IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07/12/2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.10873 OF 2017
AND
CRL.M.P.NOS.7168 OF 2017 AND 3491 OF 2018

The Deputy Commissioner of Customs,
Prosecution Unit (Sea),
Seaport (Exports), Custom House,
Chennai - 600 001. ... Petitioner

.Vs.

1. Subash,
Proprietor,
M/s.Sharmi Exim Company,
No.67, Railway Station Road,
Athipattu, Chennai – 600 102.

2. Shri Kishore Nagaarur,
Managing Director,
M/s.Sri Chemicals,
A-96, 3rd Street,
Anna Nagar (East),
Chennai – 600 102.

3. S.Babu
Proprietor,
M/s.R.B.Traders,
No.3/25, Vinayakar Kovil Street,
Arumbakkam, Chennai – 600 106.

4. Bholu Kumar Parmar (CHA),
123 (Old No.64), 1st Floor,
Lingi Chetty Street,
Chennai – 600 001.

5. S.Senthilnathan,
Export Executive,
M/s.Bholu Kumar Parmar,
123 (Old No.64), 1st Floor,
Lingi Chetty Street,
Chennai – 600 001. ... Respondents

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the order dated 9th May 2017 in Crl.M.P.No.1198 of 2017 in E.O.C.C.No.72 of 2013 on the file of the learned Additional Chief Metropolitan Magistrate (E.O.1), Egmore, Chennai.

For Petitioner : Mr.N.P.Kumar

For Respondents : Mr.B.Manoharan For RR1, 3 to 5

Mr.B.Satish Sundar For R2

O R D E R

This Criminal Original Petition has been filed to set aside the order, dated 9th May 2017, in Crl.M.P.No.1198 of 2017 in E.O.C.C.No.72 of 2013, by the learned Additional Chief Metropolitan Magistrate (E.O.1), Egmore, Chennai, dismissing the petition filed, under Section 311 of the Code of Criminal Procedure, to permit the petitioner therein to examine the then Deputy Commissioner of Customs, Sea Prosecution, Chennai, as a prosecution witness for the purpose of marking the vital documents, since his evidence is to be essential to the just decision of the case and the trial Court, dismissed the application, on the ground that the prosecution has filed a petition, after questioning the accused, under Section 313 (1) (b) of the Code of Criminal Procedure, which is nothing but protracting the trial.

2. Heard Mr.N.P.Kumar, learned counsel appearing for the petitioner, Mr.B.Manoharan, learned counsel appearing for the respondents 1, 3 to 5 and Mr.B.Satish Sundar, learned counsel for the second respondents.

3. The learned counsel appearing for the respondents submitted that the following petitions have been filed before the trial Court, viz.,

(i). Crl.M.P.No.98 of 2017, to produce the statement of accounts for the period from January 2008 to December 2009. Vide, order, dated 2/2/2017, trial Court allowed the petition, directing the Chief Manager, IOB, George Town, to produce the statement of accounts for the period Jaunuary 2008 to December 2009.

(ii). Crl.M.P.No.2968 of 2016, to recall and re-examine P.W.2 for the purpose of marking the copy of the invoice, packing list, holding that this evidence is essential for a just decision of the case. Vide, order, dated 10/11/2016, trial Court allowed the petition, to recall the Inspector DIU, Chennai, to mark the copy of the invoice and packing list.

(iii). Crl.M.P.No.2970 of 2016 to examine the then Preventive Officer, Sea Prosecution as prosecution witness for the purpose of marking the Mahazar dated 29/7/2011 under Section 110 of Customs Act, Vide, order, dated 10/11/2016, trial Court dismissed the petition.

(iv). Crl.M.P.No.2971 of 2014 to issue summons to Santosh Menon and two others for the purpose of marking vital documents, viz., Show Cause, Order-in Original, Sanction order. Vide, order, dated 12/11/2014, trial Court allowed the petition holding that the examination of these witnesses are necessary for rendering just decision of the case.

4. It is the contention of the learned counsel appearing for the respondents that prosecution attempted to file such documents, at a later point of time is nothing but to fill up the lacuna in the prosecution case at this stage. Such plea cannot be accepted. Whereas, the learned counsel for the Department/petitioner submitted that during the course of trial, the enclosures of the shipping bill were not marked. Further, the Mahazar, dated 29/7/2011 drawn at the time of inspection by the Court under Section 110 of the Customs Act, which are the most important document were not marked due to inadvertence and over sight. Therefore, these documents are necessary to show the nature of the shipment to prove the fact that it was potassium alone is imported, whereas in the declaration it was stated as industrial salt.

5. Though this Court is aware of the fact that to fill up the lacuna in the prosecution case, examination of further witnesses or introducing the documents cannot be allowed. At the same time, this Court is of the view that any evidence appears to be essential to the just decision of the case, such evidence not seriously disputed which are already on record for effective adjudication of the entire case. Such documents to be brought on record. Therefore, merely because those documents are not filed at an earliest point of time, due to some administrative reasons and failure of the prosecutor, those documents cannot be kept out side the purview of the trial. Therefore, this Court is of the view that when the documents which are sought to be filed is essential for the just decision of the case all those documents should be brought on record. Merely because some documents which are admitted was not filed

at an earlier point of time, it cannot be construed to mean that filing the same at the time of trial will always lead to the consequence of filling the lacuna of the prosecution. It is not that those document is filed behind the back of the respondents. The respondents would be given sufficient opportunity to confront those documents.

6. In such a view of the matter, trial Court declining the right of the Department to bring before the Court of law all the documents which are essential to the just decision is not correct according to law. The petitioner is directed to furnish copy of the documents to the respondents and examine the witnesses to mark those documents within a period of one month from the date of receipt of a copy of this order. The learned trial Judge shall examine the witnesses on day-to-day basis and provide an opportunity to the accused to cross examine the witnesses and conclude the trial, within a period of three months thereafter.

7. With the above direction, this Criminal Original Petition is allowed. Order dated 9/5/2017 passed in Crl.M.P.No.1198 of 2017 in E.O.C.C.No.72 of 2013 by the learned Additional Chief Metropolitan Magistrate (E.O.1), Egmore, Chennai 8 is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs

To

1. The Additional Chief Metropolitan
Magistrate (E.O.1),
Egmore, Chennai.

2. The Public Prosecutor,
Madras High Court,
Chennai.

CRL.O.P.NO.10873 OF 2017

SSD(CO)
PBS/07/01/2022