IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.3.2024

Delivered on : 20.6.2024

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Appeal Nos.489 and 491 of 2016
and
Crl.M.P.No.915 of 2017

1.G.Vinoth Kumar Gollapudi 2. Natha Venkata Vathsa Vardhan	Appellants in Crl.A.489/2016/ A2 and A3
K.A.A.Salam	Appellant in Crl.A.491/2016/ A1

vs.

State by Deputy Superintendent of Police, SPE/CBI/ACB, Chennai. (RC MAI 2011(A)0011)	Respondent in both Appeals

Criminal Appeal filed under Section 27 of Prevention of Corruption Act and Section 374(2) of Cr.P.C. against judgment of conviction in C.C.No.40 of 2012 dated 21.6.2016 by the IX Additional Special Judge for CBI Cases, IX Additional City Civil Court, Chennai.

For Appellants in Crl.A.No.489/2016	: Mr.A.Ganesh
For Appellant in Crl.A.No.491/2016	: Mr.N.R.Elango, Senior Counsel for Mr.A.Nagaraj

For Respondent in both Appeals : Mr.K.Srinivasan,
Spl.P.P. for CBI cases

COMMON JUDGMENT

Challenging the judgment of conviction and sentence passed by the IX Additional Special Judge for CBI Cases, IX Additional City Civil Court, Chennai, the first accused has filed Criminal Appeal No.491 of 2016 and A1 and A3 have filed Criminal Appeal No.489 of 2016.

2. The details of conviction and sentence are as under:-

Rank	***Legal provision***	***Sentence imposed***
A1	Section 120B IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	Two years rigorous imprisonment for each offence and a fine of Rs.10,000/- for each offence in default to pay the fine, to undergo simple imprisonment for a period of three months each. The sentences shall run concurrently.
A2	Section 120B IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	Two years rigorous imprisonment and a fine of Rs.10,000/- in default to pay the fine, to undergo simple imprisonment for a period of three months.
A3	Section 120B IPC r/w 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	Two years rigorous imprisonment and a fine of Rs.10,000/- in default to pay the fine, to undergo simple imprisonment for a period of three months.

3. Facts of the case in brief are as under:-

i) On a reliable information received by in this office that the accused are bringing dutiable goods into India and the active connivance of public servants who by abuse of their position as public servants, exercise their official influence to get the goods cleared without payment of due Customs duty. Based on this information, a joint surprise check comprising officers of Central Bureau of Investigation, Chennai and Directorate of Revenue Intelligence, Chennai was conducted in the intervening night of 12/13.02.2011 at Arignar Anna International Airport, Meenambakkam, Chennai in the presence of witnesses viz., (1)PW3-Shri.Ram Prasad Reddy, Superintendent, Air Intelligence Unit, Anna International Airport, Chennai. (2)PW5-Shri.M.Victor Wilson, Air Customs Officer, Anna International Airport, Chennai. and (3)Shri.R.Mohana Shanmuga Sundaram, Intelligence Officer, Anna International Airport, Chennai.

ii) The information available was to the effect that Shri.K.A.A.Salam. Deputy Superintendent of Police, CBI was facilitating the clearance of passengers coming from abroad by Jet Airways flight No.9W225 from Brussels to Chennai and the officers of DRI are participating in the proceedings.

iii) Accordingly, the officers of CBI, ACB, Chennai and Directorate of Revenue Intelligence, Chennai viz., PW-6, Shri.P.Rama Mohana Rao, Deputy Superintendent of Police, CBI, ACB, Chennai, Shri.R.Purushotham, Inspector of Police, CBI, ACB, Chennai, Shri.N.Muruganandam, Senior Intelligence Officer, DRI, Chennai, Shri.R.Srinivasan, Intelligence Officer, DRI, Chennai and PW-10, Shri.M.Ebrahim, Intelligence Officer, DRI, Chennai had entered into the Arrival Hall of Chennai International Airport at about 00:00 hrs on 13.02.2011.

iv) It was found that Shri.K.A.A.Salam came into the International Airport Arrival Lounge and contacted PW4-Shri.S.Ganapathy, PRO, Customs. Enquiries with Shri.Ganapathy revealed that Shri Ram Prasad Reddy, Superintendent (Customs) (PW3) had requested him that one officer by name Shri.Salam has to be allowed inside. This request was conceded and a pass to enter into the International Airport was issued in the name of Shri.Salaam. Further, Shri.Ram Prasad Reddy, Superintendent, when he was asked as to how he knew Shri Salam, he had stated that though he was aware of the name, he did not meet Shri.Salaam earlier and this was the first time he met him, he had stated that one Shri.Anburaj, Superintendent (Air Customs) (PW2) working in Air Cargo requested him by a call on his mobile 9841093606 at 7:00 pm on 12.02.2011 to arrange for pass for Shri.Salam to come inside the Customs area. Accordingly, Shri.Ram Prasad Reddy made a request to the PRO and a pass No.A877041 dated 12.02.2011 of Bureau of Civil Aviation Security was arranged on the basis of the photocopy of CBI Identity Card of Shri.Salam, Inspector. This pass contains the name of Shri.Salam alongwith others for whom Customs arranged entry for facilitation.

v) Shri.Salam came upto the visitors area with Airport Authority of India Ticket No.025141, which was produced by him during the proceedings. Shri.Salam came with one Shri. Sadique, S/o Shri.Seeni Mohd., Proprietor of Elite Collection, Chennai City Centre, Dr.Radhakrishnan Salai and his driver, Shri.Girish, S/o.Shri.Balakrishnan, resident of No.23, Pediyari Koil Street, Seven Wells, Chennai-1.

