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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :14.10.2022

Pronounced on : 27.10.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Criminal Revision Cases Nos.782 & 924 of 2017

Crl.R.C.No.782 of 2017
Balasubramanian, .. Petitioner

/versus/

State represented by,
The Assistant Commissioner of Customs,
Chennai. .. Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the conviction and sentence imposed in C.A.No.111 of 2008 dated 28.03.2017 confirming the conviction imposed in E.O.C.No.169 of 1997 dated 10.03.2008 on the file of Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (CBI)

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Crl.R.C.No.924 of 2017

Mr.S.Nandagopal, ... Petitioner

/versus/

The Assistant Commissioner of Customs,
Prosecution Cell, Custom House,
Chennai. ... Respondent

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment dated 28.02.2017 passed by the Learned Principal Sessions Judge, Chennai, in C.A.No.112 of 2008 in E.O.C.C.No.169 of 1997, E.O.II, Egmore, Chennai

For Petitioner : Mr.P.Ramesh Kumar,

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor (CBI)

C O M M O N O R D E R

On 04/08/1992, the Special Crime Branch of C.B.I registered the F.I.R against 6 persons on the complaint received from the Additional Collector of Customs, Chennai, reporting unauthorised export of goods on forged documents which has come to the notice during the course of correlation of shipping bills with

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export manifest. Three shipping bills dated 06/12/1991, 09/12/1991 and 16/12/1991 raised in the name of M/s.Ganesh Traders, Chennai were not genuine and it did not contain the signatures of the Officers working in the Export Department of the Customs House, Chennai. The shipping bills are forged in all aspects since the bills were not admitted for examination by the Export Group and were not assessed by assessors.

2. On completion of investigation, C.B.I recommended for launching prosecution against the accused persons. Accordingly, in exercise of power under Section 137 (1) of the Customs Act, 1962, the Commissioner of Customs accorded sanction to prosecute Balasubramanian (A-1) and Nandagopal (A-2) for their act of forgery and cheating punishable under sections 120-B, 420, 467, 468, 471 I.P.C and Section 135 of Customs Act, 1962 and Rule 14 of Exports Control Order r/w Section 5 of IMPEX Act.

3. The complaint by the Assistant Commissioner of Customs was taken cognizance by the Additional Chief Metropolitan Magistrate, Egmore in

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E.O.C.C.No.169/1997. After appreciating the oral evidence of P.W-1 to P.W-21 and the documents marked as Ex.P-1 to Ex.P-35, the trial Court held A-1 and A-2 guilty of offences under Section 120-B r/w 420, 467,468 and 471 r/w 468 I.P.C and Rule 14 of the Export Control Order r/w Section 5 of Imports and Exports (Control) Act. The trial Court in E.O.C.C.No.169/1997, sentenced each of the accused to undergo 2 years R.I and fine of Rs.1,000/- in default 2 months R.I for each of the charges (6 in numbers). The period of imprisonment was ordered to run concurrently.

4. Aggrieved by the judgment of conviction and sentence, A-1 preferred Criminal Appeal in C.A.No.111/2008 and A-2 preferred Criminal Appeal in C.A.No.112/2008 before the Principal Sessions Judge, Chennai, *vide* common judgment dated 28/03/2017, these two criminal appeals were disposed off with modification in sentence as one year R,I for each of the charges and by confirming the conviction. Hence, the revision petitions under consideration are filed challenging the legality of the common judgment passed by the Lower Appellate Court confirming the judgment of the trial court.

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5. For convenient sake, the revision petitioners are referred as per their ranking before the trial Court.

6. According to the prosecution, A-1 is the Manager of M/s.Cargo Wings Ltd. He holds the power of attorney on behalf of Company and the authorised signatory of the Company. A-2 is a former temporary clerk in Custom Department doing the freelance intermediatory job in connection with exports and imports. During the month of December 1991, A-1 and A-2 conspired to clandestinely export snake skins to Singapore and pursuant to the conspiracy, A-1 floated a fictitious firm by name M/s.Ganesh Traders, arranged snake skin from one Abdul Rahuman, prepared three shipping bills mentioning the goods to be exported as leather goods. The signatures of the Customs Officials were forged by A-2 and the name of M/s.Ganesh Traders shown as consignor and goods by mis-declaration and forged shipping documents were exported from Chennai to Singapore through travel Agent Abdul Rawoof, Director of M/s.Mackt Travels in Malaysian Air Craft.

