

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 92 OF 2016
(FOR LEAVE TO APPEAL)

Union of India,
through the Assistant Director,
Directorate of Revenue Intelligence,
New Marine Lines, Mumbai.

...Appellant

Vs.

Kishore Narayan Babale and Ors.

...Respondents

Mr. Natarajan Narayanaswamy for Appellant
Mr. A.M. Sachwani for Respondent Nos.1 and 2
Ms. R.M. Gadhvi -APP for the State

CORAM : PRAKASH D. NAIK, J.
DATE : 19 JANUARY, 2018.

P.C. :-

1. This is an application seeking leave to file an appeal against the judgment and order dated 11th April, 2016 passed by the Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. Respondent Nos.1 and 2 were prosecuted for the offences punishable under section 135(1) (a) (i) and 135 (1) (b) (i) of the Customs Act, 1962 and also under section 120B of the Indian Penal Code. After the evidence was led by the prosecution, the Respondents Accused were acquitted.

2. The learned counsel for the Appellant submits that the trial Court has committed an error in passing the judgment of acquittal. The evidence

of PW-1 and other witnesses was sufficient to prove the prosecution case. It is further submitted that the Trial Court has not considered the rigours of section 139 and 138 of the Customs Act.

3. The learned Advocate for the Respondents submits that there was no evidence to convict Respondent Nos.1 and 2. The Trial Court has passed a well reasoned order. The panchnama was not proved. The alleged articles were disposed of and no proof was shown. The order of acquittal cannot be inferred unless the view expressed by the Trial Court is perverse. The learned Advocate for the Respondents submits that the prosecution was having sufficient time to establish their case since 1999 and, therefore, leave may not be granted in the absence of cogent evidence.

4. Considering the issues involved in the matter, I feel that the arguable questions are raised for granting leave to file an appeal. Hence, I pass the following order:

ORDER

(i) Leave to file appeal against the judgment and order dated 11th April, 2016 passed by the Additional Chief Metropolitan Magistrate, 19th Court is granted.

(ii) Appeal is admitted

- (iii) Hearing of the appeal is expedited.
- (iv) Call for the record and proceedings.
- (v) Liberty to the parties to apply for early date of hearing of the appeal.

[PRAKASH D. NAIK, J.]

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