vi) Shri.Salam had gone inside the conveyor belt area and met the passengers viz, Shri.Vinodh Kumar Gollapudi holder of passport No.HO725355 dated 26.09.2008 and Shri.N.V.Vathsa Vardhan, holder of passport No.E0453882 dated 19.12.2001. After collecting the baggage coming out of the conveyor belt duly scanned, the two passengers and Shri.Salam were proceeding towards green channel and by that time, they were intercepted. Their baggages did not have any scan markings and their disembarkation/declaration card did not mention any values for the contents of the baggages. The declaration of Shri N.V.Vathsa Vardhan mentioned the number of checked-in baggages and the hand baggages as 3 and 1 respectively. The declaration of Shri.Vinodh Kumar Gollapudi mentioned the checked-in baggages and hand baggages as 2 and 2 respectively. However, all the baggages contained the baggage tags in the name of Shri.Gollapudi bearing Nos.(1) 0589 9W987543, (2) 0589 9W987544, (3) 0589 9W987545, (4) 0589 9W987546 and (5) 0589 9W987563.

vii) On request, Shri.Mohana Shanmuga Sundaram, Intelligence Officer (Customs) also participated in the process of inventorisation of the baggages brought by the passengers for assessment of duty. The details of items found in the baggages and the values arrived at for the same based on the prices taken from the internet.

viii) The overall value of the goods came to the Indian currency of Rs.8,62,615/-. Value of the goods after abatement at the rate of

35% was Rs.5,60,700/-. During the proceedings, CBI officers handed over the items to the jurisdictional Customs Officers for the purpose of Assessing appropriate customs duty and for further action under the provisions of Customs Act, 1962. The other items which all are of personal effects of the above passengers were handed over to them. The joint surprise check proceedings concluded at 08:15 hrs on 13.02.2011.

ix) Since the proceedings of the Joint Surprise check, prima facie, revealed commission of offences punishable U/s 120-B rw 420 IPC, Sec. 132 and 135 of Customs Act, 1962 and Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 by Shri.K.A.A. Salam (A-1), Deputy Superintendent of Police, CBI, ACB, Nagpur Branch, Shri.Vinod Kumar (A2), Shri.Vatsa Varadhan (A3), Shri.Sadique (A4) and Shri.Girish (A5) a regular Case in Crime No.RC MA1 2011 A 0011 was registered on 13.2.2011 at 9.45 hours under FIR, Ex.P53 and the case was entrusted to PW30, Shiri.A.J.Ramalingam, Deputy Superintendent of Police, SPE/CBI/ACB/Chennai for detailed investigation.

x) PW30, took up the case for investigation and during investigation, he examined the prosecution witnesses on various dates and recorded their statements and also collected documents from the authorities concerned. Further, he also collected Ex.P61 Search List from Thiru.K.Raja, Inspector, CBI/ACB/Chennai who conducted search at the residential premises of the of N.V.V.Vardhan (A3) on 13-11-2011. After completion of investigation and after obtaining the sanction order, Ex.P1 from PW1, Thiru.Ashok K.K.Meena, who was then serving as Director, Vigilance II, Department of Personnel and Training, Government of India, New Delhi for the prosecution of A1, laid the charge sheet against the accused persons u/s 120-B IPC r/w Sec. 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sections 132 and 135 of the Customs Act, 1962 and substantive offences thereof.

xi) The final report was taken on file in C.C.No.40/2012 and summons were ordered to be issued to the accused and on the accused entering appearance, the copies of the documents relied on by the prosecution were furnished to the accused under Section 207 Cr.P.C. Thereafter on a perusal of the records and after hearing the Public Prosecutor and the counsel for the accused, the Trial Court, on being satisfied that a prima facie case has been made out against the accused, framed the charge against A1 to A4, u/s 120-B IPC read with section 13(2) read with 13(1)(d) of Prevention of Corruption Act and against A1 under section 13(2) read with 13(1) (d) of Prevention of Corruption Act. The accused, on being questioned with reference to the charges, denied the same and sought to be tried.

xii) In support of the prosecution case, PWs 1 to 30 were examined and Exs. P1 to P61 were marked. On the conclusion of the prosecution evidence, the accused were examined under section 313 Cr.PC. with reference to the incriminating evidence tendered against them by the prosecution witnesses. The accused had denied the same and filed detailed written statement of defence and they have marked Exs.D1 to D3, but, not chosen to examine any witness on their side.

xiii) The Special Court, on considering the entire materials, found the accused/appellant guilty and imposed punishments, as referred to above, which is under challenge in the present Criminal Appeals.

4. The crux of the submissions made by Mr.N.R.Elango, learned Senior Counsel appearing for appellant in Criminal Appeal No.491 of 2016 is as under:-

i) The appellant, having joined as Sub Inspector of Police in Central Industrial Security Force (CISF) in the year 1985 and served at various places of India, attained the level of Deputy Superintendent of Police, CBI without any blemish in his service. The appellant had purchased a second hand Hyundai Santro Car in the year 2006 from Mr.Vathsa Vardhan, after due intimation to the Department. From that transaction, Mr.Vathsa Vardhan became close friend of the appellant, who introduced his brother in law Mr.Vinod Kumar and their friend Mr.S.M.Sadiq. On promotion as Deputy Superintendent of Police, the appellant was transferred from Hyderabad and joined Nagpur in the month of January 2011. As he had not met his family at Chennai as well as his parents at Kerala, after the promotion, on 1.2.2011, he had applied for 12 days leave from 7.2.2011 to 18.2.2011 to visit both Chennai and Kerala. After obtaining leave, he reached Chennai on 5.2.2011 and while in Chennai, he came to know from Shri.Sadiq that Shri.Vathsa Vardhan and Shri.Vinod are in US to meet their sister, who had settled there. He was also informed by Shri.Sadiq that they are expected back on 12.2.2011. Therefore, the appellant decided to meet Shri.Vathsa Vardhan and Shri.Vinod in Airport itself on their arrival as a courtesy.

ii) The appellant had proposed to obtain a valid pass to enter into the arrival hall of Chennai International Airport and thereby, he contacted Shri.Anburaj, PW2, whom he knows for a few years and as directed by him, the appellant had contacted Shri.Ramprasad Reddy, PW3,, who had arranged for a pass and on the strength of the same, the appellant had entered into the arrival hall, however, he had not asked for any obligation or any favour to do for his friends as evident from the evidence of the prosecution witnesses.

