IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 654 OF 2002

The Asstt Commissioner of	)	
Customs (Prev.) Mumbai 400 009	)	..Appellant

Vs.

1 Vincent Rodrigues	)	
5A/14, Takshila, Mahakali	)	
Caves Road, Andheri (E)	)	
Mumbai 400 093	)	
2 State of Maharashtra	)	..Respondents

Ms Anuradha Mane APP for Appellant
Mr. Milind Gholap, Asstt. Commissioner of Custom (preventive) R & I Mumbai present
Mr. Sourabh Parashar, Inspector (P. O.) Prosecution Cell, R. & I Mumbai, present

CORAM : K.R.SHRIRAM, J.
DATE : 18th NOVEMBER 2019

ORAL JUDGMENT:

1 On 4-11-2019, the following order came to be passed:-

> *"1 The court passed an order on 28-2-2019 directing issuance of fresh notice of final disposal to respondents, returnable on 28-3-2019. Respondent no.1 is the accused Vincent Rodrigues, whose address is given in the cause title and respondent no.2 is the formal party, i.e., State of Maharashtra. The notice was sent to the Commissioner of Police on 18-3-2019 to be served on respondent no.1. There is a report dated 25-3-2019 in Marathi from MIDC Police, stating that respondent no.1 was not found at the given address. It seems, the sister of the Accused informed the Police that the Accused does not reside at that address. On 7-6-2019 none appeared for appellant. On 14-6-2019 appellant's counsel sought four weeks time to secure correct address of respondent no.1. On 9-8-2019 (8 weeks later) appellant sought further 8 weeks time to trace the address of respondent no.1-Accused. Those 8 weeks got over on 4-10-2019. Today, another 4 weeks have passed and Ms*

> *Mane for appellant is seeking further time to trace the address of respondent no.1. Ms Mane is unable to explain as to why from 14-6-2019 till date, appellant has not been able to furnish the address of respondent no.1-Accused. Ms Mane states that nobody is present from department to give her instructions. Ms Mane, of course, also states that department is aware of the orders passed by this court and the court's indulgence from time to time.*
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> *2 In the circumstances, purely by way of indulgence, at the request of Ms Mane, time is given upto 18-11-2019 for appellant to trace the address of respondent no.1, failing which, the appeal will be dismissed with an observation that appellant- Assistant Commissioner of Customs is not interested in prosecuting this appeal and is only wasting court's judicial time.*
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> *3 Stand over to 18-11-2019, on which date, the concerned Assistant Commissioner of Customs, Appellant, shall remain present in court, failing which, such orders to ensure his presence will be passed."*

2 Today Ms Mane states that she has been debriefed in the matter and instructed not to appear. It is rather unfortunate that Ms Mane is being targeted for the inaction on the part of appellant.

3 Mr. Gholap, the Assistant Commissioner of Customs (Preventive) and Mr. Saurabh Parashar, Inspector (P. O.) Prosecution Cell, are present in court. Mr. Gholap states that this is a matter which pertains to Directorate of Revenue Intelligence (DRI). Because, the Assistant Commissioner (Preventive) is the prosecution wing, the above appeal has been filed by them. Mr. Gholap states that only DRI can do something in the matter and despite a communication from them to DRI, informing DRI that the accused is not traceable and therefore the assistance was required, there has been no response from DRI. Mr. Gholap states the stand of DRI is

customs department is the prosecution wing and we have to take the lead.

4 Mr. Gholap tendered a copy of letter dated 10-10-2019 addressed by the Investigating Officer, Prosecution Section, (R & I), to the Registrar Appellate Side, in which, it is stated that when they inquired at the last known address, they found the premises to be occupied by the sisters of Mount Calvary who are running a Creche and Nursery School since 1998. It also states that the Secretary of the society informed him that the accused sold the flat sometime in 1998 and thereafter, he has not been heard of. Mr. Parashar, is present in court and confirms and states that he personally went to inquire. Photocopy of the said letter dated 10-10-2019 is taken on record and marked “X” for identification.

5 I have to note that there is a noting in the records and proceedings that warrant of arrest was executed under Section 390 of CrP.C. and the accused is on bail. There is an order of 5-6-2002 of this court when the appeal was admitted directing action u/s 390 of CrP.C be taken. Warrant of arrest has been issued by this court on 5-6-2002. Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai has sent a report to the Additional Registrar, High Court Appellate Side, Mumbai, on 22-10-2002 stating that the accused Vincent Rodrigues has been arrested by DRI in view of the arrest warrant issued by the Hon’ble Court u/s 390 of CrPC and released on bail on 2-9-2002. There is also an application on record from Mr. D. S. Shetty, I.O. DRI, Mumbai, dated 2-9-2002 addressed to the

Additional CMM, 3rd Court, Esplanade Mumbai, stating therein "……. I am producing the accused before Your Honour and pray that he may be taken in custody as per the order of the Hon'ble High Court……." There is another notice dated 11-10-2002 addressed by the Additional CMM, 3rd Court, Esplanade Mumbai to the Additional Registrar, High Court, (A.S.) Mumbai, stating therein "……. The above notice has been duly served on Vincent Rodrigues and his signature has been obtained on the original notice and he also intend to engage a lawyer as per report." That is based on an application by Mr. D. S. Shetty, I.O. DRI, Mumbai stating that the accused/respondent has been duly served with the original notice. There is handwritten noting of the accused dated 8-10-2002, on the said notice, "received copy of the high court notice along with appeal copy. I would like to state that I will be engaging my own lawyer to appear for me." If the accused has sold the last known address in 1998, certainly appellant/DRI should have known the later whereabouts of the accused when they arrested the accused and when he was released on bail.

From these notings, it is clear that it is DRI, that has been tracing the accused. Therefore, it is rather shocking to hear from Mr. Gholap that DRI is not co-operating and it is expecting the office of the Commissioner of Customs (Preventive) to try to trace the accused.

6 Therefore, DRI/Appellant always knew where the accused was even in 2002. Therefore, for appellant to come back and simply inform the

court that they are unable to trace the accused and somebody told them that in 1998 the accused sold the flat and left the premises and they do not know the whereabouts, only indicates lack of interest in prosecuting the appeal diligently. I would have expected appellant to go through the records and proceedings and take it up with DRI and trace the accused.

7 I have to also note that the appeal was also listed on 28-9-2017, 21-11-2017, 21-2-2018, 9-3-2018, 22-12-2018, 28-2-2019, 28-3-2019, 7-6-2019, 14-6-2019, 9-8-2019, 4-10-2019 and on 11-10-2019, before the order of 4-11-2019 was passed. Still, appellant did not feel it necessary to take steps to trace the accused.

8 Matters cannot be kept pending like this and the court cannot advise appellant what steps in law they have to take to trace the accused. DRI and the Customs, both come under the Ministry of Finance and both are expected to work in co-ordination and in co-operation with each other.

9 From the above, it is quiet clear that appellant is uninterested to prosecute this appeal. Appeal dismissed for want of prosecution. No order as to costs.

(K.R. SHRIRAM, J.)