



Crl.A(MD)No.59 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.06.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.A(MD)No.59 of 2009

The Assistant Commissioner,
Customs Department,
Tuticorin.

O.R.No.2 of 1998.

... Appellant/Complainant

Vs.

K.M.A.Alexander

... Respondent/Accused No.6

PRAYER: Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, to call for the records and set aside the acquittal of the respondent by the Additional Chief Judicial Magistrate, Madurai in C.C.No.4 of 2004, dated 23.05.2008 and convict the respondent in accordance with law.

For Appellant : Mr.Arul Vadivel @ Sekar
Special Public Prosecutor

For Respondent : Mr.V.Kathirvelu
Senior Counsel
for S.M.A.Jinnah



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JUDGMENT

On the basis of the complaint registered by the appellant in O.R.No.2/1998 against the respondent and five others, after full trial, the learned Additional Chief Judicial Magistrate, Madurai, vide separate Judgments and Orders, dated 23.05.2008 passed in C.C.No.2 of 2003 and C.C.No.4 of 2004, had acquitted all the six accused. On separate appeals, the appellant/State preferred appeals in Crl.A(MD)No.59 of 2009 and Crl.A(MD)No.59 of 2009 before this Court. This Court heard both the appeals together and passed a common Judgment and order, dated 19.10.2019 and 23.11.2019, thereby set aside the order of acquittal and convicting the respondents 1 to 5 in Crl.A(MD)No.59 of 2009 for the offence under Section 135 (1)(a)(ii) r/w 135A of the Customs Act and sentenced them to undergo imprisonment of one year each and to pay a fine of Rs.50,000/- each, in default, to undergo six months Rigorous Imprisonment and also convicted the respondent in Crl.A(MD)No.59 of 2009 for the offence under Section 135 (1)(a)(ii) r/w 135A of the Customs Act and sentenced them to undergo imprisonment of one year and to pay a fine of Rs.50,000/-, in default, to undergo six months Rigorous Imprisonment.



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2. Aggrieved by the same, the respondents 1 to 3 in Crl.A(MD)No.58 of 2009 preferred appeals before the Honourable Supreme Court of India. The Honourable Supreme Court of India vide Judgment dated 29.10.2021 set aside the common Judgment passed by this Court and remanded the matter back to this Court for fresh disposal. While remanding the matter, the Honourable Supreme Court of India also observed that “all the questions of law and fact would remain open before the High Court and the parties would be free to address the High Court on all issues both on law and facts”.

3. The case of the prosecution is that on secret information, the Anti-Smuggling Wing of the Customs Department at Tuticorin, conducted a raid in a warehouse situated at Door No. 111, Etayapuram Road, Tuticorin on 10.03.1998. During the raid, large quantities of cardboard boxes were recovered in the presence of three persons, who identified themselves as Rahman Sait alias Nathan, Selvaraj and Sullan. They admitted that 419 cardboard boxes contained sandalwood billet/sticks and 57 cardboard boxes contained Mangalore tiles. All were kept for export from Tuticorin to



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Singapore clandestinely and to be delivered to one RN Contractors Enterprise Company, Singapore. All were seized by two separate mahazars in the presence of witnesses. The seized materials were transported to the appellant's office. The sandalwood was valued at Rs.96,52,800/- and Mangalore tiles were valued at Rs.10,000/-.

4.After completion of the enquiry, the appellant lodged a criminal complaint as against six accused persons. During the investigation, sixth accused viz., K.M.A.Alexander was absconded and hence, the complaint against these respondents/Accused 1 to 5 has been taken cognizance in C.C.No.2 of 2003 on the file of the learned Additional Chief Judicial Magistrate, Madurai, for the offences punishable under Sections 132, 132(1)(a)(ii) and 135A of the Customs Act. Later the absconding accused viz., the sixth accused was arrested and another case has been taken cognizance against him in C.C.No.4 of 2004 on the file of the learned Additional Chief Judicial Magistrate, Madurai. A separate trial was conducted in both complaints.



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5.The prosecution had examined P.W.1 to P.W.7 and marked Ex.P.1 to Ex.P.13. The prosecution also produced material objects M.O.1 and M.O.2. On the side of the accused, no one was examined and no documents were marked.

6.On perusal of the oral and documentary evidence, the trial Court found the respondent not guilty for the offences under Sections 132, 132(1)(a)(ii) and 135A of the Customs Act and acquitted them of all the charges.

7.The learned Senior Counsel appearing for the appellant would submit that while allowing the appeals, this Court correctly held that the prosecution proved its case beyond any doubt as against the respondent. However, the Honourable Supreme Court of India set aside the order only on the ground that this Court passed a common Judgment against two appeals preferred by the appellant against two separate order of acquittal by two separate trials. Further, the learned Senior Counsel submitted that the trial Court acquitted the respondent on the ground that the materials



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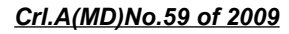
objects were not produced before the trial Court and it is a fatal to the case of the prosecution. The sanctioning authority was not examined by the prosecution, whereas the order of sanction was marked through P.W.4. In fact, the learned trial Judge, inspected the premises where the sandalwood was kept in the office of the appellant. The mahazars were prepared and the same were marked by the prosecution as Ex.P.3, Ex.P.6 and Ex.P.12. In the customs cases, all the materials could not be produced before the trial Court, since it was in large quantum and as such, the mahazar alone is enough to prove that the materials were seized from the accused persons. Further, any statement made before the customs officers is admissible in evidence. During the adjudication process, the accused persons were imposed fine by the adjudicating authority. It was challenged before the Tribunal. Though it was set aside in the adjudication proceedings again on the appeal, penalty imposed as against the respondent by the Commissioner was confirmed and the same was not challenged before any court of law by the respondent. The photographs of the material objects were produced before the Court and proved the materials which were seized from the accused persons. Further, the customs officials are not the police authorities and as such, the statements given before the customs officer are admissible in nature. By producing the statement of the accused



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persons, the prosecution proved its case beyond any doubt. Without considering the above facts and circumstances, the trial Court mechanically acquitted the respondent and as such prayed for convicting the respondent.