iii) While waiting for his friends, the appellant saw the CBI Officers including Shri.Raju, Superintendent of Police, Shri.Sundarvel, Inspector from Special Unit of CBI and Shri.Purushothaman, Inspector from ACB, Chennai and while conversing, they informed that they had come for a surprise check.

iv) Around 0030 hrs on 13.02.2011, Shri.Vathsa Vardhan and Shri.Vinod came out of the Immigration area and walked towards conveyor belt to collect their baggage. On seeing the appellant, they also waved at him. While collecting their baggage, they were intercepted by officials from, DRI viz., Shri.Muruganandam, R.Srinivasan and M.Ebrahim along with Shri.Rammohana Rao, Deputy Superintendent of Police, CBI, Shri.Purushothaman, Inspector from ACB, Chennai and Shri.Raju, Superintendent of Police, Sundervel, Inspector, Shri.Deivanayagam, G.Gandhi, K.Sathyan, V.Thangaraj (all staff from Special Unit of CBI) and took them to AIU room. On the way, they had also asked the appellant to join them. Then, the items brought by them were inventorised and at that time they told that the items were gifted by their sister who is residing in US and expressed their willingness to pay the duty. Upto that time, the appellant did not know what are the goods brought by them. No evidence has been adduced to establish that the appellant/A1 had knowledge aboiut the contents of the baggage of A2 and A3. Shri.S.M.Sadiq, who was waiting outside, was also brought inside and the proceedings, which are the subject matter of the present case.

v) A perusal of the proceedings drawn on 12/13.02.2011, will clearly prove that it was drawn not showing the full fact. The passengers were repeatedly expressing their willingness to pay the duty. It is also devoid of showing the full details of officials at the time of interception like names of Shri.Raju, Superintendent of Police, Shri.Sundervel, Inspector, Shri.Deivanayagam, G.Gandhi, K.Sathyan, V.Thangaraj (all staff from Special Unit of CBI).

vi) During the course of investigation, to prove the real facts and also to show the victimisation of CBI, the appellant had requested for the CCTV footage of the arrival hall through RTI from Airport Authority of India and CISF, who were maintaining the same. It was informed by Airport Authority of India that CISF is manning CCTV and that the CCTV footage can only be provided to an investigating agency. However, on 02.03.2011, the appellant had made a request to the Commandant, CISF, Airport for the same. CISF also, vide letter dated 22.03.2011, under section 24 of RTI Act informed that the said Force is exempted from providing information, except in the cases of corruption and Human right violation. Though, the appellant made appeals, it was turned down by the appellate authorities, including Chief Information Commission, New Delhi.

vii) Despite the availability and means to secure the best evidence, viz., the CCTV footage of Customs Area, which would have clinched the issue, the respondent had deliberately omitted to produce the same during trial thereby creating serious doubts about the prosecution case.

viii) The act of the appellant/A1 has been portrayed as "Facilitation". It is a normal practice in CBI to facilitate friends and relatives at International Airport. Not only that other Government Officials and VIPs also seek facilitation. Facilitation does not mean to clear the goods without paying duty.

ix) To hold a person, who is stated by the Customs Officers themselves to have not brought under any influence on them, guilty just because he was present in the Airport, even if it be at conveyor belt area will be very grave injustice to him.

x) The Customs Appeals preferred by the appellant in C.Cus.No.1524-1527/2013, the Commissioner (Appeals) Customs House, Chennai had set aside the penalty imposed on the appellant and allowed the appeals exonerating from the customs proceedings.

xi) While it is the case of the prosecution that the dutiable electronic goods were not brought by A2 and A3 for personal use and they were meant for sale through PW4 and thereby PW4 was also arrested in the case, the acquittal of A4 by the Special Court goes to the root of the case and till date, no appeal had been filed by the respondent against the acquittal of A4.

xii) Mere proceeding towards green channel is not an offence. Even if one enters into the green channel, he can go back to red channel and vice versa as admitted by the prosecution witnesses.

xiii) When the Joint Surprise Check was conducted on 12/13.2.2011, the rough sketch was prepared on 22.9.2011 after more than seven months, which is a suspicion surrounding the genuineness of the entire joint surprise check proceedings itself.

xiv) When the admissions made by the prosecution witnesses in their cross examination do not give rise to any allegation against the appellant for the offence of criminal misconduct as required under Section 13(1) of the Prevention of Corruption Act, the Special Court has erred in convicting the appellant and thereby, it is liable to be set aside and the appellant is entitled to be acquitted.

5. The submissions made by Mr.A.Ganesh, learned counsel appearing for appellant in Criminal Appeal No.489 of 2016 is as under:-

i) The appellants being only private individuals and not public servants, the Trial Court has erred in convicting them under Section 13(1)(d) of the Prevention of Corruption.

ii) The admission made by PW2 in his cross-examination would make it clear that A1 did not misuse his official position in obtaining the pass for entry into the Airport arrival hall and it is only for facilitation and thereby offfence under Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act is not attracted even for the main accused viz., A1, as a result, there is no question of applicability of such Section for the appellants/A2 and A3.

iii) The admissions made by PW3 to PW5 would make it clear that A1 did not seek any pecuniary advantage for A2 and A3 by entering into the arrival hall, however, the Special Court has erred in coming to the conclusion that A1 had abused his official position to enter into the customs area in order to make pecuniary advantage to A2 and A3.

iv) The appellants had time to fill up the disembarkation card till they submit the same prior to exit as admitted by the prosecution witnesses and they were only within the arrival hall, however the Trial Court failed to consider the same.

v) The Special Judge ought to have seen that all the Checked in Baggages were in the name of the first appellant/A2 though the appellants travelled together. The second appellant had informed the officer and segregated his baggage goods by giving statement to Mr.Mohanashanmugasundaram, Preventive Officer. The prosecution had omitted to examine the said Mohanashanmugasundaram as prosecution witness which is fatal to the prosecution and the statement is inadmissible in evidence when the officer who recorded the statements from the appellants was not examined.

