

HIGH COURT FOR THE STATE OF TELANGANA  
AT HYDERABAD

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Criminal Appeal No.1243 OF 2008

Between:

The Deputy Commissioner,  
Customs Preventive, Hyderabad Commissionerate-II,  
Hyderabad. ... Appellant

And

Bala Ravi Kishore and others. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 13.06.2023

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

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*K.SURENDER, J*

\* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.A. No. 1243 of 2008

% Dated 13.06.2023

# The Deputy Commissioner,  
Customs Preventive, Hyderabad Commissionerate-II,  
Hyderabad. ... Appellant

And

\$ Bala Ravi Kishore and others  
... Respondents

! **Counsel for the Petitioner:** Sri Swaroop Orilla

^ **Counsel for the Respondents:** Sri A.Hari Prasad Reddy

> **HEAD NOTE:**

? **Cases referred**

(2022) 8 Supreme Court Cases 536

**HON'BLE SRI JUSTICE K.SURENDER**  
**CRIMINAL APPEAL No.1243 OF 2008**

**JUDGMENT:**

1. The State, represented by Deputy Commissioner, Customs, Hyderabad has preferred the present appeal questioning the correctness of the orders of the learned Metropolitan Sessions Judge in Criminal Appeal No.186 of 2007, dated 10.03.2008 reversing an order of conviction passed by the Economic Offences Court convicting the respondents 1 to 4/A1 to A4 for the offences under Section 135(1)(b)(ii) of the Customs Act.

2. Briefly, the case of the Deputy Commissioner, Customs is that on the basis of specific intelligence gathered by the Directorate of Revenue Intelligence (DRI) that some foreign currency was being smuggled out of India from Hyderabad by boarding flight AIR India to Singapore on 11.012.1999 intercepted the 1<sup>st</sup> respondent/A1 and found currency of different countries totally valued at Rs.54,20,855/-.

3. The currency was Singapore dollars, Canadian dollars, UAE Dirhams, Saudi Arabian Riyals and Omani Riyals.

4. After following due procedure, the said currency was seized and since the currency gathered was attempted to be smuggled out of India without special or general permission from the RBI, which act was in violation of FERA and Customs Act, complaint was filed.

5. After complaint was filed, the Economic Offences Court examined P.Ws.1 to 7 and marked Exs.P1 to P47 on behalf of the complainant. The accused examined D.w.s.1 to 3 and marked Exs.D1 to D12. In all, four accused were charged for the offence under Section 135 (1)(a)(ii) of the Customs Act, 1962.

6. Learned Special Judge of the Economic Offences Court found that the ingredients of Section 135(1)(a)(ii) of the Act were made out and not under Section 135 (1)(a)(ii) of the Customs Act. Accordingly, though the charge was framed under Section 135(1)(a)(ii) of the Act, learned Special Judge convicted the accused herein for the offence under Section 135(1)(b)(ii) of the Customs Act.

7. Aggrieved by the said conviction, the accused preferred appeal before the learned Metropolitan Sessions Judge. Learned Sessions Judge found that the accused were complicit of trying to smuggle out foreign currency which is in violation of the Customs Act. However, learned Sessions Judge recorded acquittal on the following grounds;

i) The sanction under Ex.P8 was granted for prosecuting the accused under Section 135(1)(a)(ii) of the Customs Act and not under Section 135 (1)(b)(ii) of the said Act;

ii) When no charge was framed under Section 135(1)(b)(ii) of the Act, there was no occasion for A1 to A4 to defend themselves for the alleged contravention;

iii) there is no allegation against the accused in the complaint that they have contravened the provisions under Section 135(1)(b)(ii) of the Customs Act;

iv) No valid grounds are present to remand the matter back to the lower court for framing charge under Section 135((1)(b)(ii) of the Act and order retrial.

8. Section 137 of the Customs Act prescribes pre-condition of sanction for taking cognizance of any offence under Section 135 of the Act. Since there are no sanction proceedings, the accused are entitled to be acquitted.

9. Learned Special counsel appearing on behalf of the Deputy Commissioner, Customs emphasized on the fact that the learned Sessions Judge committed grave error in acquitting only on the ground that the charge was not framed by the Special Court. The evidence adduced made out an offence under Section 135 (1)(b)(ii) of the Customs Act, as such the learned Special Judge had not committed any error in convicting the accused when the sanction under Ex.P8 was given for prosecuting the accused under Section 135(1)(a)(ii) of the said Act. Accordingly, learned Special Counsel submits that this is a fit case where the order of acquittal has to be reversed, since the findings of the learned Sessions Judge has no legal basis.

10. On the other hand, learned counsel appearing for the accused would submit that the findings of the learned

Sessions Judge in acquitting the accused are on legal grounds. When no sanction was granted by the concerned authority to prosecute the accused under Section 135(1)(b)(ii) of the Customs Act, the question of convicting the accused under the said provision does not arise and the Sessions Judge has rightly reversed the order of conviction giving cogent and tenable reasons.

11. Learned Sessions Judge has rightly found that in the absence of sanction by the competent authority, the question of prosecuting the accused for the offence under Section 135(1)(b)(ii) of the Act does not arise. Though the competent authority has granted sanction to prosecute the accused for the offence under Section 135(1)(a)(ii) of the Act, it will not confer any sanction for prosecuting the offence under Section 135(1)(b)(ii) of the Act.

12. In view of Section 137 of the Customs Act, the sanction is a pre-condition for taking cognizance of any offence under Section 135 of the Act.

13. Both the provisions under Sections 135(1)(b)(ii) and Section 135(1)(a)(ii) of the Act operate in different areas of import and export and it cannot be said that once sanction under Section 135(1)(a)(ii) of the Act is granted, prosecution can also be proceeded under Section 135(1)(b)(ii) of the Act. In the said circumstances, I do not find any infirmity with the order of the learned Sessions Judge in reversing the order of conviction.

14. In **Ravi Sharma v. State (Government of NCT of Delhi) and another**<sup>1</sup>, the Hon'ble Supreme Court held that while dealing with an appeal against acquittal, the appellate Court has to consider whether the trial Court's view can be termed as a possible one, particularly when evidence on record has been analysed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the appellate Court has to be relatively slow in reversing the order of the trial court rendering acquittal.

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<sup>1</sup> (2022) 8 Supreme Court Cases 536



15. In the said circumstances, in the facts of the present case, when there is no sanction and also placing reliance on the judgment of the Hon'ble Supreme Court in **Ravi Sharma v. State (Government of NCT of Delhi) and another's case (supra)**, this Court is not inclined to allow the appeal.

16. Accordingly, the Criminal Appeal is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

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**K.SURENDER, J**

Date: 13.06.2023

Note: LR copy to be marked.

B/o.kvs

**HON'BLE SRI JUSTICE K.SURENDER**

CRIMINAL APPEAL No.1243 of 2008

Date: 13.06.2022.

kvs