7. The prosecution through its witnesses has explained the procedure

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involved in processing the shipping bill before permitting it to be exported. The case of the prosecution as deposed by its witnesses, A-1 signed the shipper's letter of instruction for the three shipping bills marked as Ex.P-1 to Ex.P-3. The snake skins were transported by A-2 and loaded in the Aircraft submitting shipping bills with forged endorsements along with Airway bills. The forged documents were accepted by the Export Freight Officer believing the documents as genuine. Before the fraud and forgery could be detected first by one Haridoss a Lower Division Clerk in the Customs Department, the cargo left for Singapore.

8. The Learned Counsels for the petitioners/accused challenge the legality of the impugned judgment on the ground that the case of the prosecution is that by mis-declaration as leather goods (wallets) banned goods (snake skins) were exported to Singapore forging the shipping documents. However, the charge under Section 132 of the Customs Act held to be not proved by the Court. While so, the charges for other offences under I.P.C also has to fall. The prosecution has not proved that the goods exported under the three shipping bills marked as Ex.P-1 to Ex.P-3 were snake skins and not leather goods. None of the prosecution witnesses

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has deposed about the nature of the cargo exported under these three shipping bills. Except the so called confession statements to the Customs officials which was obtained under threat and later retracted, the investigation has not probed and proved that the goods exported was snake skins and not leather goods.

9. In support of his argument, the Learned Counsel for the revision petitioners rely on the judgment of the Supreme Court in ***Titty @ George Kurian -vs- The Deputy Range Forest Officer*** reported in ***2021(2) Crimes 28 (SC).***

10. Further, it is submitted by the Learned Counsel for the petitioners that except the opinion of the handwriting expert, who has vaguely opined that the writings in the shipping bills appears to be that of A-2, there is no positive evidence that the writings and signatures of the Examiner, Appraiser and Export Freight Officers found in Ex.P-1 to Ex.P-3 were forged. The prosecution has examined only four out of six Export Freight Officer (EFO) working at the relevant point of time. They have deposed in negative that they have not seen the shipping bills Ex.P-1 to Ex.P-3, but without examining, the others Officers who were in duty during the relevant period. It cannot be presumed that the signatures are forged and

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the goods were exported without proper examination. It is impossible to bring cargo to the Aircargo complex and offload it without proper documents duly processed by the Customs Official in three stages.

11. In response to the above submissions, the Learned Special Public Prosecutor for CBI, submitted that, the revision petitioners are found guilty of offences for forging the signatures of customs Officials and used the fabricated document as genuine to export goods to Singapore thereby cheated the Department. For the said charges, the prosecution has examined the customs Officials, who were dealing with export during the relevant point of time. They all have deposed that the shipping bills marked as Ex.P-1 to Ex.P-3 contain endorsements which were not made by them or any other Officers of their Department. The disputed writings were sent to hand writing expert and their opinion clearly indicates that the disputed endorsements were made by A-2 in connivance with A-1 pursuant to the conspiracy hatched between them. Therefore, for the offences for which the revision petitioners stands convicted, the recovery of the snake skin is not necessary. Hence, the judgment cited by the revision petitioner is not relevant to the facts of the case.

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The Learned Special Public Prosecutor further submitted that, in the concurrent finding of facts by two Courts below, there is no error apparent or perversity, hence need no interference in exercise of power under revision.