vi) The Special Court failed to see that the appellants have brought the BOSE Music system in their original cartons openly and it was visible to naked eyes and thereby, it amounts to declaration as no officer will leave the passenger with the said carton without obtaining duty. Therefore, it is not a case of non-declaration and evasion of duty to invoke Section 13(2) read with 13(1)(d) of Prevention of Corruption Act.

vii) The Special Court has arrived at a conclusion based on surmises and conjectures inasmuch as it has been held that the appellants ought to have agitated as a common man when they were intercepted by the CBI preemptively and their non-agitation shows that A1 came for pecuniary advantage and thereby Section 13(2) read with 13(1)(d) of Prevention of Corruption Act is attracted.

viii) The Joint Surprise Check having been conducted inside the arrival hall itself, mere non entry in the disembarkation card about the dutiable goods does not mean that they have committed an offence of conspiracy and the prosecution has not proved the ingredients of conspiracy theory, however, the Special Court has convicted the appellants under such provision.

ix) None of the prosecution witnesses says that A1 had misused his official position in order to attract Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act.

x) The Special Court failed to consider that facilitation itself is not an offence or illegal act.

xi) The Special Court ought to have seen that the CBI officials, without allowing the appellant to declare the goods orally to the proper officer of the customs, seized the goods under the proceedings which is against law.

xii) The Special Court has failed to consider that non-dutiable goods were also seized by the CBI and valued, which is against baggage Rules.

xiii) The Disembarkation card is only an exit card and therefore, non-declaration of goods in that card will not raise any violation under the baggage rules or Customs law.

xiv) The case of the prosecution itself is that the appellants were proceeding toward green channel and they had not crossed it, rather, not even entered it, however, the Special Court failed to consider that as evident from Ex.D1, Customs Circular, a passenger can wait or road around the arrival hall without time limit and therefore, mere going near the green channel does not mean that he has no dutiable goods and he attempts to violate the rules, especially, when P.Ws.2 to 5 have admitted that after green channel, Assistant Commissioner's room, Forex and Duty free shop are there and the passenger can go via green channel to those places and it is not a violation.

xv) The Special Court ought to have seen that as spoken by P.Ws.2 to 5, the exit gate is situated in between red and green channel and this clearly shows that if the appellants intended to evade duty, they could have gone to the exit gate after crossing the red channel, but, in this case, the proceedings says that they were proceeding towards green channel and at that time, they were intercepted, which proves their intention not to evade duty and it is preemptive seizure.

xvi) The Special Court failed to appreciate that the Customs Circular 9/2001 says that even the officers have to help the passengers to fill up the card or obtain oral declaration if they have not written or complete the disembarkation card or incomplete disembarkation card, but, no such chance was given to the appellants by the respondent, which shows their high handedness.

xvii) The appellants and A1 and A4 being friends for a long time, A1 and A4 came to receive the appellants, who were returned from

USA after 10 days stay in their relative's house. Mere receiving them will not raise any criminal conspiracy or offence under the Prevention of Corruption Act. Further, A4 and his driver, who were waiting in the visitor's hall were brought from there and arrested for no fault, which shows the ulterior motive or intention of the respondent. The Special Court, having disbelieved the fabricated story of the prosecution against A4 acquitted A4 holding that the prosecution had failed to prove the case against him. Whileso, it ought to have acquitted all the accused as the conspiracy theory of the prosecution has failed.

xviii) The Special Court failed to consider that the appellants have succeeded in their Appeal before the Commissioner of Customs (Appeals), Chennai and got exonerated from the charges.

xvix) Thus, the Special Court has erred in convicting the appellant and thereby, it is liable to be set aside and the appellants are entitled to be acquitted.

6. The submissions of Mr.K.Srinivasan, learned Special Public Prosecutor are as under:-

i) On a reliable information received with regard to the electronic goods being brought into India with the connivance of public servants and by evading customs duty, a joint surprise check was conducted by the CBI and DRI officers at Arignar Anna International Airport, Meenambakkam, Chennai and on interception of A2 and A3, the authorities found that they have not declared the dutiable electronic goods in the embarkation card and they had tried to evade customs duty with the facilitation of A1, Shri.K.A.A.Salam. Deputy Superintendent of Police, CBI. The enquiry revealed that the goods worth Rs.8,62,615/- were brought by A2 and A3 without declaring the same in the declaration cards viz., disembarkation card, Ex.P5 in order to evade the customs duty to the tune of Rs.2,00,000/- payable even after allowing the permissible abatement.

ii) Enquiry further revealed that the goods were brought by them not for domestic purposes but, for commercial purposes intended for A4, Shri.S.M.Sadiq, who is running an electronic showroom in the name of M/s.Elite Electronics in the City Center, Chennai.

iii) During enquiry, the telephone call logs of telephones used by the accused person were collected which disclose that they were in touch with each other during the relevant period of time. During the search conducted at the house of A-1, Shri.K.A.A.Salam, a Chevrolet Car bearing Registration No.TN9-AW-1111, owned by co-accused A-4, Shri.S.M.Sadiq was seen parked in the portico of Shri.K.A.A.Salam's house. Besides, the RC Book, Insurance Papers and other documents related to this vehicle were also recovered from the house of A-1. The evidence recorded revealed that the aforesaid car was used by A-1 Shri.K.A.A.Salam and his family members. Moreover, the RTO document showing transfer of ownership of Hyundai Santro Sedan Car bearing registration No.TN-01-S-0036 from the name of A-3 Vathsa Vardhan to the name of Smt.Fareeda Salam, wife of A-1 was recovered from the residence of co-accused A-4 Shri.S.M.Sadiq. There were ample oral and documentary evidence, to prove that all the accused are known to each other for quite a long time and they hatched the conspiracy to indulge in the offence.

