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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 06.08.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.223 of 2018

The Assistant Commissioner of Customs,
Customs Division, Ramanathapuram.

... Appellant

vs.

M.Murugavel

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 378(4) of Criminal Procedure Code against the Judgement of the learned Additional Chief Judicial Magistrate, Madurai dated 27.11.2017 in C.C.No.6 of 2017.

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

For Respondent : Mr.T.Veerakumar

J U D G E M E N T

This appeal has been filed challenging the Judgement of the learned Additional Chief Judicial Magistrate, Madurai dated 27.11.2017 in C.C.No.6 of 2017.



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2. The appellant is the complainant who has filed this appeal challenging the Judgement of acquittal rendered by the trial Court. The respondent is the sole accused.

3. The case of the appellant / complainant as per records is as follows.

3.1. On information, the Customs Officer attached to the Customs Preventive Unit, Rameshwaram had effected seizure of 3 pieces of gold rods weighing 1002.600 gms valued at Rs.27,39,103/- on 28.12.2014 which were kept buried in a hut near Dhanushkodi seashore bridge, Rameshwaram. On believing that gold rods were smuggled illegally from Srilanka and were kept concealed for local sale, a case was registered in O.R.No.3/14-15 for taking further action. As the hut belonged to the accused and the recovery was made in the hut, the accused was enquired and he gave a voluntary statement on 29.12.2014 admitting the smuggling of 3 gold rods which were already seized. The purity of the seized gold rods has been ascertained and certified by a Government approved appraiser as 24 carat gold. The seized gold rods and the packing materials were deposited in the godown of CPU, Madurai. The vehicle (vallam) bearing Registration No.TN11/WV/1314 used for transporting the smuggled gold from the second islet Rameshwaram to



seashore bridge, Dhanushkodi, Rameshwaram was seized on 25.03.2015.

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3.2. The residence of the accused was searched on 29.12.2014 by the Customs Officer and no incriminating documents or things were recovered from there. The accused was arrested on 30.12.2014 and produced before the Court on 31.12.2014. Based on the investigation, a show cause notice was issued to the accused on 27.05.2015. After adopting due process, the adjudicating authority passed an order of confiscation of seized materials from the accused vide order in No. 5/2015-2016 dated 30.12.2015. After getting pre-trial disposal order from the Court and permission from the Commissioner of Customs, Trichy, the Assistant Commissioner, Rameshwaram had issued a disposal certificate for disposal of seized 3 pieces of gold rods weighing 1002.600 gms and accordingly, they were deposited with Customs Office, Chennai by Deposit Memo dated 08.01.2016. By doing the acts of omission and commission in concealing the above contraband with an intention to evade payment of duty by illegal import of the goods in contravention of the provisions of the Customs Act, 1962 [hereinafter referred to as 'the Act'], the accused is liable to be punished under Sections 135(1)(a) of 135(1)(b) of the Act.

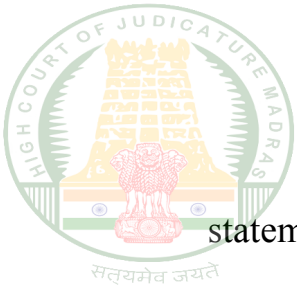


3.3. After taking cognizance of the complaint, the trial Court framed charges under Sections 135(1)(a) and 135(1)(b) of the Act against the accused. When the accused was questioned, he denied his involvement and claimed to be tried.

3.4. Before the Trial Court, on the side of the prosecution PW1 to PW4 have been examined and Exs.P1 to P15 have been marked. On the side of the accused, no oral or documentary evidence has been marked.

3.5. After the conclusion of trial, the learned trial Judge concluded that the prosecution failed to prove the charges against the accused and found him not guilty and acquitted him. Aggrieved over that, the appellant / complainant has preferred this appeal.

4. Mr.C.Arul Vadivel @ Sekar, learned Special Public Prosecutor appearing for the appellant submitted that as per the details shown in the Arrest Memo, the respondent / accused has been arrested only on 30.12.2014; the statement of the respondent was obtained on 29.12.2014 itself; the respondent may be under a limited custody before his arrest and that cannot be considered as formal arrest; the Customs Officer will not come under the ambit of the expression 'Police Officer' and hence the



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statement made by the respondent before the Customs Officer is admissible in evidence; the Sanctioning Authority has passed speaking order; non-examination of the Sanctioning Authority will not vitiate the Sanction Order; even though the prosecution evidence was cogent and clinching, the trial Court has not properly appreciated the same and had given much importance to minor discrepancies; hence the Judgement of the learned trial Judge should be reversed.