12. This case investigated by C.B.I on the complaint of Assistant Commissioner of Customs (Prevention Cell). The petitioners were tried for forgery and for violation of Customs Act. The trial Court has acquitted them from the charge under Section 132 of Customs Act, since the complaint not supported by valid sanction to prosecute. From the procedure explained through the witnesses for prosecution, the shipping bills has to be filed in Export Department and it will come to the Assistant Collector of Examination. He, after examining the bills will order for random check up. Based on his order, the Examiner should open the consignment, check the cargo and report. Thereafter, the bill will go through appraisal for examination and counter signed with let export order. P.W-1 and P.W-2 who are the Examiner and Appraiser respectively had deposed about their respective role in processing the shipping bills and also deposed that they have not processed Ex.P-1 to Ex.P-3. Both P.W-1 and P.W-2 had also deposed that they

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have not put their signatures in the shipping bills marked as Ex.P-1 to Ex.P-3. In the said contest, since these two witnesses were not cross examined to disprove their testimony, the trial Court has negatived the plea of the defence that the non-production of the appraisal register maintained by the Customs Department is fatal to the prosecution.

13. After appraisal, the bill will be verified by the Export Freight officers. He will verify the let export order given by the appraiser and sign in the column meant for EFO signature. Out of six EFO's working on turns, 4 were examined as P.W-5, P.W-6, P.W-9 and P.W-10. Though other two EFO's were not examined. P.W-10 had deposed that he is well acquainted with the signatures of the other EFO's and the signatures in Ex.P-1 to Ex.P-3 found in the column meant for EFO's signature is not made by any of the six EFO's.

14. The Courts below had referred the confession statements of the accused persons given to the custom Officials and the testimony of the customs Officials who served as Examiners, Appraisers and Export Freight Officers and held

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that the endorsement of examiners, appraisers permitting the export was not genuine. Particularly, the testimony of P.W-12 , Haridoss who is a Lower Division Clerk in the Department reveals that he on scrutiny of Ex.P-1 to Ex.P-3 found the initials of Assistant Commissioner, signatures of appraiser with seal of the Custom Department and initial of Examiner were not the familiar to him. He brought to the notice of his Higher Officers about the suspicious endorsements found in Ex.P-1 to Ex.P-3.

15. P.W-12 (Haridoss, L.D.C) in his evidence had stated that he received Ex.P-1 to Ex.P-3 from his Office and he processed it. He found the signatures in the bills were different from the Officers of the department. Hence, he scored off his signature in the bills and reported the matter to Mr.Parthasarathy, the Superintendent and he, in turn, reported to the Assistant Commissioner Vijayaragavan. Thereafter, the Assistant Commissioner called the Group Appraiser Anthonysamy and verified with him about the signatures found in the shipping bills Ex.P-1 to Ex.P-3. Then, Vijayaragavan handed over the bills to Additional Commissioner Gopinath for further action. The Officials, after comparing the

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shipping bills and the flight manifest of Malaysian Airlines found the forgery and fraud committed and had initiated criminal prosecution. Anthonysamy was examined by the prosecution as P.W-11 and he has deposed about sequence of event and had corroborated the evidence of P.W-1, P.W-2 and P.W-12.

16. The report of the handwriting expert Ex.P.34 given by Mr.Arora (P.W-21) and the reasoning without any ambiguity indicates the endorsement of Customs Official in the shipping bills as if, it was examined and permitted to export are all made by A-2.

17. On considering the evidence, this Court finds no error apparent in appreciating the evidence by the Court below and no perversity in their finding which warrants interference.

18. Hence, the ***Criminal Revision Petitions are dismissed.*** The judgment of conviction and sentence imposed by the Lower Appellate Court is confirmed. The petitioners are directed to surrender before the trial Court within period of 4 weeks from today, to undergo the remaining period of imprisonment.

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Index :Yes/no
Speaking order/Non speaking order
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To:-
1. The Principal Sessions Judge, Chennai.
2. The Public Prosecutor (CBI), High Court, Madras.
3. The Assistant Commissioner of Customs, Prosecution Cell, Custom House, Chennai.
4. The Additional Chief Metropolitan Magistrate, E.C.II, Egmore, Chennai.

DR.G.JAYACHANDRAN,J.

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Pre-delivery Common Order made in
Crl.R.C.Nos.782 & 924 of 2017

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