iv) A-1 by abusing his official position as Deputy Superintendent of Police, CBI, went into the arrival hall of Anna International Airport, Chennai for unofficial purpose, met accused A-2 Shri.G.Vinodh Kumar Gollapudi and A-3 Natha Venkata Vathsa Vardhan near the conveyor belt, collected the baggages and proceeded towards green channel along with them with their undeclared dutiable goods for commercial purpose intended for co-accused A-4 Shri.S.M.Sadiq so as to obtain undue pecuniary advantage to themselves. It is also revealed that A1 had earlier too, used to visit the Arrival Hall of Chennai Airport several times by obtaining Entry pass to receive his friends/relatives coming from abroad. The Evidence of PW12, Shri.Srivastava, Deputy General Manager, Airport Authority of India and Ex.P25 clearly shows the above facts.

v) A1 was on earned leave at the relevant point of time viz., on 12.2.2011 and 13.2.2011. As a common individual can get the airport entry passes to assist any known persons who are physically handicapped. In this case, there is no such need for any help for A2 and A3 to come out of Airport themselves. As a friend, A1 could have merely received them in the Visitor's area. However, he had misused his official position and obtained the entry pass and by showing the same, he had entered into the arrival hall.

vi) The evidence of PW12 is to the effect that if the CBI approaches for passes, they first get letter from them and if it is for official duty, he will is bring a letter from the department and if it is for personal work, it depends on the merits of the case like helping Senior Citizen, Sick passengers, Physically challenged persons, pregnant lady or a child travelling alone. Relying on the same, the Special Court has rightly observed in para 71 of the judgment that in the present case, it is not the case of the defence that A2 and A3 are Senior Citizens, Sick passengers or physically challenged persons and it is also an admitted fact that A1 has not opposed and agitated when himself A2 and A3 were intercepted and if really A1 had no intention of helping A2 and A3 by misusing his power, definitely, he would have got furious and would have agitated like any prudent man will act and hence the above attitude of A1 would prove that A1 has abused his official position to enter into the customs area in order to make a pecuniary advantage to A2 and A3.

vii) The evidence of PW2 would make it clear that if the goods value is more than Rs.25,000/- the passenger should go to the red channel and declare before the Customs Officer. If the passengers bring more than Rs.5 lakhs worth of goods and do not declare before the customs authorities, such passengers will be arrested. If any passengers whenever suspected or when the goods pass through the scanner marked with the scan mark and diverted to the Red Channel and used to see the declaration card and the baggages are taken for examination. Ex.P4 Joint Surprise Check proceedings revealed that the value of the goods brought by the friends of A1 is more than Rs.5 lakhs.

viii) The evidence of PW-5 Shri.U.M.Victor Wilson, Preventive Officer of Customs Department will enlighten the fact that the two passengers / friends of A1 had brought four numbers of Bose DVD Home Entertainment Systems, which itself shows that they were not meant for personal use but they were brought for commercial use. PW-5 had also deposed that the declaration forms of both the passengers did not mention the value of goods. The fully filled up and signed disembarkation card/Declaration Card which were in possession of the passengers revealed that the details about the aforesaid dutiable goods were not mentioned in the declaration card, which itself prove that they did not intend to declare the same. Being so, A1 was accompanying them from the conveyor belt to exit gate for getting them a smooth exit. The passengers holding dutiable items worth more than Rs.25,000/- should go to the red Channel and declare before the Customs Officer. The appellants were moving towards green channel, but, crossed the red channel as evident from Ex.P9 rough sketch, which shows the exact location of the point of interception.

ix) On many earlier occasion, A1 had availed the entry pass and he intentionally suppressed those facts in the instant appeal only to mislead this court.

x) When the accused were taken to Air Intelligence Office room, A2 and A3 had given their voluntary statement under Section 108 of Customs Act and hence, they cannot take a stand that the officials have not sought oral declaration from A2 and A3, passengers immediately after interception and inventory of the goods as it is false and misleading this court.

xi) The accused have not proved as to how they are prejudiced by non-production of CCTV footage. If at all, they could have moved an application under Section 91 Cr.P.C. for production of the same in the Special Court.

xii) The prosecution has proved its case against the accused with regard to the illegal act committed by them having entered into a conspiracy and the Special Court, considering the entire materials of the case, has rightly convicted them for the offences and imposed with the punishment, which does not warrant any interference by this court and the Appeals are liable to be dismissed.

7. In reply, the learned Senior Counsel Mr.N.R.Elango would submit that assuming for a moment that A2 and A3 had given voluntary statement under Section 108 of the Customs Act when they

were enquired in the Air Intelligence Office room, it is relevant to note that their so-called voluntary statements do not incriminate A1 and that itself clarifies that A1 had no acquaintance about the goods brought by A2 and A3 and there was no conspiracy at all among the accused.

8. Heard the learned counsel appearing for the parties and perused the materials available on record.

9. The allegation levelled against A1, the appellant in Criminal Appeal No.491 of 2016, who was serving as Deputy Superintendent of Police, CBI, is that having hatched a conspiracy with other accused viz., A2 to A4, misused his official position, obtained entry pass, entered into the arrival hall and facilitated the other accused viz., A2 and A3 in order to clear the customs dutiable electronic goods worth Rs.8,62,615/- and by evading payment of customs duty to the tune of Rs.2,00,000/-.

10. It is the case of the appellants that A1 is an unblemished officer and when he went to receive and facilitate his friends, A2 and

A3 coming from abroad, without any knowledge as what they were bringing alongwith them, the CBI and DRI officials had conducted a joint surprise check at the arrival hall of the Anna Internal Airport and during such search, they had intercepted the friends of A1 viz., A2 and A3 before ever they could declare the dutiable goods to the officials alleging that they tend to evade the customs duty and A1, for having entered into the arrival hall to facilitate A2 and A3, was implicated in the case by the CBI and DRI officials.

