

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRI.REVISION APPLN NO. 473 of 2002

Shri K.P.Saseedharan ..Applicant

V/s

1. Union of India,

2. Superintendent of Police

CBI ACP Bombay

3. The State of Maharashtra ..Respondent

Shri P. Janardhan i/b Ms

Eva Almeida for Applicant

Shri R.V.Mirza APP for Respondentno.3

Shri J.C.Satpute for Respondent.

CORAM:S.R.SATHE,J.

DATED:17th Sept.2004

ORAL JUDGMENT :-

1. The applicant original accused no.1 in Special Case No.110 of 2001 has filed the present Criminal Revision Application NO.473 of 2002 under Sections 397 and 402 of Cr.P.C. for challenging the order passed by the Special Judge, Greater Mumbai in Misc. Application No.240 of 2002, whereby, the

application filed by the original accused no.1 for discharge in Case registered by CBI as RC No.20(A)1999 Mumbai, under Sections 120 B read with Section 480 and 420 of IPC and Section 13(2) read with Section 13(1)(d) of Prevention of corruption Act, 1988 was dismissed.

2. The brief facts giving rise to this Revision Application are as under :

. The applicant accused no.1 K.P.Saseedharan was working as Superintendent of Customs U.B.Centre, Mumbai. In the month of May 1999 the accused No.2 Sipahi Ram Yadav was working under him as Preventive Officer (Customs) U.B.Centre, Mumbai. On 21-5-1999 reliable information was received by the office of Inspector of Customs (Preventive) that the applicant original accused Saseedharan, Sipahi Ram Yadav, accused no.2 (Preventive Officer, Customs), original accused no.3 Shri Lingala Raj Reddy, passenger who had arrived from Dubai and accused no.4 Deepak P. Parekh, Clearing House Agents M/s Thawardas Wadhumal have entered into criminal conspiracy and cheated the Mumbai Customs Department by bringing into the country contraband articles under the garb of bonafide baggage to be brought into the country on less duty payable on them and thus defrauded the Government of India in

terms of customs duty of large amount by assessing only part of the goods and that too at low value. Hence Shri Sanjay H. Pandit and Shri Girish M. Dighe, Preventive Officers, were deputed to keep servlance near Green Gate of Mumbai Docks. At about 4-30 p.m. on 21-5-1999 they intercepted two tempos bearing No.MRL 9087 and MMS 1272 when they came out of Greet Gat of Mumbai Docks. On enquiry the driver of tempo No.MRL 9087 disclosed his name as Shabir Ali while the driver of other tempo disclosed his name as Abdul Rehman Shaikh. Both of them informed the Inspectors that the goods in tempo were loaded in UB centre as per the instructions of Arifbhai. Both the drivers were not having any document in respect of the said goods. The Inspectors Pandit and Dighe therefore thought it necessary to carry out inventory of packages in the said two tempos. As it was not possible to open those packages just outside the Green Gate, both the tempos were taken by the officers to the Customs Godown situated at Industrial Estate, Lower Parel, Mumbai for detailed examination of the goods. The Inspectors opened the packages in the said tempo in the presence of panchas and tempo drivers. They found that said packages were containing various goods of foreign origin such as Video Cassettes, Cordless Telephones, rechargeable lanterns, body spray and

other electronic items etc. On completing the inventory it was noticed that goods found in tempo No.MRL 9087 were of the value of Rs.6,20,370/- hence the said articles were seized under the provisions of Customs Act. Similarly the articles which were found in other tempo MRL 9057 were of the value of Rs.13,09,700/-. One big plywood box was found in MRL 9057. It was bearing markings Baggage Declaration Form BDF No.739 PP No.G 681980 AND LRL while 2 packages which were in MMS 1272 were bearing marking BDF 739/20.5099, PP No.G681980 LRR IGM No.1562/UB 46. The said articles were also seized. It transpired that these were the baggages of shri Lingalal Raj Reddy, booked as his unaccompanied baggage through CHA M/s Thawerdas Wadhumal and the same were checked and cleared by S.R.Yadav, Preventive Officer and K.P.Saseedharan, Supdt. of Customs, U.B.Centre, Mumbai. They had valued only part of the articles containing the packages and that too at low price. The passenger had declared that baggage was containing articles worth Rs.1,15,700/- and applicant accused and his subordinate Yadav after checking made a note that baggages were containing articles worth Rs.1,50,580/-. Accordingly necessary custom duty and penalty was saddled and the passenger made the said payment and the packages were cleared. So, it was found that accused Saseedharan with his