8.The learned senior counsel appearing for the respondent would submit that even according to the case of the prosecution, the respondent attempted to export the material object to Singapore for which the appellant failed to produce any iota of evidence to prove the said allegation. There is no iota of evidence to show that the bill was fabricated in order to export the material object to Singapore. On the information given to the various department, they also proceeded as against the respondent and it is pending. Therefore, the appellant has no jurisdiction to prosecute the respondent, that too under the Customs Act. The authority, who accorded sanction, was not examined by the prosecution to mark the order of sanction. Further, the material objects were not produced before the trial Court and no Form 95 was marked before the trial Court. Therefore, the prosecution failed to prove its case beyond any doubt and as such, the trial Court rightly acquitted the respondent from all the charges. He further submitted that the





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10.The trial Court acquitted the respondent on the ground that no evidence was shown to prove that the respondent is Customs House Agents and they packed and kept the boxes and had an intention to attempt to export Sandal Wood, illegally, to Singapore. Admittedly, the sandalwood had arrived at Tuticorin two months before, and arrangements were made to cancel the shipping bill. Accordingly, it cannot be said that the accused had an intention to evade to pay the customs duty levied by the customs department by crossing the green gate and having escaped by wrong declaration contravening under Section 135 of the Customs Act. There are no documents on record to show that the accused forged the documents and produced the same before anybody. That apart, the prosecution failed to prove that the respondent with an intention of evading in paying customs duty under Section 135 (1)(a)(ii) of the Customs Act, had attempted to export carton boxes containing prohibited sandalwood by means of forged documents thereby causing revenue loss to the customs department and contravention of Section 135A of the Customs Act.



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11. On perusal of the deposition of P.W.4 revealed that the sanctioning authority was not examined, however, the order of sanction was marked through him as Ex.P.5. He also admitted that no independent witnesses were examined while seizing the material objects. He also admitted that the alleged sandalwood seized from the godown belonged to one Kesavan. That apart, he also informed about the same to the forest department and they proceeded against the respondent separately. The alleged sandalwood was not confirmed by any expert opinion that the said objects are sandalwood. He also admitted that there is no evidence to show that the material objects about to export to Singapore. The prosecution also failed to prove that the sandalwood belonged to whom. Admittedly, the sandalwood was in the godown owned by one Kesavan. He was not implicated as an accused, which is fatal to the case of the prosecution. There is absolutely no evidence to show that the respondent is the owner of the sandalwood. Therefore, the prosecution failed to prove its case beyond any doubt and the trial Court rightly acquitted the respondent.



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12.The learned counsel appearing for the respondent relied on the Judgment of the Honourable Supreme Court of India in ***Chinnam Kameswara Rao and others Vs. State of Andhra Pradesh*** reported in **(2013) 12 SCC 689**, wherein it is held as follows:-

"12.A recent decision of this Court in Murugesan & Ors. v. State 2012 (10) SCALE 378 is a timely reminder of the principles that were succinctly enunciated in an earlier decision of this Court in Chandrappa & Ors. v. State of Karnataka (2007) 4 SCC 415, in the following words:

"21..... "42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient



grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court." (emphasis supplied)

12. What, therefore, needs to be examined in the light of the settled legal position is whether the view taken by the trial Court acquitting the accused was a reasonably possible view. If the answer is in



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the negative nothing prevents the Appellate Court from reversing the view taken by the trial Court and holding the accused guilty. On the contrary, if the view is not a reasonably possible view the Appellate Court is duty bound to interfere and prevent miscarriage of justice by suitably passing the order by punishing the offender. We have in that view no hesitation in rejecting the contention that just because the trial Court had recorded an acquittal in favour of the appellants the Appellate Court had any limitation on its power to reverse such an acquittal. Whether or not the view was reasonably possible will be seen by us a little later when we take up the merits of the contention urged by the appellant regarding involvement of the accused persons in the commission of the crime”.

13. Thus, it is clear that since because the trial Court acquitted the accused, the Appellate Court cannot interfere with the order of acquittal without any substantial and compelling reasons. There cannot be any dispute in regard to the legal proposition that an appellate Court while entertaining an appeal from a Judgment of acquittal would not ordinarily interfere therewith, if two views are possible. In the case of acquittal, there is a double presumption in favour of the accused. Firstly, the presumption of innocence is



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14.In my view, in the case on hand, the prosecution failed to prove its case beyond any doubt for the reasons stated supra. Therefore, there is absolutely no ground to interfere with the order of acquittal passed by the trial Court as against the respondent and the Criminal Appeal is liable to be dismissed. Accordingly, the Criminal Appeal is dismissed.

07.06.2023
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NCC : Yes/No
Index : Yes/No
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To

The Additional Chief Judicial Magistrate,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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