11. Whereas it is the case of the CBI that the prosecution has proved its case against the accused with regard to criminal conspiracy to commit the offence in bringing the dutiable electronic goods by evading customs duty with the influence of A1 by misusing his official position as Deputy Superintendent of Police, CBI, by producing Call Detail Records to establish that they were in touch frequently. It is the further case of the CBI that such acquaintance among the accused is established from recovery of documents in a search made at the house of A1. It is the case of CBI that A1 was in the habit of availing the entry passes on many earlier occasion and if his intention was only to receive the passengers, he could have waited in the visitors hall itself

and his entering into the arrival hall itself proves his intention to commit the illegal act.

12. What is to be seen is whether the prosecution has proved its case against all the accused with regard to the offences alleged against them or they have been victimized as contended by the defence.

13. A perusal of the entire materials would reveal that the action taken by the CBI and DRI officials during the joint surprise check is nothing but preventive in nature. The interception itself appears to have taken place in the arrival, hall within the barrier of Customs. The relevant aspect to be noted is that the goods seized by them are not tiny and valuable ones like gold, diamonds or any narcotic products hidden in the baggages. As evident from Ex.P4, Joint Surprise Check Proceedings, they are electronic goods like Digital Cameras, Speakers, Projectors. Laptop, etc., which could not be reasonably hidden from the eyes of scanner or concealed in the baggages. Of course, the passengers viz., A2 and A3 had not declared them in the Disembarkation Cards.   A1 and A4 being friends them went to the Airport to receive them. A1 had availed the entry pass and entered

into the arrival hall to receive his friends. Such being the situation, the interception by the CBI and DRI officials takes place during the course of a joint surprise check. A2 and A3 alongwith A1 were taken to Air Intelligence Office room and statements were recorded from A2 and A3 and thereupon, A4, who was waiting at the visitors hall, was brought inside and arrested.

14. The entire incident is two fold, one being that A1 availing entry pass and entering into the arrival hall and the other being that A2 and A3, on landing at Chennai Airport and after meeting A1 at the arrival hall move towards green channel with their baggages. It is the case of the CBI that the entry pass was availed by A1 by misusing his official position as Deputy Superintendent of Police, CBI and A2 and A3 brought into India dutiable electronic goods without declaring in the Disembarkation card intentionally to evade Customs duty to the tune of Rs.2,00,000/- for selling the same through the shop owned by A4 and A1, having entered into a conspiracy with A2 to A4 to assist them in such activity to provide pecuniary advantage to them, had availed the entry pass by misusing his official position and entered into the arrival hall. To establish the conspiracy among the accused, the

prosecution has produced Call Detail Records to contend that they were in touch frequently, but, it is relevant to note that such details being electronic records, having been produced without any certificate as mandated under Section 65-B of the Indian Evidence Act, it is inadmissible. Moreover, the accused themselves have contended that they, being close friends, used to contact frequently and there is no denial about their contacts.

15. The case of the prosecution itself is that the accused were proceeding towards green channel in the arrival hall and only during such time, they were intercepted. It is not the case of the prosecution that the accused have been intercepted on coming out of the exit point to contend that they had evaded the Customs Duty. Even at the point of interception, they were within the barrier of Customs. It is the case of the accused that they were intercepted near the conveyor belt itself. It is also seen that the entry pass was availed by A1 by contacting PW2 and in turn, as advised by him, he had contacted PW3 and availed the same. Their evidence do not reveal that A1 had exerted any influence on them with his official position. A perusal of the evidence adduced by the prosecution witnesses makes it clear that there was no

influence from A1 on any authority for exempting the goods brought by A2 and A3 from Customs duty. In fact, it is not the version of any prosecution witness that A1 had knowledge about the goods brought by A2 and A3.

16. While it is the case of the prosecution that A1, by entering into the arrival hall under the guise of facilitation, attempted to assist A2 and A3 to bring the dutiable electronic goods by evading customs duty, it is the case of A1 that it is a normal practice in CBI to facilitate friends and relatives at International Airport, however, it does not mean to clear the goods without paying the customs duty.

17. With regard to facilitation, it is the case of the prosecution that as evident from Ex.P25, facilitation pass register and as spoken by PW12, Shri.Srivastava, Deputy General Manager, Airport Authority of India, A1 had availed the facilitation entry passes for eight times during the period from April 2009 to 12.2.2011, whereas, it is the case of A1 that it not he, who has been referred in Ex.P25. Therefore, it is relevant to analyse the evidence of PW12 in this regard.

18. PW12, who was serving as Deputy General Manager, Chennai Airport at the relevant time, had deposed that as per Ex.P25, Salam had availed the facilitation entry pass for 8 times during April 2009 to 12.2.2011. However, his evidence in the cross examination, speaks much about the facilitation and the same is extracted hereunder for ready reference:-

> *"I do not know Mr.Salam. AAI will not issue the pass to any individual but, to the Government agency such as Customs, Police and other Government Agencies and Airlines and these are all only temporary passes valid only for particular day. Airport authority also selling visitors entry tickets in the counter for a sum of Rs.55/-. No charges are levied for the temporary facilitation passes. Entry ticket permits the person to confine upto visitor's area of either arrival or departure only. Whereas* ***facilitation pass permits a person upto Customs hall in arrival or check in area in departure****. Ex.P.2 is the temporary facilitation pass.* ***The facilitation passes are taken only by the concerned agencies****.* ***I do not know***

whether the concerned agencies are getting the identity card copies of concern individual for facilitation passes*. On 9.1.2049 Customs had taken facilitation passes for one Mr.Salam, Thiryagarajan Sundar, Ravi, Rajeswaran, Ramachandran, C.J.Rao. For them single pass was issued. The pass no. was 0189482. The customs officials can only tell who are the person come to the Airport and they can identify the persons. On 14.11.2009 the Assistant Commissioner of Police had obtained facilitation pass in the name of Salam. The officials of the Assistant Commissioner of Police can identify the persons in whose name the passes were issued. On 2.11.2009 also the officials of the Assistant Commissioner of Police obtained the pass in the name of Salam. On 29.9.2009 also the office of Deputy Commissioner of customs obtained pass in the name of Abdul Salam and 10 others. On 29.8.2009 also, the office of Deputy Commissioner of Customs obtained passes for 12 people including in the name of Salam. On*

