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Crl.O.P.No.3526 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 13.07.2022

Delivered On: 23.12.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.3526 of 2021

and

Crl.M.P.No.2063 of 2021

K.Soundararajan

... Petitioner/Accused No.2

Vs.

The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
27, Adarsh Towers,
G.N. (Chetty) Road,
T.Nagar, Chennai -600 017.

(F.No.DRI/CZU/VIII/48/ENq-1/INT 44/2014)... Respondent/Complainant

PRAYER: Criminal Original Petition had been filed under Section 482 of Criminal Procedure Code, seeking to call for the records relating to the R.R.No.27/2014 in respect of the Petitioner herein/A2 in F.No.DRI/CZU/VIII/48/ENq-1/INT44/2014 on the file of the Respondent and quash the same.

For Petitioner : Mr.M.Palanivel

For Respondent : Mr.N.P.Kumar

Special Public Prosecutor for DRI Cases



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ORDER

WEB COPY This Criminal Original Petition had been filed to call for the records relating to the R.R.No.27/2014 dated 24.09.2014 in respect of the Petitioner herein/A2 in F.No.DRI/CZU/VIII/48/ENq-1/INT44/2014 on the file of the Respondent and quash the same.

2. The Petitioner is arrayed as A-2 in the case registered against him and two others by the Directorate of Revenue Intelligence. According to the Respondent-Directorate of Revenue Intelligence, on the basis of a tip-off that a passenger is arriving Chennai International Airport by Singapore Airlines flight SQ 528 on 23.09.2014 with smuggled gold bars, they have watched the movement of the passengers in the arrival hall. During such surveillance, at the exit of the aero-bridge on bay No.32, they intercepted one Abubaker Sithikali who was in possession of a stroller suitcase and a laptop. On enquiry, Abubaker Sithikali informed that he is carrying two chocolate wrappers but the trolley suitcase was unusually heavy. On checking the suitcase, it was noticed that it contains foreign marked gold bars. The enquiry disclosed that it was given to him by one Ajmal Kaka of Singapore to be



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handed over to Paulraj, whose Mobile No. is 9176346642 and that he would be waiting in the gents toilet located inside the immigration hall in the arrival side of airport, based on the instructions received on his mobile No. 8754653801 from one Farook of Chennai from mobile No. 9176318310. The interrogation further unfolded that Abubacker has to knock the side plywood panel of the toilet twice which would be a signal to the person waiting inside the toilet number two and he would respond in the same manner by knocking the side panel twice and on receiving such signal, he would give the packets containing gold bars to the said person through the gap, below the side panel between the two toilets. When the interrogation was going on, Abubacker received a call from Farook, instructing him to proceed to the gents toilet inside the immigration hall. The officials attached to the Directorate of Revenue Intelligence rushed to the gents toilet and apprehended the person who was found speaking on a mobile phone, who disclosed his name as Paulraj, Security Guard, Bureau of Immigration and informed the officers that he was talking to the Petitioner/A-2, who is also working as Security Guard. As per the instructions of Paulraj, the Petitioner also came to the toilet in the immigration hall to receive the gold and he was



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also apprehended. After complying with further formalities, including recording of the statement of the accused, the Respondent arrested all the three accused on 24.09.2014 and produced before the learned Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai and they were remanded to judicial custody.

3.The learned counsel for the Petitioner submits that the Additional Commissioner of Customs (Adjudication-AIR) initiated an adjudication proceedings against the Petitioner and passed a final order on 19.03.2016 imposing a penalty of Rs.5,00,000/- (Rupees Five Lakhs only). Challenging the same, the Petitioner filed an appeal before the Commissioner (Appeals) and the appellate authority set aside the order of penalty by passing an order dated 17.07.2016. The Department filed a Revision against the order dated 17.07.2016 before the Government/Revisional Authority and the same was dismissed on 28.07.2020. Therefore, it is submitted that the entire proceedings initiated against the Petitioner, including the remand report are illegal and legally not sustainable. Therefore, the learned counsel for the Petitioner submits that the Remand Report No.27/2014 laid by the



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Respondent on 24.09.2014 is liable to be quashed and the Petitioner need not undergo the ordeal of a lengthy trial especially when the order of penalty against the Petitioner itself has been set aside.

4.The learned Special Public Prosecutor for the Respondent only submits that though the penalty proceedings under Section 112 have concluded, the criminal proceedings launched against the Petitioner for violation of Section 135 of Customs Act, 1962 is pending before the learned Judicial Magistrate, Alandur. Notwithstanding the setting aside of penalty proceedings, the Respondent is entitled to maintain the proceedings initiated against the Petitioner under Section 135 of the Customs Act and therefore, the present petition to quash the criminal proceedings is not legally sustainable. Therefore, the learned Special Public Prosecutor prayed for dismissal of this Criminal Original Petition.

5.By way of reply, the learned Counsel for the Petitioner submitted that as on date no proceedings is pending against the Petitioner and therefore also, the Criminal Original Petition is to be allowed.



