



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 18.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO.767 OF 2019

WEB COPY

The Assistant Commissioner of Custom
Custom Division,
Trichy.

... Petitioner/Complainant

- Vs -

Navaskhan

... Respondent/Accused No.1

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, to call for the records of the order of learned Judicial Magistrate No.I, Tiruchirappalli in C.C.No.167 of 2018 dated 18.07.2018 and set aside the same and enhance the sentence awarded by the trial Court in accordance with law.

For Petitioner : Mr.C.Arulvadivel @ Sekar
For Respondent : Mr.V.A.Dhana Aravindha Balaji

ORDER

The present criminal revision petition is filed against the order of the learned Judicial Magistrate No.I, Trichy in C.C.No.167 of 2018 dated 18.07.2018 sentencing the respondent to convict him imprisonment till the rising of Court and imposed a fine of Rs.15000, in default of payment, one month simple imprisonment under Section 241 of Cr.P.C.

2.According to the revision petitioner, the Assistant Commissioner of Custom, the respondent was convicted under Section 135 of the Customs Act, 1962. As per clause 3 of Section 135, minimum sentence is provided for one year and in case of less than one year special reason is to be assigned. However, under the same section, 4 cases were mentioned which do not come under the special jurisdiction for passing sentence less than one year.

3.Mr.C.Arulvadivel @ Sekar, learned counsel appearing for the petitioner/complainant would submit that the Judicial Magistrate has passed order sentencing the respondent till the rising of the court only on the ground that he was the first offender. Such reason does not come within the ambit of Section 135(3)(1) which specifically excludes that the first time offender need not be shown any lenience by imposing less than statutory punishment. Therefore, the learned counsel would submit that it is a fit case to be remanded to the learned Judicial Magistrate for fresh consideration.



4.At this, the learned counsel appearing for the respondent would stoutly oppose for remanding the matter. The learned counsel would submit that it is entirely the discretion of the Magistrate to award less than the statutory punishment prescribed under the provisions of the Customs Act and if the discretion exercised by the Magistrate, does not found to be perverse and arbitrary, the same need not call for any interference from this Court.

5. I have considered the submissions made by the learned counsel for the petitioner as well as the learned counsel appearing for the respondent.

6.The provision relied on by the learned counsel for the petitioner is very clear that the special reason excludes the first time offender as per Section 135(3)(i) of the Customs Act. Therefore, the reliance placed by the Magistrate for passing special sentence less than statutory minimum punishment per se appears to be in violation of the provisions of the Customs Act and therefore, the same is liable to be interfered with. The sentence passed by the learned Judicial Magistrate is therefore, contrary to the specific provision of the Customs Act and therefore, it calls for interference from this Court.

7.For the above said reasons, this Court is of the view that the matter is to be remanded back to the learned Judicial Magistrate for fresh consideration and passing orders in terms of Section 135 of the Customs Act, 1962. Therefore, the matter is remanded back to the learned Judicial Magistrate No.I, Tiruchirappalli for fresh consideration and for passing orders strictly in terms of the Section 135 of the Customs Act. The learned Judicial Magistrate No.I, Tiruchirappalli is directed to issue notice to the parties concerned and pass appropriate orders on merits and in accordance with law within the framework of Section 135 of the Customs Act. The said order shall be passed by the Magistrate within a period of three months from the date of receipt of a copy of this order.

8.This Criminal Revision Petition is allowed with the above terms. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

skn



To

1.The Judicial Magistrate No.I, Tiruchirappalli.

2. The Assistant Commissioner,
Custom Division,
Trichy.

+1 CC to Mr.C. ARUL VADIVEL @SEKAR, Advocate (SR-99626[F] dated
20/11/2019)

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MK (16.12.2019) 3P 4C