5.4.2009 Airport Police station obtained pass in the name of Salam. On 2.4.2009 the Customs had obtained passes for 6 persons out of which one person is Aslam. We collect identity cards only we issue the passes directly to a person and we are not getting identity cards for passes issued through the agencies. lf the CBI approaches for passes we first get letters from them. Normally they approaches BCAS directly for issuance of passes. If the CBI officer individually comes and request for passes, if it is officials duty he will bring the letter from the department. If it is his personal work it depends on the merits of the case i.e., helping senior citizens, sick passenger, physical challenged passengers, pregnant lady or child traveling alone. If a person directly comes to us for facilitation passes I have already explained the norms. If the Government agency comes it also depends on the merits of the case. The passes were issued to person concerned depends upon merits of the case and were issued *only the agencies on their recommendation.*"

19. The above admission made by PW12 would make it clear that they would not insist for Identity Cards if the request for facilitation entry pass flows from the department and they would do it only when an officer comes for personal visit. While Ex.P2 is admitted by A1 to have been availed by him, he claims that the name referred as Salam and Abdul Salam in Ex.P25 series is not himself. Therefore, this court is of the view that the prosecution has failed to prove its case that A1 had frequently visited the Airport by availing the facilitation entry passes.

20. So far as the entry of A1 into the arrival hall by availing the facilitation entry pass is concerned, the evidence of P.Ws.2 to 4 is relevant. PW2, Anburaju was serving as superintendent of Customs in Air Cargo Complex, Chennai at the relevant point of time. He had deposed that on 12.2.2011 at about 6.00 pm, A1 had called him over phone and requested for Airport entry pass to enter customs area of Anna International Airport to receive his friend coming by Lufthansa Flight and thereby, he had contacted PW3, Shri.Ramprasad reddy,

Superintendent of Customs, Intelligence Unit at about 7.10 pm on the same day over phone to arrange an entry pass for A1, who, in turn, told him that he would arrange the pass through PW4, Ganapathi, PRO, Customs at Anna International Airport.

21. PW2, in his cross examination admits that A1 did not approach him for any illegal help or for clearance of the goods without payment of duty and he did not threaten him to get the entry pass. His further admission is that the exit gate is situated between the red channel and the green channel and a person coming through the green channel can go to the red channel before cross the exit point.

22. PW3, the Superintendent of Customs in Air Intelligence Unit (AIU) at Anna International Airport, Chennai at the relevant point of time corroborates the evidence of PW2 in respect of request of A1 for arrangement of facilitation entry pass. His specific evidence is that A2 and A3 were intercepted inside the arrival hall only and they have not crossed the customs barrier. He further deposes that the customs declaration cards were recovered from A2 and A3 and normally the customs declaration cards have to be given at the exit gate of the

customs barrier to the customs officer, but, in this case, the customs declaration cards were not given to the customs officer at the exit gate and A2 and A3 were intercepted before the exit point. PW3 also admits in his cross examination that A1 never obtained a pass by using corrupt or illegal means or misusing his official position and he did not ask him to enable A2 and A3 to take the dutiable goods out of Airport without payment of duty. He has specifically stated that a person can go from the green channel to the red channel and vice versa and mere entering into the green channel does not mean that he has committed an offence. It is his specific admission that A2 and A3 never refused to pay the customs duty. PW3 also admits that by the entry of A1 in the arrival hall, A2 and A3 did not get any advantage or valuable thing or favour from the Customs and the Customs do not show any mercy to Government officials who come to receive the relative passengers and the Government official also do not get any pecuniary advantage or undue advantage or avail free duty. His further admission is that it is not stated in Ex.P4 that after inception the officer had put any question whether they are in possession of gold or silver or electronic goods or any contraband goods.

23. PW4, Ganapathy, PRO, who ultimately arranged for the facilitation entry pass for A1 speaks in his evidence that as a matter of routine work, they used to receive 10 to 15 request from various departments seeking facilitation entry passes. He admits in his cross examination that the duty of the Preventing Officer is to prevent the passengers from going outside without payment of customs duty. He specifically admits that A1 did not ask him personally to arrange for entry pass. He admits that in Ex.P2, it is shown that 6 persons have availed facilitation for arrival and 11 persons have availed facilitation for department and he does not know if CBI has registered case against all the 6 persons and 11 persons stated in Ex.P2. He also admits that A1 did not try to enter the arrival hall by showing his ID card only and he entered into the arrival hall with the entry pass only and he did not abuse his official position to enter the arrival hall. His categorical admission is that facilitation means to arrange the visitors to receive their friends and relatives in the arrival hall instead of waiting outside the Airport and it does not mean that the goods brought by the passengers will be allowed freely.

24. The above admissions made by the prosecution witnesses

would reveal that A1 had not exerted any influence either on the authorities issuing the facilitation entry pass or on the Customs official for bringing the dutiable electronic goods by evading the customs duty and thereby, there is no question of misuse of his official position attracting Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 against A1.

25. It is the case of the prosecution that the accused were intercepted almost near the green channel before ever they could escape from the clutches of the Customs. Prima facie thing to be considered is that moving towards the green channel itself is not an offence. Further, in this regard, two aspects need to be considered. One is rough sketch, which would enlighten as to the location of interception and the other being the CCTV footage, the best evidence to speak about the entire episode. For the reasons best known to the prosecution, the CCTV footage has not been produced. When it is the primary duty of the prosecution to raise the presumption against the appellants/accused, the prosecution has shirked from its responsibility. A perusal of the statement made by A1 under Section 313 Cr.P.C. and its enclosures would make it clear that the attempts made by A1 to

summon the CCTV footage also failed. The Special Court has also not bothered about the same. Instead, it has viewed that admittedly A1 was intercepted in the customs area and thereby non production of the footage is in no way prejudicial to the accused. Sofar as the rough sketch is concerned, though it has been produced and marked as Ex.P9, it is seen that it has been prepared on 22.9.2011 more than seven months after the joint surprise check was conducted. It is also to be noted that despite the availability and the means to recover the CCTV footages of Customs Area, the prosecution has deliberately avoided to collect and mark the best evidence, which would have clinched the issue. The failure on the part of the prosecution to produce the best evidence available viz., the CCTV footage, especially, when the rough sketch had been prepared after more than seven months from the date of joint surprise check, has a cumulative effect and creates more suspicion about the case of the prosecution.

