IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (MAIN) NO. 14 OF 2020

Central Bureau of Investigation
Anti Corruption Branch
Bungalow No F 1, Type VI,
GMC Quarters, NH 17 Road,
Bambolim Goa. **... Applicant**

V/s

1. Mr. Lucio Rodrigues
   s/o Mr. Carlos Rodrigues,
   R/o. H. 295, Securam Waddo,
   Chinchinim, Salcete, Goa
   Superintendent of Customs (Prev.),
   Mormugao Customs House,
   Mormugao, Goa

2. Mr. Joaquim Pereira
   s/o Mr. Clemente Felicidade Pereira,
   R/o. H. No 26/B, Xamody,
   P.O. Dramapur, Salcete, Goa
   Inspector of Customs (Prev.),
   Mormugao Customs House,
   Mormugao, Goa

3. Mr. Ramasamy Suppiah Venugopal
   R/o. Blk 291C, # 03-33, Bukit Batok
   Street - 24,
   Singapore - 652291.
   Pvt. Person.
   C/o M.Somasundaram,
   22-B Railway Road, Sirkali,
   Nagapattinam Dist, Tamil nadu.
   India 609 110

4. Mr. Khetshi Hirji Shah
   S/o Mr. Hirji Donarshi Shah,

R/o H. No. 401, 4th Floor, Sompuri
Market, Station Road, Santa Cruz (W),
Mumbai
P/Address: - Village & Police Station -
Adhoi, Taluka Bhachau, Dist: Kutch,
Gujarat.
Pvt. Person.

5. Mr. Narayan Bhiwaji Dichwalkar
s/o Mr. Bhiwaji Narayan,
R/o H. No. 105/3, Shivneri,
Dadasaheb Falkar Road, Dadar (E),
Mumbai - 14.
Pvt. Person.

6. Mr. Vinod Bhaskar Kanna
S/o Mr. Bhaskar Kanna,
R/o 2/B, Searock Leisure,
Near Damodar House,
Donapaula, Goa
P/Address:- 6/92, Kannamwar Nagar - 1,
Vikhroli (E), Mumbai - 83
Pvt. Person.

7. Mr. John Fernandes
S/o late Mr. Cosmo Fernandes,
R/o. No Bairo, St. Agustino, Marod,
Santacruz, Goa.
Pvt. Person.

…. Respondents.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Appellant.

Mr. C. A. Ferreira, Advocate for the Respondent No.2.

Mr. Anoop Gaonkar, Advocate under Legal Aid Scheme for the Respondent No.3.

Coram: NITIN W. SAMBRE, J.
Date: 30th March 2021

ORDER:

The Central Bureau of Investigation has invoked the provisions of Section 378(3) of the Cr.P.C. seeking leave to appeal against the judgment dated 29.08.2018 passed by Special Judge, North Goa, Panaji in Special Case No.13/2016.

2. By the judgment referred above, the respondent accused were acquitted of an offence punishable under Section 120-B read with Section 420 of I.P.C and Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. The Directorate of Revenue Intelligence on secret inputs about the involvement of Custom Officers posted at Dabolim Airport, of having hatched criminal conspiracy with the customers/passengers arriving by Air India flight from Singapore, in the matter of fraudulent and dishonest act of abusing their official position by corrupt and illegal means, releasing the electronic goods without levying the lawful custom duty and as such, claim to have cheated the public exchequer, carried out raid outside the said Airport.

3. The accused No.3 -Venugopal, a foreign national and accused No.5, an Indian National landed at Goa airport from

Singapore alongwith electronic goods which were in commercial quantity and that too, without any valid import licence. The DRI officials who were outside the airport arrival gate intercepted accused No.5 who was carrying certain cartons/packages with the help of individual accused No.6-Vinod and accused No.7- John. All the three accused claim to have loaded the imported goods in a car. The accused No.3-Venugopal was on watch and as such remained inside the airport premises. Having noticed the above, A-3 got prepared immediately the documents with the help of accused No.1 and 2 namely Lucio and Joaquim and paid custom duty of ₹1,19,340/- in Indian currency. It is claimed that the accused persons caused loss of around ₹9,41,868/- to the public exchequer.

