IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 124 OF 1997
WITH
CRIMINAL APPLICATION NO. 228 OF 2012
IN
CRIMINAL APPEAL NO. 124 OF 1997

Yeshwant Anand Bhadekar	}	
Residing at 318/23, Shiv Sadan Nanda	}	
Patkar Road, Vile Parle (East),	}	
Mumbai-400 057.	}	Appellant/Applicant

V/s.

The State of Maharashtra and Anr.	...	Respondents

WITH
CRIMINAL APPEAL NO. 157 OF 1997

Laxman N. Patkar	}	
Occ. Service, Age-35 years,	}	
R/o Room No. 11. Albela Diary	}	
Compound, Mumbai Pune Road,	}	
Mumbra, Dist-Thane, Pin-400 612	}	Appellant

V/s.

The State (at the instance of C.B.I.)	...	Respondent

Mr. Niteen Pradhan I.by Mr. Aditya Lasaria for the appellant in Apeal/ 124/1997.

Mr. Sanjeev P. Kadam a/w. Ms. Vilasini B. for appellant in Apeal/157/1997.

Mr. H.S.Venegaonkar for Respondent-CBI.

Mr. S.S. Pednekar-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J
DATED : 24th SEPTEMBER 2019.

ORAL JUDGMENT :

1. The appellants herein are convicted for the offence punishable under Sections 420, 120-B of the Indian Penal Code and under Sections 5(2) read with 5(1) (d) of the Prevention of Corruption Act, 1947 and they are sentence to suffer R.I. for one year and to pay fine of Rs.5000/- in default, to suffer R.I. for three months in Session Case No. 11 of 1987 passed by Special Judge, Greater Mumbai vide Judgment and Order dated 31st January 1997. Hence, these Appeals.

2. Such of the facts necessary for the decision of these appeals are as follows:-

3. The original accused no.1, the appellant in Criminal Appeal No. 124 of 1997 was officiating as Prevention Officer, Customs, Bombay in the year 1986. Whereas the appellant in Criminal Appeal No. 157 of 1997 (Original Accused No. 2) was an employee of M/s. E.G. Phadnis and Sons and was working as clearing agent at U.V Centre. (Unaccompanied Baggage Centre).

4. It is the case of the prosecution that one Mr. Arvind Parikh was working at Qatar during the period 1991-1996. He had decided to return to India. He had booked his cargo with Gulf Agency. He had returned on 6th October 1986. On 8th October 1986 he had been to Indira Docks at U.V. Centre for making enquiry about his Cargo. He

had contacted the clearing agent i.e. accused no.2 Mr. Patkar. Upon paying the fees for clearing he had to book the package for inspection. He was introduced to Mr. Chandramouli by Mr. Patkar. Thereafter, the complainant had filled request forms. Mr. Parikh along with his documents were taken to the customs clearance department. He had filled in the TR form (Transfer of Residency forms) by virtue of which, he would be entitled for exemption on certain used commodities and other goods. The customs clearance form was also filled in by Mr. Patkar and Mr. Chandramouli. He had not declared all the goods and therefore, he was taken to the Customs Officer.

5. Mr. Bhadekar (accused No.1), was directed by the customs officers to present all the goods for inspection of checking, in order to assess the amount of tax that would have to be paid by Mr. Parikh. The goods were brought to U.V. Centre. Mr. Patkar had inquired with the customs officer as to what would be the approximate amount that would have to be paid towards the customs clearance tax. A rough calculation of Rs.38,000/- was quoted by him. The customs officer had then inspected the package and had arrived at a conclusion that Mr. Parikh could not claim exemption or concession for item nos. 2, 3 and 4 as they were new items. The exemption / concession could be granted only to item nos. 1 and 5 which were used goods. It had transpired that the articles at serial no. 8 to 16 were not mentioned initially in TR Concession Form. The Forms filled in by Mr. Parikh are at Exhibit-11. The customs officers had opined that Mr. Parikh would be liable to pay a penalty @ 240% on items not declared. The final declaration is at Exhibit-13 which is dated 9th October 1986. It has

transpired that item Nos. 8 to 16 were included only after inspection and prior to it. Mr. Parikh was claiming TR concession on certain items which was finally denied.

