

(2013) 03 BOM CK 0083
In the Bombay High Court
Case No : Criminal Appeal No. 696 of 1998

S.M. Sawant

APPELLANT

Vs

Mahgoub Ali Mohamed El Boshari and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Customs Act, 1962 — Section 135(d)(a)(II)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22, 23, 28, 29, 8(c)

Citation : (2013) 3 ABR 150 : (2013) ALLMR(Cri) 1553 : (2013) 2 BomCR(Cri) 654

Hon'ble Judges : P.V. Hardas, J;A.M. Thipsay, J

Bench : Division Bench

Advocate : Rebecca Gonsalves, for the Appellant; V.R. Bhonsale, APP for State, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Hardas, J.—This is an Appeal filed by the Appellant challenging the judgment of the Special Judge for Greater Bombay, dated 2.4.1998-3.4.1998, in N.D.P.S. Special Case No. 1069 of 1989, acquitting the respondents for offence punishable under Sections 29, 22, 23 r/w. Sections 28 and 8(c) of the N.D.P.S. Act and u/s 135(d)(a)(II) of the Customs Act, 1962. Facts in brief as are necessary for the decision of this Appeal may briefly be stated thus:--

The Officers of the N.C.B., Mumbai had information regarding International Smuggling of Narcotic Drugs out of India through Airmail parcels and therefore, kept surveillance at the Air Port Sorting Office (Foreign Export) Santacruz (East). The Officers suspected some parcels from their destination and after studying the modus operandi of the despatch notice that on seven occasions the parcels were consigned to the addresses in Somaliya, Tanzania and Zambiya. N.C.B. Officers had accordingly seized Heroin from three parcels weighing about 8 kgs., Mandrax tablets from 14 parcels weighing about 40 kgs. 500 gms. Mathaqualone powder

in four parcels weighting about 21 kgs. 100 gms. In addition to the above recovery, the N.C.B. Officers had also seized 22.500 kgs. of Mandrax Tablets from three Sea Mail parcels which were traced and found at the Export Department, G.P.O., Bombay under panchnama Exhibit 43 pursuant to the disclosure made by Accused No. 4.

The prosecution further alleged that after seizure of the Narcotic Drugs from each parcel, the Seizing Officer reconstructed it for its control delivery at the destination for further investigation and despatch note of parcels were secured under the panchnama under the signature of the panchas and the Postal Authority. The samples were also drawn and the report of the Chemical Analyzer at Exhibits 50 to 59 indicate that the test for detection of Narcotic Drugs was positive. The prosecution also alleged that the control delivery of the parcels was arranged and it resulted in interception of one person who had come to receive the parcels destined for Somaliya and the said person was the brother of one Haji Abdulla, who was controlling drug trafficking syndicate and was an International Smuggler. Further investigation revealed that one telephone number 577094 of Bombay was being used to contact Haji Abdulla. The investigation further revealed that the subscriber of the said telephone was one MA. Khan and on the search of his premises, one unauthorized extension given to an adjoining flat of one Afroz Khan was noticed. Investigation further revealed that the unauthorized connection was used by Accused No. 2 George for drug trafficking as he was found residing there. After recording the statements of Afroz Khan, the name of Accused No. 2 came to be revealed and Accused No. 2 led the Investigating Officers to Room No. 7, Narottam Niwas, Nana Chowk, where his friend Accused No. 1 was residing with one Ashwin Ulhalkar. On search of the Room 5, documents were recovered from the suit-case of Accused No. 1 and they were seized under panchnama Exhibit 41 collectively. Accused Nos. 1 and 2 were taken to the N.C.B. Office and pursuant to the disclosures made by them, Accused No. 2 was intercepted near Zam Zam Sweet Mart at about 5.00 p.m. on 7.2.1989. Accused No. 3 who was then studying in the college was also intercepted and according to the prosecution, he acted as interpreter in drug transaction where his father Abdul Hamid was also involved along with Accused No. 1 and was dealt with Haji Abdul la of Somaliya. Accused No. 5 was also picked up from Dava Bazar, Mumbai on 7.9.1989 and his statement was recorded. Thereafter, a complaint was filed against the Accused. After recording the evidence of the prosecution witnesses, the Trial Court, by the judgment referred to above, acquitted the Accused.

2. By virtue of the order passed by this Court, the Appeal came to be dismissed as against respondents 1, 2 and 4 and therefore, the present Appeal questions the acquittal of respondents 3 and 5 only.

3. The Trial Judge at paragraph 24 has come to the conclusion that nothing incriminating was found from Accused No. 3 Altaf and therefore, no charge could be attributed on the basis of the statements alone. In respect of Accused No. 5,

the Trial Court observed at paragraph 26 that Accused No. 5 could not be connected with the charge on the basis of the statement recorded at Exhibit 97. In other words, the trial Court found that there was no evidence at all in respect of the involvement of Accused No. 3 Altaf and Accused No. 5 Prajesh.

4. We have heard Ms. Rebecca Gonsalves, learned counsel for the Appellant and with the assistance of the learned counsel, we have perused the reasons recorded by the Trial Court. Upon such perusal, according to us, the view taken by the Trial Court is a possible view to be taken on the basis of evidence on record. We do not notice any perversity in the reasoning of the Trial Court to justify any interference in this Appeal against acquittal. Accordingly, there being no merit in the present Appeal, this Appeal is dismissed confirming the acquittal of the respondents.