customs Act.

17. Apart from above, the Applicants have also relied upon the Judgment of Calcutta High Court in the matter of ***Ashok Kumar Singh V/s State of West Bengal & Anr. Decided in CRR No. 4062 of 2009 on May 19, 2016,*** which is based on the provisions of Section 40 (2) of the Central Excise and Salt Act. In view of the observations made herein above, in my opinion, even the said Judgment will be of hardly any assistance to the Applicants.

18. In the backdrop of observations made herein above, in my opinion, no case for interference is made out, particularly failure to exercise jurisdiction.

19. In view of above, all these Revisions lack merit and are dismissed accordingly.

20. It is needless to observe that the observations made herein above shall not influence the proceedings in the trial on merit, as the observations are *prima facie* in nature.

(NITIN W. SAMBRE, J.)