IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 194 OF 2016

R.N. Singh ….Applicant
Vs.
Nafisa Hasan Ali Bastawala & Anr. ….Respondents.

WITH
CRIMINAL APPLICATION NO. 436 OF 2018
IN
CRIMINAL REVISION APPLICATION NO. 194 OF 2016

Nafisa Hasan Ali Bastawala ...Applicant
Vs.
Assistant Collector of Customs & Anr. ...Respondents.

Mr. A.S. Inamdar for the Applicant in Revision Application No. 194 of 2016.
Mr. Murtaza Najmi I/by Farida Najmi for the Respondent No.1 in Revision Application No. 194 of 2016.
Mr. Rahul Arote for the Applicant in Criminal Application No. 436 of 2018.
Mr. Amit Palkar APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 4th SEPTEMBER, 2018.

<u>P.C.</u>:-

The present Revision is directed against the Judgment and Order dated 13th January, 2016 passed by the learned Additional Sessions Judge/Special Judge (CBI), Greater Mumbai in Criminal Appeal No. 1076 of 2014 thereby, reducing the sentence of imprisonment imposed upon the Respondent No.1 by the Trial Court from six months of rigorous imprisonment to one month of simple imprisonment.

2 Heard the learned counsel for the Applicant and the learned counsel for the Respondent No.1. Perused the record.

3 The Respondent No.1 was convicted under Section 135 (1) (ii) of the Customs Act, 1962 and is sentenced to suffer rigorous imprisonment for six months and to pay fine amount of Rs.1,00,000/-, in default to further suffer rigorous imprisonment for three months by the Chief Metropolitan Magistrate, Esplanade, Mumbai in Case No. 140/CW/1997 by its Judgment and Order dated 18th November 2014.

4 Being aggrieved by the said Judgment and Order dated 18th November 2014, the Respondent No.1 preferred a Criminal Appeal No. 1076 of 2014 in the Sessions Court at Greater Mumbai. The Appellate Court, by the impugned Judgment and Order dated 13th January, 2016 was pleased to upheld the conviction of the Respondent No.1, however, reduced the imprisonment from six months of rigorous imprisonment to one month of simple imprisonment.

5 The learned counsel for the Applicant submitted that, the maximum sentence prescribed under Section 135 (1)(ii) of the

Customs Act is of three years of rigorous imprisonment and both the Courts below, have lost sight about the said fact. He further submitted that, the Trial Court at the first instance, ought to have imposed maximum sentence upon the Applicant in view of the gravity of the offence. He further submitted that, the Appellate Court has further committed error in reducing the sentence, therefore, this Court in revisional jurisdiction, may interfere in the said Order and may enhance the sentence imposed upon the Respondent No.1-Original Accused.

6 The record indicates that, the Respondent No.1 is about 66 years of age as of today. She has already undergone the sentence imposed upon her by the Appellate Court.

7 The learned Trial Court, so also the Appellate Court, have elaborately given reasons for imposing the necessary sentence upon the Applicant.

I find that, there is no illegality and/or error committed by both the Courts below while initially imposing the said sentence and subsequently reducing it to one month of simple imprisonment. There is no error either in law and/or on facts committed by both the Courts below.

8 I find that the present proceedings initiated by the Applicant-Department is not bonafide and is filed only with a view to cause undue harassment to the aged lady i.e. Respondent No.1. It is further to be noted here that, the conviction rewarded by of the Trial Court has been upheld by the Appellate Court and the conviction is maintained. The Applicant has preferred the present Revision for enhancement of the said sentence, which according to me is not proper and justified. The Application is devoid of merits and is accordingly rejected.

9 In view of the rejection of Revision Application, nothing survives in Criminal Application No. 436 of 2018 and is accordingly disposed off.

(A.S. GADKARI, J.)

S S Mashalkar Digitally signed by S S Mashalkar Date: 2018.09.06 14:14:23 +0530