

CASE NO.:
Appeal (crl.) 308 of 2008

PETITIONER:
P. SANKARAN

RESPONDENT:
ASSISTANT COLLECTOR OF CENTRAL EXCISE

DATE OF JUDGMENT: 12/02/2008

BENCH:
S.B. SINHA & D.K. JAIN

JUDGMENT:
JUDGMENT
O R D E R

CRIMINAL APPEAL NO. 308 OF 2008
[Arising out of SLP(Crl.) No.1531/2007]

Leave granted.

Accused No.2 before the Trial Court is the appellant before us. He was prosecuted along with six other persons for commission of offences under Section 135(1)(b)(i) of the Customs Act, 1962 ("the Act", for short) as also under Section 71 of the Gold Control Act. Out of the said seven accused, accused No.1 - Thisayaveerapandian, accused No.2 - P. Sankaran were working as Constables in the Tamil Nadu Police and accused No.4 - G. Gnana Thilgar, accused No.5 - P. Rajagopalan and accused No.6 - V. Sakthivel were Railway Police personnel.

Ninety Gold Bars are said to have arrived at Pullaveli Sea-shore near Tuticorin from Ceylon on 21.10.1989. Accused No.3 - A. Thangadurai and one Murugesan of Turicorin took charge of the said ninety gold bars and carried them to Tirunelveli. From that place they took them to Madras by Nellai Express on 22.10.1989. It appears that while travelling in the said train, accused Nos.3, 4, 5 & 6 on the one hand, and the other accused including the appellant herein, on the other, deliberated upon sharing of the said gold bars. However, it was found that accused No.1 and the appellant (A-2) were in possession of 80 gold bars. Accused No.3 kept 50 gold bars with him and allowed accused Nos.1 & 2 to have 30 gold bars. Accused Nos.1 & 2 were staying in Barani Hotel at Thirunelveli. Thirty gold bars were recovered from them.

In the morning of 23.10.1989, upon receiving information in that behalf, the Superintendent of Preventive Department of Customs conducted a search at Room No.208 at Barani Hotel at Thirunelveli and recovered 30 gold bars from the appellant and his companion. Appellant as also his companion (accused No.1) allegedly made a confession of commission of the alleged crime. All the seven accused, on trial, were convicted by the learned Trial Judge.

They preferred appeals before the learned Sessions Judge. The learned Sessions Judge acquitted all the accused inter alia holding that the orders of sanction passed by the Collector of Customs was not in accordance with law, stating:

"PW-1 in the evidence has stated that he sent all the documents related to this case to the Addl. Collector, Customs, Madurai, through Assistant Collector who after scrutinizing all the documents prepared Exts. P.37, 38 same placed before the Collector, Customs and got his signature for sanction to prosecution g was given. Only to this extent PW-1 stated in his evidence. Neither the Addl. Collector or the Assistant Collector was there with Collector when the sanction to prosecute the accused was given by the Collector. PW-1 was also not there when sanction to prosecute

was given. Therefore, there is no evidence to say that the sanction to prosecute the accused was given only after perusing the documents and considering other circumstances. PW-1 too neither stated in his evidence that Collector (Customs) gave sanction only after perusing the documents and considering the circumstance thereof. In the above circumstance, it is impossible to accept that the sanction order are legal and proper as it mentions that the sanction order was given only after perusing the documents and reasonable ground was found to grant the sanction order for prosecution."

Respondents preferred appeal thereagainst before the High Court.

By reason of a common judgment and order dated 1.4.2002, the High Court reversed the judgment of the Principal Sessions Judge, Madurai and recorded a judgment of conviction against accused Nos. 1 & 2. However, the said judgment was rendered without hearing their counsel.

Accused Nos. 1 & 2 preferred an appeal before this Court and this Court allowed the appeal and remitted the matter back to the High Court for hearing the appeal afresh. By reason of the impugned judgment dated 17.4.2006, the High Court allowed the criminal appeal filed by the respondents and convicted accused No.1 and the appellant (accused No.2) before us.

The short question which arises for consideration before us is as to whether the order of sanction passed by the Collector of Customs was a valid order. Indisputably, grant of sanction is a pre-requisite for taking cognizance of an offence inter alia under Section 135 of the Act as is laid down in Section 137 thereof.

The said provision reads thus:

"137. Cognizance of the offences.- (1) No court shall take cognizance of any offence under section 132, section 133, section 134 or Section 135 or Section 135A, except with the previous sanction of the Commissioner of Customs.

(2) No court shall take cognizance of any offence under section 136-
(a) where the offence is alleged to have been committed by an officer of customs not lower in rank than Assistant Commissioner of Customs or Deputy Commissioner of Customs, except with the previous sanction of the Central Government;
(b) where the offence is alleged to have been committed by an officer of customs lower in rank than Assistant Commissioner of Customs or Deputy Commissioner of Customs, except with the previous sanction of the Commissioner of Customs.

(3) Any offence under this Chapter may, either before or after the institution of prosecution, be compounded by the Chief Commissioner of Customs on payment, by the person accused of the offence to the Central Government, of such compounding amount as may be specified by rules."

The order of sanction merely states that on 23.10.1989, from Room No.208 of Hotel Barani, Tirunelveli, thirty gold bars of foreign origin weighing 3496.800 gms valued at Rs.11,22,472.80 were recovered and on further information, fifty gold bars of foreign origin weighing 5828 gms. valued at Rs.18,70,788/- were recovered from a place near Palmirah tree on the western side of Mani Crushers, Pudukottai on Tuticorin Tirunelveli High ways by the officers of Customs Preventive Unit, Tuticorin. Only on the said premise the sanctioning authority then proceeded to pass an order granting sanction stating:

"Now, therefore, in exercise of powers conferred on me under Section 137(1) of the Customs Act, 1962, I, M.G. Venugopalan, Collector of Customs and Central Excise, Tiruchirupally hereby accord sanction for filing a complaint for the offences under section 135(1)(a)(i) and 135(a)(b)(i) of the Customs Act, 1962 read with Section 13(1) and 67 of Foreign Exchange Regulations Act, 1973 read with Section 3 of Imports and Exports (Control) Act, 1947 in

respect of S/Shri C. Thisayaveerapandian, P. Sankaran, A. Thangadurai, G. Gnana Thilagar, P. Rajagopalan, V. Sakthivel and M. Ganesan, in the court of law."

Learned counsel appearing on behalf of the appellant has rightly submitted that the said order of sanction does not even disclose that the sanctioning authority had applied its mind on the documents produced before him.

We have noticed hereinbefore that before the learned Trial Court, PW-1 merely stated that he had sent all the requisite papers to the Assistant Collector of Customs, who had placed them before the sanctioning authority.

The sanctioning authority was not examined by the respondent. Had he examined himself as a witness in the case, he could have disclosed as to how he had applied his mind on the documents on the basis whereof he passed the order of sanction.

Furthermore, the High Court in its impugned judgment does not deal with the question of grant of a valid order of sanction at all. As the learned Sessions Judge recorded a judgment of acquittal, the High Court while reversing the same was required to meet the reasonings given by the learned Sessions Judge. The same having not been done, the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.