6. It is alleged by the prosecution that Mr. Patkar had given an amount of Rs.36,000/- to Mr. Chandramouli, which according to him was handed over to Mr. Patkar. It is a matter of fact that Mr. Patkar had paid the requisite tax and had given a receipt to Mr. Parikh in the sum of Rs.25,540/-. The said receipt dated 10th October 1986 is marked at Article 'X'. According to prosecution after obtaining the receipt in the sum of Rs.25,540/- Mr. Parikh had realised that he had paid an amount of Rs.10,460/- in excess Mr. Patkar had informed him that the said amount was returned to Mr. Bhadekar, the customs officer. Thereafter, Mr. Parikh had approached Mr. Bhadekar seeking refund of the amount and he had allegedly informed Mr. Parikh that the amount was retained for distributing the same amongst the higher officers.

7. Thereafter, on 13th October 1986, Mr. Parikh approached the Customs Controller Officer Mr. Krishna-PW.7 and lodged a complaint against Mr. Bhadekar and Mr. Patkar, alleging therein that they had not returned the excess amount to the tune of Rs.10,460/- . He was further directed to meet the Intelligence Officer, PW-4 Mr. Kanade. The complaint of Mr. Parikh was recorded. The complaint is at Exhibit-8. By letter dated 16th October 1986, the superintendent of U.B.C Mr. Kulkarni was directed to conduct necessary investigation. The investigation was set in motion. The sanction for prosecution was accorded by PW-6, Parande who happened to be the Deputy Collector

of Customs. The case was committed to the Special Court. At the trial, the prosecution examined as many as 11 witnesses to bring home the guilt of the accused.

8. At the threshold, it would be pertinent to note that it was the specific contention of the complainant that the amount was handed over to Mr. Chandramouli, who had not only received amount but had counted the said amount and had entrusted the same to Mr. Patkar for making due payments. Mr. Chandramouli is neither an accused nor a witness in the present case. Therefore, there is no foundation that the amount which was handed over in advance was Rs.36,000/-.

9. The case mainly rests upon the evidence of PW-2 and the documents brought on record by the complainant and the prosecution.

10. The evidence of PW-2 Arvind Parikh would indicate that he has admitted all the documents i.e. Exhibits-11, 12 and 13. He has also admitted Article X-2 which is the receipt for the payment of Rs.25,540/-(Exhibit-35). The substantive evidence of PW-2 would indicate that it is a clear admission that he had not declared item Nos. 8 to 16 deliberately. That, Mr. Bhadekar had not demanded any gratification for exempting him from declaring item Nos. 8 to 16. That, he had fully apprised him of the fact that he would have to pay penalty @ 240% on undeclared items. That, he had claimed concession for item Nos 1 to 5, which upon inspection were denied by Mr. Bhadekar and he had specifically refused exemption for item No. 2, 3 and 4. The total amount of tax after exemption was Rs.25,540/- which appears in the receipt dated 10.10.1986 (Article-X-2).

11. That, there was no demand of gratification by Mr. Patkar, to give an undue advantage to Mr. Parikh. In fact, Mr. Patkar had calculated the tax to the tune of Rs.40,000/-. According to the complainant he had paid Rs.36,000/- to Mr. Patkar only because of an assurance by Mr. Bhadekar, that, Mr. Patkar is trustworthy and would not flee. It is admitted by the complainant in the cross-examination that on 10th October 1986 he had met the customs officer i.e. Accused No.1 on three occasions and at that time he was accompanied by other customs officer. The map of the office submitted by the defence counsel at the time of trial is taken on record which would clearly indicate that all the senior officers were sitting in the said hall. At the time of examination of the package Mr. Parikh was aware that superiors of Mr. Bhadekar are around.

12. It is categorically admitted that he had initially declared only six items as unaccompanied package. However, he had given evasive answers in respect of the other nine items. It is also admitted that the accused Bhadekar has rejected his claim for three items out of the five items which appeared to be new. He had admitted the said forms. At this stage, it is further pertinent to note that the complainant had not challenged the very assessment of the tax calculated by the assessment officer. He has mentioned the value of each of the item as calculated by the assessment officer. It is also admitted that he was bound to pay penalty @240% for items mentioned at serial nos. 8 to 16. The examination of the package was done on 10.10.1986 and he had paid the money on 11.10.1986 and had received the delivery of package on 11.10.1986.