5. Mr.T.Veerakumar, learned counsel appearing for the respondent / accused submitted that in Ex.P3 Seizure Message, dated 28.12.2014, it has been stated that the respondent has been arrested and hence, the prosecution cannot claim that he was arrested only on 30.12.2014; as the confession is said to have been given on 29.12.2014, it could have been a confession given when the respondent was in custody and hence, the same cannot be treated as voluntary one; unless the confession is proved to be voluntary, the case of the prosecution based on the confession will fail; the summon dated 29.12.2014, asking the respondent to appear on 30.12.2014 cannot be true because the respondent was in custody from 28.12.2014 itself; since confession is not proved to be voluntary, there is no ground to reverse the Judgement of acquittal.



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6. On perusal of Ex.P3 Seizure Message, it is seen that the respondent has been arrested on the day of seizure which was effected on 28.12.2014 itself. In fact, the *modus operandi* itself has been mentioned as illicitly imported the gold rods of uneven size along with packing materials from Srilanka and kept concealed and buried in a hut near Dhanushkodi seashore bridge. The confession is said to have been given by the respondent on 29.12.2014. Only in the said confession statement, it is known to the prosecution agency that the seized contraband was illicitly smuggled from Srilanka. But, as stated above, in the Seizure Message dated 28.12.2014 itself, the *modus operandi* has been mentioned as illicitly imported goods from Srilanka, which would make it clear that the respondent has been taken into custody on 28.12.2014 and the confession has been given by him only after he was apprehended. Had it been the claim of the prosecution that the confession has been given on 28.12.2014 and thereafter only the respondent was arrested, the confession can be considered as a confession given before the Authority. Such confession given before the adjudicating authority like Customs Officer, can be admitted in evidence only if it is proved to be voluntary. As there are materials to show that the respondent has been arrested on 28.12.2014 itself, no validity can be attached to the alleged confession dated 29.12.2014 that it is an extra judicial confession and not the



confession during custody. The learned trial Judge has also dealt about the entries made in Ex.P3 Seizure Message in a right perspective.

7. The learned Special Public Prosecutor has attracted the attention of this Court to the Arrest Memo Ex.P7 and claimed that the Memo has been issued only on 30.12.2014 and the respondent had also endorsed saying that he is informed about the arrest. So, it is claimed that the entries made in Ex.P3 Seizure Message about the arrest of the respondent is only a typographical error. Though column no.11 may be claimed to be a typographical error, column no.13 cannot be claimed to be a typographical error. Because column no.13 of Ex.P3 pertains to *modus operandi*, wherein, it is stated that the contraband was illicitly imported from Srilanka and kept concealed and buried in a hut near Dhanushkodi seashore bridge. So, the endorsement of the respondent as seen in Ex.P7 Arrest Memo cannot be read in isolation without the entries made in Ex.P3 Seizure Message.

8. It is claimed by the prosecution that the respondent was summoned to appear on 30.12.2014 and he participated in the enquiry and only thereafter, he was arrested. PW2 Officer who had accompanied PW1 for inspection, after hearing the intelligence information, has stated



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in his evidence that the respondent was not arrested after he was summoned to appear, but he was arrested when he was standing in the bus stand. So, the above contradiction between the evidence of PW2, Ex.P7 Arrest Memo and Ex.P3 Seizure Message would show that something is fishy and that the respondent was available from 28.12.2014 onwards and PW1 has rightly stated in Ex.P3 Seizure Message that the respondent has been arrested on 28.12.2014 itself.

