

\220LIN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 150 OF 2010
INDRASH CHANDER JOSHI
VERSUS

... Appellant

INSPECTOR OF CUSTOMS,
LAND CUSTOMS STATION ... Respondent

O R D E R

The appellant herein was convicted by the Trial Court for offences under Sections 22 and 23 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'Act') and sentenced to undergo Rigorous Imprisonment of 20 years and also to pay a fine of Rs.2 lakh and in default of payment of fine, to further undergo Rigorous Imprisonment for three years. The appeal preferred by the appellant against the said judgment has been dismissed by the High Court vide judgment dated 30.08.2005 maintaining the sentence as well as fine.

As per the case of the prosecution, the appellant is a Customs House Clearing Agent (CHA) for which he was having a valid license. A Transit Certificate (TC) was received by the Customs Authorities at Land Customs Station, Attari on 07.01.1999. The appellant collected a copy of the said TC on the same day. Thereafter, on 14.01.999, he contacted the Customs Authorities stating that he would like to collect the

1

Criminal Appeal No. 150/ 2010

consignment which was received on the same day. This consignment was sent by M/s. Abdul Bari Kandhar, Afganistan, in the name of the consignee/importer, M/s. AG Trading Company, Delhi. As per the prosecution, Customs Authorities had received a secret information on 15.01.1999 that a consignment of dry fruits was received, which had the marking of 'AB', contained some narcotics as well. This information was received by one Shruti Kant Mahajan, Inspector (Customs) (PW-3). He passed on this information to his Superintendent Mr. P. S. Vist (PW-5). On receiving this information, two independent witnesses, viz., Balbir Singh and Kulwant Singh were summoned and an offer of search was made to the appellant under Section 50 of the Act as to whether he wanted the consignment to be searched in the presence of Gazetted Officer or Magistrate. The appellant gave his consent and expressed his willingness to be searched before a Gazetted Officer of the Customs Department. Thereupon, a Gazetted Officer was requested to come there and in his presence consignment was searched. In the said search, 165 packets each weighing 130 grams of brown powder was recovered. Total weight was 21 kilograms 450 grams. This brown powder had been concealed in plastic envelops. On testing, it was turned out that the said powder was Heroin. Panchnama was prepared and signed by independent witnesses. It was also found that the value of the Heroin recovered was Rs.1,07,25,000/-. After completing the formalities, the

2

Criminal Appeal No. 150/ 2010

appellant was arrested. After the investigation, challan was filed and the appellant was chargesheeted for committing offences under Sections 22 and 23 of the Act. The prosecution examined as many as five witnesses viz., R.K. Agnihotri, Inspector Customs(PW-1), RL Meena(PW-2), Shruti Kant Mahajan, Inspector Customs(PW-3), Kulwant Singh, Superintendent Customs (PW-4) and P. S. Vist, Superintendent Customs, Ludhiana (PW-5). On the basis of their testimony and evidence produced on record, the Additional Sessions cum-Special Judge, Amritsar, convicted the appellant against the aforesaid Sections as pointed out earlier. Before the High Court, the main contention advanced by

the appellant was that he was not responsible for the import of the aforesaid consignment which contained the Heroin which was, in fact, imported by M/s. AG Trading Company Delhi. His submission was that the appellant acted only as CHA Agent and, therefore, for the consignment in question, he could not be held responsible. This argument was considered by the Sessions Court as well as the High Court and was rejected after finding that M/s. AG Trading Company, Delhi, was a non-existing company and fake name was used for the import of the said consignment. Conduct of the appellant was also found to be suspicious inasmuch as in his first statement, (Exhibit PF) given under Section 108 of the Customs Act on 15.01.1999, the appellant had stated that as the consignee

3

Criminal Appeal No. 150/ 2010

was not making the payment of outstanding dues of Rs.75,000/- payable to the appellant, the appellant was not willing to get the consignment released initially. However, in the second statement, recorded on 20.01.1999 (Exhibit PH), again under Section 108 of the Customs Act, the appellant gave an altogether different explanation. This time, he mentioned that in the said consignment, one box was broken, out of which a powder like infested wood was seen falling and he smelt something wrong and confused and, therefore, had not come to take the delivery of the consignment. The High Court, in the impugned judgment, has discussed the evidence of the aforesaid witnesses which have proved the recovery of the material and after highlighting the contradiction in the statements of the appellant in the manner mentioned above, further discussion about his conduct goes somewhat like this:

â- S There was no need for the appellant to come on 15.01.1999 at 10.30 a.m. to the Customs Authorities regarding goods as already on 14.01.1999, he had returned the T.C. In fact, he came on 15.1.1999 to enquire into the matter and see as to whether Customs Authorities were suspecting him or not. Search of consignment was conducted in front of the appellant on 15.1.1999. Thereafter, the Customs Authorities asked the appellant to go, but he did not do so, as he was afraid that some other Govt. agency may arrest him when he left the Customs House. Statement of PW-3 Shruti Kant Mahajan is corroborated by PW-4 Kulwant Singh and PW-5 P.S. Vist, Superintendent, a Gazetted Officer. There is no discrepancy in the statements of the witnesses.

Answer to Question No. 14 in Ex. PH, the appellant has stated that up to 14.1.1999, there is mention of the appellant on the T.C. and thus, the consignment did relate to him. He received the consignment as he was to take delivery of the consignment, as he had received phone calls regarding

4

Criminal Appeal No. 150/ 2010

this. These phone calls were received by his Clerks Amit Taneja, Janak Raj, and some were received by him. Statements made under Section 108 of the Customs Act, 1962 Exhibits PF, PG and PH coupled with the statements of the prosecution witnesses which have found corroboration inter-se, the guilt of the appellant is proved beyond a reasonable doubt.â- \235 On the aforesaid basis, the High Court came to the conclusion that no infirmity in the judgment of the Additional Sessions Judge-cum-Special Judge in convicting the appellant could be found.

We are in agreement with the said reasoning given by the High Court. We find no merit in this appeal and the same is accordingly, dismissed.

At this stage, we are informed that the appellant after completing the full term of sentence, has even been released.

....., J.
[A.K. SIKRI]
....., J.
[S.A. BOBDE]
....., J.
[ASHOK BHUSHAN]

New Delhi;
September 01, 2016.
5

Criminal Appeal No. 150/ 2010
ITEM NO.106 COURT NO.11 SECTION IIB
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No. 150/2010
INDRASH CHANDER JOSHI Appellant(s)
VERSUS
INS. OF CUSTOMS, LAND CUSTOMS STATION Respondent(s)
(With appln. (s) for suspension of sentence and office report)
Date : 01/09/2016 This appeal was called on for hearing today.
CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S.A. BOBDE
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)
Mr. Dipak Kumar Jena, Adv.
Ms. Minakshi Ghosh Jena, Adv.
Ms. Pooja B., Adv.

For Respondent(s)
Ms. Pinky Anand, ASG.
Ms. Rekha Pandey, Adv.
Ms. Sushma Manchanda, Adv.
Mr. B. K. Prasad, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.
In view thereof, application pending, if any, stands disposed of.

(Nidhi Ahuja) (Tapan Kr. Chakraborty)
Court Master Court Master
[Signed order is placed on the file.]