4. An FIR came to be registered against accused No.1 who is Superintendent of Customs (Prev.) at Dabolim airport as also against accused No.2, an Inspector of Customs (Prev.)

5. The prosecution so as to prove the guilt of the accused has examined 31 witnesses.

6. Amongst other points determined by the Court below were, whether the accused No. 1 and 2 who are public servants conspired with accused No.3 to 7 in the matter of

fraudulently, dishonestly by corrupt and illegal means released electronic goods worth r17,34,000/- having CIF value (market value) of ₹36,41,400/- without payment of duty thereby cheating the public exchequer to the extent of ₹9,41,864/-. The further point for determination was also considered as to whether the aforesaid act on the part of the accused No.1 and 2 is a misconduct.

7. PW-1-Mangesh, Senior Intelligence Officer working in Directorate of Revenue Intelligence claim to have acted on intelligence input and carried out raid on 15.05.2000. According to him, upon an enquiry with the accused No.5, 6 and 7 he could discover that the goods were removed from the airport without paying duty.

8. According to him, he took the goods from the Airport to the Panaji office, drawn seizure panchanama which evidence was also endorsed/supported by PW2-Officer from the DRI. PW3 is a pancha witness who claim to have certified the attachment of goods in the Panaji office of the PW1, opening of the said goods on 16.05.2000. PW4 -Aruol, Assistant Commissioner of Customs deposed in support of the procedure to be adopted by the Customs and DRI officials. Basically, the star witnesses to the incident appear to be PW1 and PW2.

Though it is claimed by the learned Counsel for the applicant that the necessary ingredients of Section 120B are very much satisfied however he is unable to establish from the evidence on record that there was meeting of minds of the accused with an object to be accomplished, a plan or scheme embodying means to accomplish the object, an agreement or understanding between two or more persons whereby they became definitely committed to cooperate for accomplishment of the object by the means embodied in the agreement.

This Court is required to assess whether there was unlawful combination so as to achieve unlawful object. In the case in hand, the unlawful act alleged by the appellant is that of acquiring goods without payment of the custom duty.

9. PW2 in his evidence has admitted that the accused No.5 cannot maneuver two trolleys at the same time, as physically, same is impossible, particularly, when the trolleys are laden with goods. Apart from the above, the PW1 and PW2 in spite of the opportunity given by the Court below have failed to satisfy the Court about the receipt of secret information. The evidence of PW8 if read with the evidence of PW1, it can be inferred that there were no details about the accused No.3, viz., his name in the alleged secret information received. It was within the knowledge of PW1, that accused No.3 was detained inside

the airport by the Custom officials. Still, his failure to take the custody of said accused at the relevant time particularly when the stickers on the package which were sought to be cleared without payment of custom duty discloses the name of said accused. The evidence of PW1 if analyzed in the backdrop of the charge levelled against the accused person, he was unable to depose and establish the details of the custom officials, who were duty bound to collect the custom duty, duty bound to examine the package by opening counter for reverification. The conduct of the PW1 to intercept the goods and move them away from the airport to Panaji office without drawing any panchanama, though panchas were present also raises serious doubt on the case of the prosecution. PW1 in categorical terms admitted that in the capacity of DRI officer he has every authority to enter the airport premises for apprehending the accused No.3 or for conducting panchanama. The air ticket of the accused No.5 was also not assessed. Transportation of the goods loaded in the Maruti van outside the airport without accompanied by panch witnesses or any other officer particularly when the same were transported for more than 30kms without the physical supervision raises serious doubt about the genuineness of the case of the prosecution.

10. The assessment of the custom duty based on the market valuation of the goods is not established by placing on

record the Valuation Manual received from the Custom Office, Mumbai.

11. PW1 in categorical terms have admitted that the Assistant Commissioner of Customs at the airport had informed about the release of accused No.3.

12. As observed hereinabove, the case of the prosecution as is sought to be put forth has at all not been established particularly from the testimony of the PW1 and PW2.

13. The necessary ingredients for an offence punishable under Section 120B and Section 420 cannot be inferred so also the Section 13(2) and 12(1)(d) of the Prevention of Corruption Act are satisfied from the evidence brought on record by the prosecution side.

14. That being so, no case for grant of leave is made out. Leave as such stands refused. The appeal is accordingly dismissed.

NITIN W. SAMBRE, J

msr.