26. In this regard, it is relevant to refer to the decision of a Full Bench of the Apex Court in ***Tomaso Bruno and another vs. State of Uttar Pradesh*** (2015) 7 SCC 178 to the effect that omission on the part of the prosecution to produce the available electronic evidence,

which is the best evidence, which could have clinched the issue, creates serious doubts about the prosecution case. In this case, while the prosecution has taken pains to produce the CDR details of the accused, of course, without certification under Section 65-B of the Indian Evidence Act, they have miserably failed to produce the CCTV footage in respect of the Customs Area, which could have been very much available. It is not the case of the prosecution that no CCTV footage in respect of the Customs Area was available. However, the prosecution has failed to produce the same for the reasons best known to them, which is, certainly fatal to the case of the prosecution, when especially, there are doubts with regard to the genuineness of the rough sketch, asmuch as it has been prepared after more than seven months from the date of joint surprise check.

27. In addition to the above, it is seen that in the adjudication proceedings initiated against the appellant/accused, A1 stands exonerated from the customs proceedings by order dated 29.10.2013 passed by the Commissioner (Appeal) Custom House, Chennai in C.Cus.No.1524-1527/2013. The relevant portion of the observation made by the appellate authority is extracted hereunder for ready

reference:-

"I find some force in the argument that they were detained by CBI and DRI before they could go to any channel. In the Joint surprise check proceedings drawn by CBI and DRI on the night intervening 12th/13th of February 2011, at para 4 it is mentioned as "After collecting the baggage coming out of the conveyor belt duly scanned, the two passengers and Shri.Salam were proceeding towards green channel". Thus, it is evident that they were not intercepted at the green channel.

....

7. Coming to the role played by Shri.K.A.A.Salam it is brought out in the Order-in-Original that Shri.K.A.A.Salam arrived at the Chennai International Airport and was within the Customs Area, precisely speaking near the conveyor belt area informing Customs officers posted thereon that he is present there to "facilitate" his friends. This much is the role Shri.K.A.A.Salam is portrayed to have played under the name and meaning of the word "facilitation". The order in original has not mentioned:

(a) that Shri.K.A.A.Salam has influenced any of the Customs officials present there to clear the baggages without any duty.

(b) that any of the accused passengers in any of the Statements before any of the authority has even by hint stated that that Shri.K.A.A.Salam had arranged for the import of the impugned goods; Shri.K.A.A.Salam assured of them of clearance from Customs without duty or atleast that Shri.K.A.A.Salam knows what they have brought in their baggage.

(c) that Shri.K.A.A.Salam led the appellant passengers out of Customs area without paying the duty payable.

....

7(i) In fact, in the cross examination, it has been categorically stated by the Customs officers who were cross examined, that Shri.K.A.A.Salam has not brought any influence on them for clearance without duty. When a person does not even know what are the contents of the baggage that were brought by the passengers whom he had come to Airport to receive, where is the question of his culpability in the offence. Further, there is no statement recorded from Shri.K.A.A.Salam confessing of his role in the import of dutiable goods. The only possible situation that could be construed is due to a tacit acknowledgement by the investigation that they did not find the role of Shri.K.A.A.Salam suspicious or he had played role warranting action under Customs Act, 1962, no statement was drawn from him at that juncture. Only on the show cause notice stage his name was interjected. If the department had made out a case that Shri.K.A.A.Salam performed any act to the effect of preventing or to a lesser extent dissuading the proper officer of Customs from doing his duty, then there could be a reason for frowning at him. But it is not so. The factuality of role of Shri.K.A.A.Salam as purported by the Order-in-Original is totally not relevant to the situation for Section 112(a) penalty as envisaged thereunder. Section 112(a) can never be stretched to bring within it the role played by Shri.K.A.A.Salam visiting an Indian airport

(International) to receive kith and kin and friends by a citizen of India irrespective of the position he holds in itself will never constitute an offence warranting penalty under Section 112 of the Customs Act, 1962. To hold a person who is stated by the Customs officers themselves to have not brought under any influence on them, guilty just because he was present in the Airport, even if it be at Conveyor Belt area will be a very serious/grave injustice to him."

28. Of course, the above order passed by the Appellate Authority was a parallel proceedings to the Trial conducted by the Special Court and it is a subsequent development after the Judgment of conviction rendered by the Special Court. However, this court finds that apart from the merits of the present Appeal discussed above, the observation made in the orders passed by the Appellate Authority in the Appeal filed against the adjudication proceedings with regard to the role of A1 strengthens the case of the appellant that he had not influenced any of the authority to bring out the electronic goods by evading customs duty by misusing his official position. Taking an

overall view of the facts and circumstances of the case, this court finds that the prosecution has not proved its case against the accused beyond all reasonable doubts with regard to the offence alleged against them.

29. In the result, the Criminal Appeals are allowed. The judgment of conviction and sentence dated 21.6.2016 rendered by the IX Additional Special Judge for CBI Cases, IX Additional City Civil Court, Chennai in C.C.No.40 of 2012 stands set aside. The appellants are acquitted of all the charges and they are set at liberty. Bail bond if any, executed by them shall stand cancelled. Fine amount if any, paid by them shall be refunded. The connected Miscellaneous Petition is closed.

20.6.2024.

Index: Yes/No.
Internet: Yes/No.
ssk.
To
1. IX Additional Special Judge
for CBI Cases,
IX Additional City Civil Court, Chennai.

2. Deputy Superintendent of Police,
CBI, ACB, Chennai.

3. Special Public Prosecutor for CBI
High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. JUDGMENT IN
Crl.A. Nos.489 and 491 of 2016

Delivered on
20.6.2024.