IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.345 of 2016

Arising Out of PS. Case No.-27 Year-2013 Thana- GOVERNMENT OFFICIAL COMP. District- Muzaffarpur

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The Union Of India Through Directorate Of Revenue Intelligence, Regional Unit, Patna

... ... Petitioner

Versus

1. Lal Babu Sah Son of Rajendra Sah, Resident of Village- Ranha, Bintolia, P.S. Srinagar, Pujaha, District West Champaran.
2. Panalal Kumar Son of Jawahar Prasad, Resident of Village- Malahi Tola, P.S. Bairiya, District West Champaran.
3. Rupesh Prasad Son of Dhruv Prasad, Resident of Village- Malkauli Patkhauli, PS Bairiya, District -West Champaran.

... ... Respondents

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Appearance :
For the Petitioner : Mr.Manoj Kumar Singh
For the Respondents : Mr.Brij Kishore Mishra

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date : 27-06-2019

This revision application has been filed against the judgment and order dated 4.12.2015 passed by the 13th Addl. District & Sessions Judge, Muzaffarpur in Criminal Appeal No.81 of 2015, which was disposed of along with Cr. Appeal Nos. 59, 61 and 66 of 2015, an appeal filed by the Union of India for enhancement of quantum of sentence, has been dismissed.

2. Prosecution story is that DRI, Patna and Muzaffapur intercepted a Scorpio Vehicle and on search found fake 200 pieces of currency notes in Rs.1000/- de-nomination total value of Rs.02 lac, the same was seized and the apprehended persons were found

engaged in procuring, possessing and transporting of FICN smuggled from Bangladesh into India.

3. On the basis of the investigation conducted, a complaint case was filed by the Presiding Officer of Economic Offence Court, Muzaffarpur on 12.9.2013 .

4. The court after evaluating the oral evidence as well as documentary convicted respondent nos. 1 to 3, vide judgment and order dated 30.6.2015 and sentenced to three years R.I. and penalty of Rs.5,000/-.

5. Being aggrieved by that the Union of India has moved before the Sessions Judge in Cr. Appeal No.81 of 2015 for enhancement of quantum of punishment. At the same time, the respondent nos. 1 to 3 have also preferred Cr. Appeal Nos. 59, 61 and 66 of 2015.

6. Grounds for enhancement of of the quantum of sentence is that the learned lower court has not awarded sentence in conformity with the provision of law. The Government of India, vide notification no.43/2008-Customs (N.T.) dated 13.5.2008 has specified FICN as the goods falling in the category of prohibited goods for the purpose of Section 135 of the Customs Act, 1962, for which punishment of imprisonment for a term extending to seven years and with fine is prescribed.

7. It further appears that the learned appellate court vide judgment dated 4.12.2015 passed in Cr. Appeal nos. 59, 61 and 66 of 2015 dismissed the aforesaid appeal and also considered Criminal Appeal No.81 of 2015 filed by the Union of India for enhancement of quantum of sentence and dismissed the same on the ground that the fake Indian currency note is specified as prohibited goods from the day of notification of the Central Government, therefore, it appears that in the light of punishment provided in other case, the order of quantum of punishment is proper in accordance with law.

8. Being aggrieved by the same, Union of India preferred Criminal Revision Appeal, in which the respondent nos 1 to 3, who were convicts, were also made party and on notice they have also appeared.

9. The grounds for assailing the judgment passed by the appellate court is that though the appellate court has discussed that by provisions of Section 135 (1)(i)(C) of the Customs Act, 1962 fake Indian currency notes have also been brought under the prohibited goods but he has failed to consider that for prohibited goods, punishment of imprisonment for extending term of seven years and fine is prescribed. He come to a finding that fake Indian currency notes are specified as prohibited goods by notification of Central Government, therefore, it appears that in the light of

punishment provided in any other case, order of punishment is proper and in accordance with law. Government notification has also been shown by the learned counsel for the Union of India showing that fake Indian currency notes have been brought in the category of prohibited goods under Section 135 of the Customs Act, 1962 and Section 135 of the Customs Act, 1962 provides as follows : -