13. At this stage it would be relevant to mention the details of Article X-2. It appears that it is not assessment form but it is a tax receipt in the amount of Rs.25,540/- which was purportedly paid on 10.10.1986. However, according to the complainant he had parted with the amount on 11.10.1986. It appears that there was no complaint or grievance about the calculation of the tax in the complaint filed by Mr. Parikh. However, he has stated, that, he had a quarrel with Mr. Bhadekar over the amount which was calculated but Bhadekar had refused to oblige. It is categorically stated that when he met Mr. Bhadekar along with Patkar on 10.10.1986, he had told him to get out and thereafter, he had filed a complaint to the Assistant Collector. It is further admitted that Bhadekar accused no.1 had not mentioned any specific amount to be paid to Mr. Patkar. The witness has further admitted that he had seen final declaration form before signing and that he had signed the same because they were correctly filled. The receipt does not specifically mention as to whether the penalty @ 240% was charged on valuation of each item or on the total amount of the duty to be paid. In any case, there is no fault in calculating valuation and assessment of the duty to be paid.

14. PW.4 Mr. Dinkar Kanade had recorded the complaint of Mr. Parikh and had also recorded the confrontation Panchnama i.e. Exhibit-20. He has deposed about the details of the complaint, Exhibit-20 which was given by Mr. Parikh. It is admitted by PW-4 that he had come into picture in this case only on 19th October 1986 i.e. on the date when he recorded the statement of the complainant. It is elicited in the cross-examination that is is not specifically mentioned in the

complaint that he had seen Mr. Chandramouli handing over the total amount of Rs.36,000/- to Mr. Patkar and therefore, there is no foundation to substantiate the allegation of the complainant to the extent that an amount of Rs.36,000/- was given to Mr. Chandramouli, to be further given to Mr. Patkar and at that stage, Mr. Bhadekar was not in picture. He had recorded the statement of the accused and has stated that the accused Mr. Bhadekar has given ex-culpatory statement. It is also submitted by PW-4 that the accused no.2 had specifically stated in his statement that the amount of Rs.10,460/- was returned to the complainant forthwith after handing over the receipt.

15. At this stage, it would be pertinent to note that the appellant was subjected to departmental enquiry and that the accused no.1 has been exonerated in the departmental enquiry. However, it is true that departmental enquiry would be different from a criminal trial. At the trial it is incumbent upon the prosecution to establish the charge levelled against the accused persons beyond reasonable doubt the same is not true as far as departmental enquiry is concerned. In the present case it is more than clear that there was no demand of illegal gratification either by the accused no.1 and / or by accused no.2 on behalf of accused no.1. no amount was paid to either of the accused by way of gratification. The charge could have been for misconduct i.e. retaining of an amount of Rs.10,460/- which was allegedly excessively paid in advance to Mr. Chandramouli to do the needful. The complainant has failed to substantiate the allegations.

16. The learned counsel for the accused has submitted that in fact, the complainant was aggrieved by the fact that TR concession was not given to items Nos. 2 to 4 and that he was made to declare item Nos. 8 to 16 and charged with a penalty @ 240% on the total amount of the duty to be paid.

17. As against this, the learned APP submits that the accused have not demonstrated any preponderance of probabilities nor have rebutted the presumption under Section 4 of the Prevention of Corruption Act, 1947 and therefore, no interference is called for in the judgment of the trial Court.

18. The said submission cannot be accepted since the prosecution has failed to lay the foundation that an amount of Rs. 36,000/- was paid in advance and that too the complainant would pay the advance amount only on an approximate assessment. Moreover it is incumbent on the prosecution to bring home the guilt of the accused beyond reasonable doubt.

19. In fact, there is nothing on record to even indicate that the said amount was paid to Mr. Patkar and not by the complainant himself. In fact, it was the duty of the complainant to pay the same at the cash counter. Since, the foundation itself has not been established the accused would be entitled to be acquitted of all the charges levelled against them. In view of the above discussion, the appeals and application are allowed.

ORDER

i) The appeals and application are allowed and disposed of accordinly.

ii) The conviction of the appellants for the offences punishable under sections 420, 120-B of the Indian Penal Code and under Sections 5(2) read with 5(1) (d) of the Prevention of Corruption Act, passed by the Special Judge, Greater Mumbai vide judgment and order dated 31st January 1997 in Sessions case No. 11 of 1987 is hereby quashed and set aside and the appellants are acquitted of all charges.

iii) Their bail bonds stand cancelled.

iv) Fine amount if paid, be refunded to the accused-appellants as per rules.

(SMT. SADHANA S. JADHAV, J)