subordinate Yadav and clearing agent and passenger who had brought the said goods had entered into a criminal conspiracy to get cleared the same at a low value and thereby defraud the Government. The CBI ACB Mumbai therefore filed Special Case No.110/2002 against the applicant accused Saseedharan, Superintendent of Customs, U.B. Central, Mumbai, Shri S.R. Yadav, Preventive Officer, Customs, Mumbai, Shri Lingala Raj Reddy passenger and Shri Deepak Parekh working as CHA, for the offence punishable under Section 120B read with 420 of IPC and Section 13(2) read with Section 13(1)(d) of Preventive of Corruption Act 1988.

3. The original accused no.1 Saseedharan filed Misc. Application No.240 of 2002 in the Court of Special Judge, Greater Mumbai and submitted that the false case has been filed against him. He contended that there was absolutely no evidence against him to connect him with the alleged crime. He therefore prayed that he be discharged from the case.

4. After hearing argument of both the learned Advocates the learned Special Judge came to the conclusion that role of the applicant accused Saseedharan and his subordinate Yadav in clearing the packages in question was prima facie evident

from the material before the Court and as such it was necessary to proceed against them. He therefore rejected the application for discharge.

5. The original accused no.1 Saseedharan has challenged the above mentioned order in this revision application and prayed that the order passed by the Special Judge be quashed and set aside and the applicant accused be discharged from the case.

6. In this revision, Shri P.Jannardhan, learned Advocate for the applicant accused has urged only 2 points. Firstly, he submitted that there was absolutely no material before the Court to show even prima facie that baggages intercepted by Inspectors Shri Pandit and Dighe were the same baggages which were cleared by the applicant accused. Secondly, he canvassed before me that false case was lodged against the applicant because of internal rivalry in the department and if the prosecution is allowed to continue, it would amount to abuse of process of law. He therefore, submitted that this is a fit case where High Court should exercise its powers under Section 482 of Cr.P.C. and quash the proceedings against the accused. As against this, Shri Satpute, learned Advocate for the Respondent supported the order

passed by the Special Judge and submitted that there is enough material to show that the applicant accused is connected with the alleged crime. He therefore submitted that application be dismissed.

7. It is not in dispute that on 20-5-1999 and 21-5-1999 the applicant accused and Yadav were working at UB Centre as Superintendent of Customs and Preventive Officer respectively. It is also an admitted fact that one Lingala Raj Reddy passenger had come from Dubai and booked his unaccompanied baggage by submitting baggage Declaration Form No .739/99 dated 20-5-2002 and the said form was checked and supervised by Yadav and applicant accused Saseedharan respectively. They had noted that the value of the package was to the tune of Rs.1,50,580/- as against value of Rs.1,15,700/- which was mentioned by the passenger. It is also admitted that they had cleared the said baggages and the passenger had thereafter paid the necessary duty and penalty.