> *"135. Evasion of duty or prohibitions.—*
> *(1) Without prejudice to any action that may be taken under this Act, if any person—*
>
> *(a) is in relation to any goods in any way knowingly concerned in misdeclaration of value or in any fraudulent evasion or attempt at evasion of any duty chargeable thereon or of any prohibition for the time being imposed under this Act or any other law for the time being in force with respect to such goods; or*
>
> *(b) acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111 or section 113, as the case may be; or*
>
> *(c) attempts to export any goods which he knows or has reason to believe are liable to confiscation under section 113; or*
>
> *(d) fraudulently avails of or attempts to avail of drawback or any exemption from duty provided under this Act in connection with export of goods,*
>
> *he shall be punishable,*
>
> *(i) in the case of an offence relating to,-*
>
> *(A) any goods the market price of which exceeds one crore of rupees; or*

(B) the evasion or attempted evasion of duty exceeding (fifty lakh) of rupees; or

(C) such categories of prohibited goods as the Central Government may, by notification in the Official Gazette, specify; or

(D) fraudulently availing of or attempting to avail of drawback or any exemption from duty referred to in clause (d), if the amount of drawback or exemption from duty exceeds (fifty lakh) of rupees,

with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the court, such imprisonment shall not be for less than one year;

(ii) in any other case, with imprisonment for a term which may extend to three years, or with fine, or with both.]

(2) If any person convicted of an offence under this section or under sub-section (1) of section 136 is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to seven years and with fine:

Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court such imprisonment shall not be for less than [one year].

(3) For the purposes of sub-section (1) and (2), the following shall not be considered as special and adequate reasons for awarding a sentence of imprisonment for a term of less than [one year], namely:—

(i) the fact that the accused has been convicted for the first time for a reference under this Act;

(ii) the fact that in any proceeding under this Act, other than a prosecution, the accused has been ordered to pay a penalty

or the goods which are the subject matter of such proceedings have been ordered to be confiscated or any other action has been taken against him for the same act which constitutes the offence;

(iii) the fact that the accused was not the principal offender and was acting merely as a carrier of goods or otherwise was a secondary party to the commission of the offence;

(iv) *the age of the accused.]"*

10. In view of the above submissions of the learned counsel for the Union of India , learned appellate court has failed to appreciate the provisions as provided under Section 135 of the Customs Act, 1962 in the light of new notification, hence, the impugned judgment dismissing Cr. Appeal No.81 of 2015 suffers from impropriety and not sustainable in the eye of law.

11. Heard learned counsel for the O.P.nos. 1 to 3 also.

12. Learned counsel for the O.P.no.2 is unable to defend the impugned judgment relating to Cr. Appeal No.81 of 2015 .

13. Having heard both sides as only a limited question of law is involved in this case, which clearly shows that the learned appellate court while dismissing Cr. Appeal No.81 of 2015 has not considered the provisions of Section 135 of the Customs Act, 1962 in the light of notification no.43/2008/Customs (N.T.) dated 13.5.2008 in proper prospective and misunderstood the same while dismissing the prayer of Union of India for enhancement of

sentence as above, which provides for punishment of imprisonment for a term of extending seven years with a fine .

14. In such view of the matter, judgment and order dated 4.12.2015 passed by 13th Addl. District and Sessions Judge, Muzaffarpur in Cr. Appeal No.81 of 2015 along with Cr. Appeal Nos. 59, 61 and 66 of 2015 can not be sustained so far dismissal of Cr. Appeal No.81 of 2015 is concerned as it suffers from impropriety as well as inherent illegality, accordingly, this revision application is allowed and the judgment dated 4.12.2015 passed in Cr. Appeal No.81 of 2015 by the 13th Addl. District and Sessions Judge, Muzaffarpur along with Cr. Appeal Nos. 59, 61 and 66 of 2015 whereby and whereunder he has dismissed Criminal Appeal No.81 of 2015 is set aside only with respect to dismissal of Criminal Appeal No.81 of 2015.

15. The matter is remitted back to the appellate court for hearing it afresh after issuing notice to the convicts O.P.nos. 1 to 3 and pass judgment afresh in Cr. Misc. No.81 of 2015.

16. Accordingly, this revision application is allowed.

(Vinod Kumar Sinha, J)

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