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CrI.A.No.387 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2023

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THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.A.No.387 of 2015

Assistant Commissioner of Central Excise
Vellore Division, Vellore.

.. Appellant/
Complainant

.VS.

1.Mohammed Ishak Sherif
2.Mohammed Sherif
3.Yousuf Sherif

..Respondents/Accused

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973, to set aside the judgment of acquittal of the respondents/accused passed by the learned Judicial Magistrate No.I, Vellore in C.C.No.388 of 1998 dated 24.2.2015, by allowing this Criminal Appeal against the acquittal.

For Appellant Mr.P.Vishnu
Special Public Prosecutor

For Respondents Mr.S.Haroon AL.Rasheed
for M/s.T.S.Gopalan & Co.
for R1, R3



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JUDGEMENT

This Criminal Appeal has been filed against the judgment passed by the learned Judicial Magistrate No.I, Vellore in C.C.No.388 of 1998, dated 24.02.2015, dismissing the complaint for non-prosecution and consequently acquitting the respondents.

2.The Assistant Commissioner of Central exercise filed a criminal complaint against the accused persons on the ground that the accused persons had removed consignments without payment of duty in the year 1998 and thereby committed offence u/s. 9(ii)(bb) 9(i)(bbb) 9(i)(e) & 9(ii)(d) of the Central Exercise and Salt Act, 1944.

3.The summons was issued to the accused persons in the complaint and it was taken on file in C.C.No.388 of 1998 on 06.11.1998. The accused persons filed application u/s.245 (2) of Cr.PC., seeking for discharge and the same was dismissed by an order dated 23.01.2003. The same became a subject matter of challenge before this Court which was dismissed by an order dated 15.06.2004.



4.The proceedings once again commenced in the year 2005 and the case was posted on the side of the complainant, for evidence from 01.09.2005 to 08.10.2007. Thereafter, the witnesses were examined and the Court found that there was a *prima facie* case made out against the accused persons and it was at the stage of framing of charges.

5.The accused persons once again filed discharge petition and the same came to be dismissed in year 2009. This action became a subject matter of challenge before this Court in a criminal revision and this Court confirmed the order passed by the Trial Court.

6.The matter once again went before the Trial Court at the stage of framing of the charges and the charges were framed on 25.03.2014. The case was posted for the examination of the witnesses on the side of the complainant from 17.04.2014 to 29.01.2015. Since the evidence was not completed and there was no improvement in the status of the case, the complaint itself came to be dismissed for non-prosecution by a judgment dated 24.2.2015. Aggrieved by the same, the present criminal appeal has been filed before this Court.



7.Heard Mr.P.Vishnu, learned Special Public Prosecutor for the appellant and Mr.S.Haroon AL.Rasheed, learned counsel for the respondents.

8.The learned Special Public Prosecutor appearing on behalf of the appellant submitted that six witnesses were cited in the complaint out of which, five witnesses were examined. That apart, 18 documents were marked as Ex.P.1 to Ex.P.18. The learned Special Public Prosecutor submitted that the Court below ought not to have dismissed the complaint for non-prosecution and the complaint ought to have been considered on merits. Hence, the learned Special Public Prosecutor sought for setting aside the judgment passed by the Court below and for remanding the matter back to the file of the Trial Court to consider and pass judgment on merits.

9.Per contra, the learned counsel for the respondents submitted that the entire incident is said to have taken place on 30.03.1989 and whereas the criminal complaint itself came to be filed only in the year 1998. That apart, the sanction order that was given did not permit the complainant to file a complaint as against three individuals. It was



further submitted that PW.1, who was examined on the side of the complainant was not aware of any facts in this case and the person, who was incharge at the relevant point of time was not even brought before the Court. Accordingly, the matter was pending for nearly 17 years and hence, the Trial Court came to a conclusion that no useful purpose will be served in keeping the complaint pending and hence, the same was dismissed for non-prosecution. The learned counsel submitted that he was not even able to contact the respondents and according to the instructions received by him, one of the respondent has died and another respondent has already crossed 80 years and there is no response from the 3rd respondent. Hence, it was submitted that the judgment passed by the Court below does not require the interference of this Court.

10. In the considered view of this Court, reviving the case at this stage will amount to flogging a dead horse. Out of the three accused persons, the learned counsel for the respondents are not even aware as to whether anyone is alive as on date. The Trial Court took into consideration the fact that the complaint was pending for nearly 17 years. That apart, the appellant was not able to bring the important official witness, who had set the law in motion.



11.This Criminal Appeal is pending before this Court for the last eight years and this would mean that this case is pending for the last 25 years. There must be some purpose even for this Court to remand the matter back to the file of the Trial Court to deal with the same on merits. Considering the enormous time that has lapsed, it will be very difficult to bring the witness and complete the trial. Even otherwise, it will be a wasteful exercise to revive a criminal trial after 25 years from the date of incident.

12.In the light of the above discussion, this Court is not inclined to interfere with the judgment passed by the learned Judicial Magistrate No.I, Vellore in C.C.No.388 of 1998 dated 24.2.2015 and the same is hereby confirmed.

13.In the result, this Criminal Appeal stands dismissed.

27.03.2023

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Internet : Yes/No

Index : Yes/No

Speaking Order :Yes/No

Neutral Citation :Yes/No



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To

Judicial Magistrate No.1, Vellore.



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N.ANAND VENKATESH, J.

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