

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.646 of 2014

and

M.P.No.1 of 2014

N.V.Sankarlal

.... Petitioner

vs

State Rep., by
The Deputy Assistant
Commissioner of Customs,
Customs Division,
No.1, Williams Road,
Cantonment,
Tiruchirapalli 620 001.

.... Respondent

Prayer Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order dated 06.11.2012 passed in Criminal Appeal No.152 of 2009 on the file of the learned Special Judge for EC Act Cases, Salem.

For Petitioner : Mr.S.R.Satish Sundar

For Respondent : Mr.N.Suresh Kumar

Special Public Prosecutor

ORDER

The respondent police registered the case against the revision petitioner and yet another accused. After investigation the respondent police laid a charge sheet before the learned Judicial Magistrate No.III, Salem, for the offence under Section 135 (1) (b) of the Customs Act. The learned Judicial Magistrate No.III, Salem, has taken the case on file in C.C.No.32 of 2005. After trial, the learned Magistrate found both the revision petitioner and other accused found guilty for the offence under Section 135 (1) (b) of the Customs Act and convicted him and sentenced to undergo nine months Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo further period of one month Simple Imprisonment. Challenging the said order of the learned Judicial Magistrate, the revision petitioner has filed an appeal before the learned Special Judge for EC Act cases, Salem, in Crl.A.No.152 of 2009.

2 After hearing the arguments the learned Special Judge, allowed the appeal in part and set aside the sentence of the imprisonment by enhancing the fine amount of Rs.1,000/- to Rs/15,000/- directed the trial Court to collect the enhanced fine amount of Rs.14,000/- from the appellant and cancel the bail bonds.

3 Challenging the said judgment of the learned Special Judge, Salem, the petitioner herein has filed the revision petitioner before this Court.

4 The learned counsel for the petitioner would submit that the goods have not been recovered from the customs in the notified area and also the lusture is only basis on which there is a belief in the mind of the officers effecting the seizure, there cannot be any material for such seizure. No foreign markings found on the Silver bars and no evidence/investigation gathered regarding illicit importation. It is not the case of the department that they seized 3 silver bars of 30 Kg each, which alone is of foreign origin, the evidence to that effect is not available. If the 30 Kg bars "3 Nos" had been melted total weight could be less than 90 kgs. But on the other hand what was seized was 96.500 kgs., such discrepancies have not been explained by the prosecution, which is fatal to its case. Further the mahazar witnesses have also not been examined before the Court below. Therefore, the seizure itself is invalid and without any legal basis. In this case, the respondent police has not established the case, whereas, the revision petitioner has established his defence, which warrants interference by this Court.

5 The learned Special Public Prosecutor, appearing for the respondent would submit that the revision petitioner has admitted that he was in a possession of the goods. The purity of the silver is more than 99% and the T.V.Refinery opined that the silver bars under seizure are of foreign origin, The learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court, in the case of Commissioner of Central Excise, Bhopal Vs. Minwool Rock Fibres Ltd. Both the Courts have rightly appreciated the evidence and convicted the petitioner. When the department has made allegations on the petitioner, which was also proved, it is for the revision petitioner to establish his defence and innocence.

6 Heard the learned Counsel for the revision petitioner and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record.

7 The case of the prosecution is that on 11.11.1990, on information, the Officers of the Customs Preventive Unit, Salem, conducted a search of the Refinery Premises of the 1st accused Viz., Subhash. On the basis of such information, the Officers Headed by P.W.1, who was working as a Superintendent of Customs at Customs Preventive Unit at Salem and P.W.2, Inspector of Customs, recovered 20 rectangular bars weighing 96.500 kgs., of Silver in the presence of Mahazar witnesses and one V.R.Krishnamurthy, said to be relative of the revision petitioner. Hence, the complaint.

8 On reading of the entire evidence the revision petitioner himself admitted that it is an foreign region and once it is admitted that it is a foreign origin, it is for the revision petitioner to prove his innocence once, the initial burden in the department has been proved, the burden has been shifted to the revision petitioner and the revision petitioner has not proved his case in the manner known to law, whereas, he has admitted that it is only the foreign origin. Therefore, under these circumstance, this Court does not find any perversity in the order passed by the appellate Court.

9 This Court while exercising the revisional jurisdiction, cannot sit in the arm chair of the appellate Court and re-asses the entire evidence and substitute its own view. Unless, there is any perversity in the appreciation of evidence by the Courts below. On reading of the materials this Court does not find any perversity in the judgment of the appellate Court. There is no merit in the revision, this Court is not inclined to interfere with the judgment of both the Courts below.

11 In the result, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

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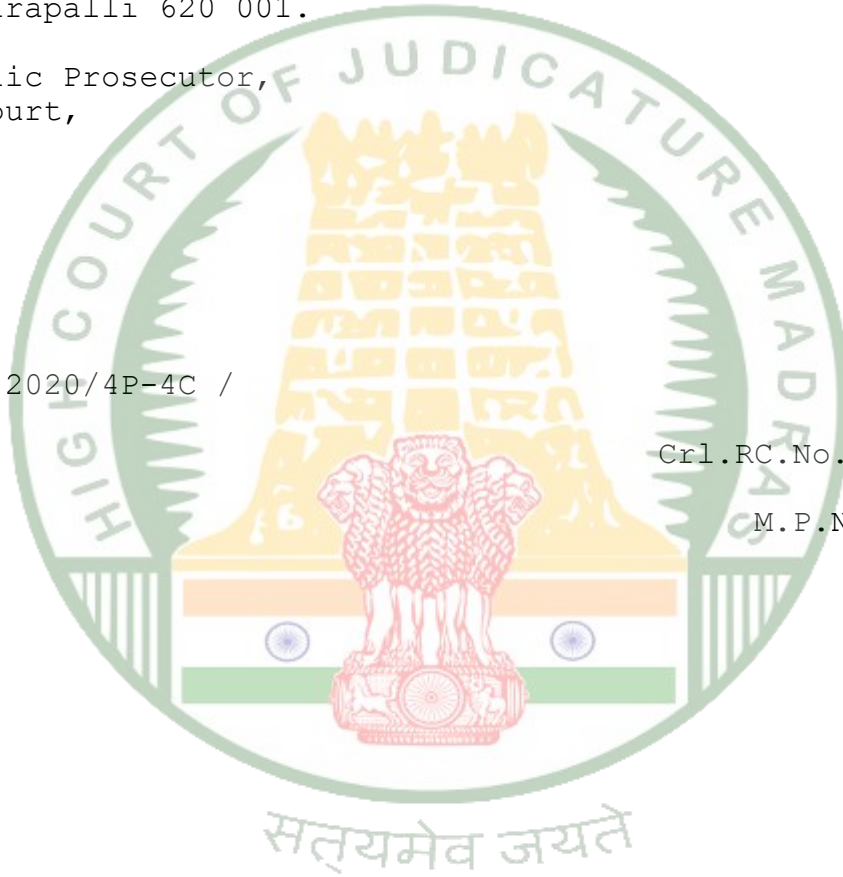
Sub Assistant Registrar

To

- 1.The Special Judge,
Special Court, EC Act Cases,
Salem.
- 2.The Deputy Assistant Commissioner of Customs,
Customs Division,
No.1, Williams Road,
Cantonment,
Tiruchirapalli 620 001.
- 3.The Public Prosecutor,
High Court,
Madras.

AKM/24.01.2020/4P-4C /

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