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6. When the case was taken up for hearing, the learned Counsel for the

Petitioner seeks indulgence of this Court to call for remarks from the learned Judicial Magistrate No.I, Alandur regarding the pendency of the case in R.R.No.27 of 2014 where the criminal case is said to be pending against the Petitioner. Therefore, the Registry was directed to call for remarks from the learned Judicial Magistrate No.I Alandur regarding the pendency of the case in R.R.No.27 of 2014 in respect of the Petitioner herein/A2. Accordingly, remarks were received from the learned Judicial Magistrate No.1, Alandur stating that since in the year 2019, Special Court for Exclusive Trial of Customs Act was constituted, the case in R.R.No.27/2014 was transferred to the file of the learned Judicial Magistrate, Special Court for Exclusive Trial of Customs Act, Alandur. In pursuance of the same, by order dated 06.10.2022, the Registry was directed to call for remarks from the learned Judicial Magistrate, Special Court for Exclusive Trial of Customs Act Cases, Alandur regarding the stage of the case relating to R.R.No.27/2014 in respect of the Petitioner herein/A2 in F.No.DRI/CZU/VIII/48/ENQ-1/INT44/2014 on the file of the Respondent, by e-mail on or before 13.10.2022. Accordingly, remarks were received from the learned Judicial Magistrate, Special Court for



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Exclusive Trial of Customs Act Cases, Alandur stating that neither records

relating to R.R.No.27/2014 nor complaint pertaining to F.No.DRI/CZU/VIII/48/ENQ-1/INT44/2014 is received and no complaint or CC relating to R.R.No.27/2014 (F.No.DRI/CZU/VIII/48/ENQ-1/INT44/2014) is pending before the said Court. Thereafter, this Court by order dated 27.10.2022, directed the Registry to call for remarks from the learned Additional Chief Metropolitan Magistrate, EO-I and EO-II, Egmore, Chennai, regarding the stage of the case relating to R.R.No.27/2014 in respect of the Petitioner herein/A2 in F.No.DRI/CZU/VIII/48/ENQ-1/INT44/2014, by e-mail on or before 03.11.2022. In response to the order of this Court dated 27.10.2022, the learned Additional Chief Metropolitan Magistrate, (Economic Offence -II), Egmore, Chennai submitted a report on 02.11.2022 which reads as under:

“I submit the following remarks in respect of the matter called for in reference 1 and 2.

I submit in the matter of R.R.No.27/2014 (F.No.DRI/CZU/VIII/48/ ENQ-1/INT44/2014) on the file of the Directorate of Revenue Intelligence, Chennai -vs- A1-Abubakker Sithikali, A2-KSoundarajan, A3-P.Paulraj, I submit in this case all the 3 accused were remanded on 24.09.2014 and were released on bail on 15.10.2014 (Common order Crl.M.P.Nos.2325/2014 & 2326/2014 & 2458/2014) with conditions. Later the conditions were relaxed by this Court as per order in Crl.M.P.No.1204/2014, dated



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16.10.2015.

It is submitted that subsequently, the Learned ACMM, EO-II (FAC), passed an order permitting the Petitioners/A2 and A3 to appear on summons in Crl.M.P.No.1996/2015 on 10.02.2016 with conditions as follows:-

- 1. The Petitioners/A2 & A3 are directed to file an affidavit with passport size photo furnishing his present and permanent address.*
 - 2. The Petitioners/A2 and A3 are directed to appear whenever required by this Court.*
- Accordingly the Petition is allowed.*

I submit after 10.02.2016 the matter was posted to several dates for filing of complaint by the complainant and after giving sufficient time, as no complaint was preferred, this Court on 17.04.2021 passed the following order closing the matter.

Order of the Court on 17.04.2021:

Accused absent. Long pending NBW. No steps taken from the complainant side to execute the warrant. Matters to be pursued after filing complaint. Now its closed."

As such it is submitted that stage of the matter before this Court is, it is "closed".

7. In the light of the above remarks received from the learned Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai, it is evident that even on 17.04.2021, for not taking steps by the complainant to file the complaint, the complaint itself was closed. Therefore, nothing survives for adjudication by this Court. When the complaint itself is not pending, the challenge made by the Petitioner to the remand report had to be



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allowed.

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In the result, the Criminal Original Petition is allowed.

The Remand Report No.27/2014, dated 24.09.2014, is set aside in as much as the complaint itself had been closed on 17.04.2021 on the file of the learned Additional Chief Metropolitan Magistrate, (Economic Offence-II), Egmore, Chennai. Consequently, the connected miscellaneous petition is closed.

23.12.2022

SRM

Index : Yes / No

Internet : Yes / No

To

- 1.The Senior Intelligence Officer,
Directorate of Revenue Intelligence,
27, Adarsh Towers, G.N. (Chetty) Road,
T.Nagar, Chennai -600 017.
- 2.The Special Public Prosecutor,
Directorate of Revenue Intelligence Cases,
Madras High Court,
Chennai.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Order made in
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23.12.2022