9. The prolonged confession of the respondent immediately preceding to the arrest itself is sufficient to show that the confession could not be voluntary and hence the case of the prosecution basing upon such a weak confession cannot be relied without making a deep scrutiny. The prosecution did not admit the custody of the respondent from 28.12.2014 and no explanation is offered for his prolonged custody. All that the prosecution claims is that he has been taken into custody on 30.12.2014, after he was enquired by the Customs Officer. The Authority who has given a sanction to prosecute the respondent has not dealt about the entries in the Ex.P3 Seizure Message about the arrest of the respondent on 28.12.2014 and had accorded sanction by presuming that the respondent had given a voluntary statement on 29.12.2014. The non-application of mind of the sanctioning authority will render the sanction



order invalid. In this context, it is worthy to refer the Judgement of the Apex Court in the case of **State of Karnataka vs. Ameer Jan** dated **18.09.2007** in Appeal (Crl.) No.766 of 2001 and the relevant paragraph is extracted hereunder.

"8. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayuktha. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police Karnataka Lokayuktha had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced."

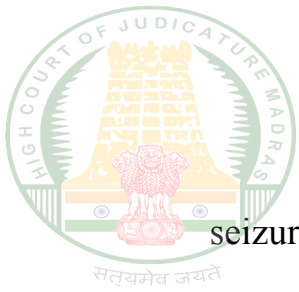
10. The materials available on record would falsify the claim of the prosecution that the respondent has been arrested on 30.12.2014 and that will also cause suspicion on the voluntary confession of the respondent



as claimed by the prosecution. The material contradictions in the evidence of the prosecution cannot be taken lightly.

11. The learned Special Public Prosecutor submitted that as per Section 138A of the Customs Act, presumption of culpable mental state can be drawn in favour of the prosecution. However, *mens rea* will come after the factum of seizure from the respondent has been proved. In the absence of *actus rea*, the above presumption under Section 138A of the Act cannot aid the prosecution. Unless the prosecution establishes that the ingredients of Sections 135(1)(a) and 135(1)(b) of the Act with regard to the fact that the respondent is concerned with or acquired possession of the contraband and he had fraudulently evaded any duty chargeable there on, the trial Court cannot find the accused guilty for the offences under above Sections.

12. The learned trial Judge has observed that the hut from where the alleged recovery was made is a place which does not have lock and key and the respondent was using the same for drying his fishing nets. When the place is accessible to anyone, it is essential to prove that the seizure has been made only from the respondent. The seizure witnesses who are independent witnesses have not been examined to prove the

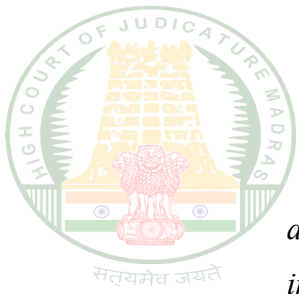


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seizure also. The learned trial Judge has rightly dealt with the cumulative effect of these deficiencies in the case of the prosecution and has given the benefit of doubt in favour of the respondent / accused.

13. In the Judgement of the Apex Court in the case of **Ram Kumar vs. State of Haryana reported in AIR 1995 SC 280**, it is held that as a rule of prudence, the High Court should give proper weightage and consideration to the view of the trial Court with regard to the credibility of the witnesses, the presumption of innocence in favour of the accused and the right of the accused to the benefit of any doubt while dealing the appeal over the order of acquittal. Unless the findings of the trial Court are perverse and contrary to the materials on record, palpably wrong, manifestly erroneous and demonstrably unsustainable as observed by the Apex Court in the case of **Ramesh Babulal Doshi vs. State of Gujaraj reported in 1996 (9) SCC 225**, the Judgement of acquittal cannot be reversed. For the sake of clarity, the observation made in **Ramesh Babular Doshi's** case is extracted hereunder:

"7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of



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acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellant Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellant Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellant Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

14. The comprehensive analysis of the facts and circumstances and the reasons given by the trial Court in my view does not merit the appeal preferred by the prosecution under Section 378 of the Code of Criminal Procedure challenging the order of acquittal. As the prosecution has not made out a case within the parameters mandating interference in the order of acquittal, this appeal deserves to be dismissed.



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15. Accordingly, this Criminal Appeal is dismissed. The

Judgement of the learned Additional Chief Judicial Magistrate, Madurai

dated 27.11.2017 in C.C.No.6 of 2017 is confirmed.

06.08.2025

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To

The Additional Chief Judicial Magistrate,
Madurai.



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Dr.R.N.MANJULA, J.

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