8. It is the prosecution case that the said baggages were intercepted by two custom inspectors viz. Pandit and Dighe on 21-5-1999 and at that time the said baggages were in fact found containing articles worth Rs.19,30,370/-. So, the main and material question at this stage is whether

there is any evidence which prima facie indicate that these baggages were checked and cleared by the accused. The learned Advocate for the applicant accused strenuously argued before me that in the instant case if we see the panchanama drawn by the inspectors at the time of opening the baggages it appears that it is nowhere mentioned in the said panchanama that the said baggages were found sealed and signed by the applicant Saseedharan and Yadav. Besides this he also argued that nobody had identified the goods in the said baggages as belonging to Lingasla Raj Reddy or the same goods which were cleared by accused. It is true that if we see panchanama drawn by the 2 inspectors at the time of opening baggages, there is no mention that the said baggages were found sealed and signed. Only at one place there is name of Yadav on one package. However question arises whether merley because there is no mention of such seal and signatures in panchanama, the accused can be discharged at this stage. For this purpose we have to find out under what circumstances the accused can be discharged. In other words we must see as to what sort of evidence is to be looked into by the Court while considering the application for discharge. The law on this point is well settled. All that court has to see at this stage is whether there is sufficient material warranting the trial

of the case. It is not necessary for the court to appreciate the said material or evidence or even to consider its reliability or genuineness. It is only to be seen whether the allegations made in FIR, other statement and evidence are sufficient to connect the applicant with the alleged crime. Court is not required to sift and weigh the evidence to determine whether there is triable case. So, bearing in mind this position of law, if we see the FIR in the instant case we find that allegations in the same certainly make out a case against the applicant for the offence mentioned therein. Question as to whether ultimately the prosecution will succeed in proving these allegations or whether there is any lacuna in the case which may create some doubt about involvement of the accused at the time of final appreciation of the evidence is not material at this stage. While considering this aspect we have to take into consultation the statements of both the intercepting inspectors. From the perusal of the same it appears that baggages which were intercepted by them were in fact checked and cleared by the accused. Besides this if we take into consideration the entire procedure that is being followed for checking and clearing the baggages by the Custom Department and then taking it out of Green Gate then also it appears that the

baggages in question must have been checked by the accused. Even witness B.K.D'Mellow Assistant Commissioner, Custom has stated in his statement that he used to check the baggages at the time of passing out of UB Gate to ensure that all those baggages bear the custom's seal and also the signature of the preventive officer and the Superintendent on each side of the baggages. So merely because in the subsequent panchanama there was no reference regarding custom seal, at this stage we cannot jump to the conclusion that the said baggages were not sealed and that the said baggage were in fact not cleared by the accused. On the contrary there is most important circumstance which prima facie clearly indicates the involvement of the accused. Admittedly, the baggages intercepted were bearing No.BDF 739 PP No.g 6811980 AND LRR. Admittedly, Lingala Raj Reddy's baggages were bearing number BDF 739 dated 20-5-199 and his passport number was PP No. 96811980. Accused had checked and cleared goods under these numbers. There is also no material to show that baggages cleared by the accused were different from already gone out of the gate. So, there is material to show nexus between the baggages which were intercepted by the inspectors and the baggages checked and cleared by the accused. Considering all these aspects, I think

that the learned Special Judge has rightly dismissed the application filed by the accused.

9. It is well settled that inherent jurisdiction of High Court under Section 482 of Cr.P.C. can be exercised only to prevent the abuse of process of court or to secure ends of justice. The allegations made in FIR, statements of witnesses and other documents on record, certainly prima facie connect the accused with alleged crime and there is absolutely no material even to suggest that there was any possibility of complainant filing a false complaint against the accused with any ulterior motive. So under such circumstances the authority cited by the learned Advocate for the accused, State of Haryana and others V/s Ch.Bhajan La. and Ors. AIR 1992 SC 604 is of no help to the applicant accused. The order passed by the Special Judge, Greater Mumbai rejecting the applicant's application for discharge is legal and correct. There is absolutely no necessity to interfere with the said order. The facts and circumstances of the case do not warrant exercise of powers under Section 482 of Criminal Procedure Code. Hence the application is rejected.

10. Trial Court is directed to dispose of the Special Case NO.110 of 2001 according to law, as

expeditiously as possible.

(S.R.SATHE, J.)