

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. Crl. Acq. Appeal No.21 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Appellant : Collector, Model Customs Collectorate,
through Mr. Ashiq Ali Anwar Rana,
Spl. Prosecutor Customs.

Versus

Respondent No.1 : Haji Abdul Raziq
Respondent No.2 : Special Judge (Customs, Taxation &
Anti-Smuggling) at Karachi.

Date of hearing : **16.11.2020**

Date of Decision : **25.11.2020**

JUDGEMENT

NAZAR AKBAR, J:- This Spl. Crl. Acq. Appeal is directed against the judgment dated **01.10.2019** passed by the Special Judge (Customs & Taxation) Karachi in **Case No.82/2014** whereby the trial Court has acquitted Respondent No.1.

2. Brief facts of the prosecution case are that M/s. Haji Abdul Raziq & Brother NTN No.1444110 and STRN-06-04-0800-006091 imported various consignments of old and used Sprinkler Lorries from Japan and cleared the same against furnishing postdated cheques equal to the value of the vehicles in compliance of Hon'ble Islamabad High Court's order dated 09.10.2013. In the light of the order of the Hon'ble Islamabad's High Court, the postdated cheques have been furnished by M/s. Haji Abdul Raziq & Brothers in favour of Collector, Model Customs Collectorate, Hyderabad, seven cheques in all Rs.1,67,007,032/-. The Hon'ble Islamabad High Court dismissed the

Writ Petition. In view of Hon'ble Islamabad High Court's order, the securities in the form of postdated cheque furnished by M/s. Haji Raziq & Brothers were sent to the Bank M/s. Habib Bank Limited, Bahadurabad Branch, Karachi for encashment. The postdated cheques of Rs.167.007 million sent to Bank vide M.R. No.21 dated 21.4.2014 were returned by the bank with the remarks that "funds insufficient". Thus the instant FIR bearing Crime No.85/Recovery/HARK/DP for an offence under Section 156(1) 95A was lodged for committing fiscal fraud under Section 32A & 95A of the Customs Act, 1969.

3. After usual investigation, charge was framed against accused/respondent No.1 to which he pleaded not guilty and claimed to be tried. After examination of witnesses and hearing learned counsel for the parties, learned trial Court by judgment dated **01.10.2019** acquitted accused/Respondent No.1 by extending him benefit of doubt. Therefore, the appellant/State has filed instant Special Criminal Acquittal Appeal against the said judgment.

4. Learned counsel for the appellant has filed written arguments, in which learned counsel contended that Respondent No.1 committed offence from the initial stage of his illegal import nearly to hoodwink the concerned Government Department by filing "Goods Deceleration" electronically by misstating the facts and on illegal documents, thus committed fraud falling Under Section 32(1) 32A(1)(a) of the Customs Act, 1969. The act of filing false and forged security in shape of various cheques in compliance of the interim order of Hon'ble High Court of Islamabad, which have been bounced when presented before the concerned bank as is evident from bank statement, tantamount to committing fraud and violation of penal clause 95A of section 156(1) of the Customs Act, 1969.

5. It is further averred that respondent No.1 had submitted postdated cheques on the interim order passed by the Hon'ble Islamabad High Court on 07.04.2014 in in CP No.3795/2013 filed by the Respondent No.1 which was dismissed. Respondent No.1 produced copy of order dated 05.9.2013 passed in the CP No.D-3293/2013 and tried to misguide the department that recovery against the accused was stayed. It is averred that said petition was filed on valuation dispute which has no relevancy with the cheques deposited by the accused. Therefore, Respondent No.1 was legally bound to facilitate the department to encash to postdated cheques deposited in compliance of Interim Order.

6. It is further averred that Respondent No.1 has not only defrauded the department but caused loss to national exchequer and also hoodwinked the Hon'ble High Court and get interim relief regarding release of subject vehicles by furnishing post-dated cheques with intent not to pay the amount. He further contended that Respondent No.1 may be convicted by setting aside the impugned order.

7. I have perused the record as well as written arguments submitted by the learned counsel for the appellant.

8. The perusal of the impugned order shows that the learned trial Court has rightly observed that:-

.....“if there is no liability existed for the release of the vehicle then need for encashment of surety was not at all aroused. The Hon'ble High Court of Sindh even in its order dated 06.02.2018 has gone to the extent of refunding the surety/security obtained from as many as six different importers including the present one. If this security was liable to be returned back to the importers then what offence remains alive in this FIR.”.....

.....“There is no arrears, now outstanding against the accused. The value of the vehicles has been accepted which is declared by the importer.”.....

.....“Nonetheless the Hon’ble Islamabad High Court had not permitted the Customs Authorities for encashment of surety/security but Customs Authorities acted at its own initiative by trying to encash this surety without getting the amount adjudged by the competent forum nor getting any orders from the Hon’ble Islamabad High Court for encashment of these securities. The Appellate Tribunal has not adjudged any amount liable to be furnished by the importers. Even otherwise the post-dated cheques were submitted before Hon’ble Islamabad High Court, neither Bill of Lading nor Goods Declaration, etc are false or forged, there is no outstanding amount against the accused, there is no loss to the Government Exchequer, even the refunds cheques have been issued by the Customs Authority, therefore, Section 32 & 32(1) of the Customs Act, 1969 are also not applicable in the instant case.”.....

.....“The basic foundation of these cases has been shaken the structure built thereon is liable to fall. In view of the findings given by the Hon’ble High Court there is no chance of conviction of accused.”.....

9. In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Spl. CrI. Acq. Appeal is dismissed.

JUDGE

Karachi
Dated: **25.11.2020**

SM