IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CRIMINAL JURISDICTION
CRIMINAL APPEAL NO. 410 OF 2001

Union of India	)	
through, Deputy Chief	)	
Controller of Imports &	)	
Exports, New CGO Building	)	
New Marine Lines,	)	
Mumbai 400 020	)	..Appellant

Vs.

1. Hukmichand Jain	)	
S/o Shri Harakchand	)	
Jain, 161, Mount Blanc,	)	
Kemps Corner,	)	
Mumbai 400 036	)	
2. M/s Diarough Inter-	)	
national,	)	
234, Panchratna,	)	
Opera House,	)	
Mumbai 400 004	)	(org. Accused)
3. State of Maharashtra	)	..Respondents

Mr. Dhirendra Pratap Singh for Appellant
Ms Ayushi Anandpara, Amicus Curaie for Respondent Nos.1 and 2
Ms Pallavi Dabholkar, APP for Respondent No.3

CORAM : K.R.SHRIRAM, J.
DATE : 13th JANUARY, 2020

ORAL JUDGMENT:

1 Since the accused was not represented, this court appointed Ms Ayushi Anandpara as Amicus Curaie. I have to note the immense assistance of Ms Anandpara.

2 The Union of India, through Deputy Chief Controller of Imports and Exports, Mumbai, has impugned an order and judgment dated 16-4-1998 passed by the Additional Chief Metropolitan Magistrate, Esplanade, Mumbai, acquitting the accused of offence under Section 5 of the Imports and Exports (Control) 1947 (the said Act).

3 It is the case of appellant that respondent no.2 through respondent no.1 applied to the office of Joint Chief Controller of Imports and Exports, Mumbai, for granting imprest licence in terms of paragraph 3 of Appendix 13 of Import Policy AM 85-88 for import of rough diamonds, uncut and unset. Appellant states that respondent no.2 was issued licence with certain export obligations mentioned in the licence. It is the case of appellant that these obligations were not met, though time was extended twice and, therefore, respondent nos.1 and 2 have committed an offence under Section 5 of the said Act. Of course, appellant also alleged that the original licence, itself was obtained by respondent nos.1 and 2 by submitting two forged and fabricated export orders. I have to note that the charge framed does not contain any charge of forgery and the charge is only that respondent nos.1 and 2 have not fulfilled the export obligations under the licence issued and, therefore, are guilty of offence under Section 5 of the said Act. The charge framed is for contravening conditions of licence and thereby committing an offence punishable under Section 5 of the said Act.

4 Respondent nos.1 and 2 denied the charges and claimed to be

tried. Respondent no.1 also gave evidence as D.W.-1 and according to respondent no.1 due to certain unavoidable circumstances, he could not comply with export obligations within the time prescribed as condition of licence and had applied for extension and the third extension upto 17-8-1992, was granted and within that period export obligations had been fulfilled.

5 To drive home the charge, appellant led evidence of three witnesses. Pramod Kumar Aggarwal, Deputy Director General of Foreign Trade (P.W.-1), Devram Shankar Bagare, Controller of Import and Export (P.W.-2) and Harbansingh, Investigating Officer (P.W.-3). Admittedly, export obligations had not been fulfilled within the initial time prescribed. P.W.-2 in his evidence has stated that the Chief Controller of Imports and Exports, New Delhi, can extend time fixed for fulfilling export obligations from time to time. On record, is the letter issued by the Chief Controller of Imports and Exports, New Delhi, extending time to export upto 17-8-1992 with further two conditions regarding additional export and realisation of export proceeds in US Dollars. Mr. Singh in fairness states, records also indicate that accused had complied with export obligations before 17-8-1992 and they had also fulfilled the two additional conditions. P.W.-3 in his cross-examination has stated that during the course of investigation, he verified several documents and statements of export found with accused upto 30-4-1990 and he verified the statements by visiting the bank and it was revealed

that the export was made as shown. According to P.W.-3, the export, however, was made after the expiry of period fixed by the competent authority. The period, what P.W-3 is referring to, is the period prior to granting of third extension. In this case, the appropriate authority had commenced investigation and filed a complaint in view of non compliance with export obligations by accused. Accused, however, had applied for an extension, which extension was granted after the complaint was filed and investigation was commenced. P.W-3 also has stated that he had discussed the matter in the office of the Chief Controller of Imports and Exports, New Delhi, and during the course of discussion, he came to know that period of completing export obligations was extended upto 17-8-1992. Of course, P.W.-3 denies that he came to know before filing of the complaint that accused had fulfilled export obligations before the expiry of the extended period, i.e., 17-8-1992. Therefore, P.W.-3, has not denied that accused has fulfilled export obligations. On the contrary, P.W.-3 admits that he fulfilled export obligations within the extended period of 17-8-1992.

6 Keeping this in mind, the Trial Court has acquitted accused. Ms Anandpara is correct in submitting that there can be no perversity in the order passed by the Trial Court. Relying on the Judgment of the Apex Court in ***Basalingappa Vs. Mudibasappa***[1], Ms Anandpara submitted that expression perverse in terms as understood in law, has been defined to mean "against

1 2019 (5) SCC 418

weight of evidence". Ms Anandpara submits that the evidence indicates that export obligations have been fulfilled within the extended period. Therefore, the conclusions of the Trial Court are in terms with the weight of evidence.

7 The Apex Court in ***Chandrappa & Ors. V/s. State of Karnataka*** [2] in paragraph 42 has laid down the general principles regarding powers of the Appellate Court while dealing with an appeal against an order of acquittal. Paragraph 42 reads as under :

> *"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;*
>
> *(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;*
>
> (*2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;*
>
> *(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.*
>
> *(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.*

2. (2007) 4 SCC 415

> *(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."*

8 There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to the accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless they are proved guilty by a competent court of law. Secondly, accused having secured their acquittal, the presumption of their innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court rightly observed that the prosecution had failed to prove its case.

9 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

10 Appeal dismissed.

(K.R. SHRIRAM, J.)