

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Criminal Appeal No. 10 of 2009

Asif Iqbal.	Appellant.
Versus		
The State	Respondent.

Date of hearing as well
as short order : 21.08.2019

Appellant Asif Iqbal through Syed Jamil Raza Zaidi, advocate.

The State through Ms. Durdana Tanveer, Assistant Attorney General.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- This appeal is directed against the impugned judgment dated 29-05-2009 pronounced by the learned Special Judge (Customs & Taxation) in Special Case # 115/1997. Through the impugned judgement, the learned trial Court convicted the appellant under Section 33 of the Sales Tax Act, 1990 and awarded a sentence of rigorous imprisonment for 8 months and a fine of Rs. 100,000/- with a direction that in case of default in payment of fine, he has to undergo simple imprisonment for two months more. While pronouncing the aforementioned conviction and sentence, the learned trial Court suspended the sentence under Section 382-E CrPC for seven days to enable the appellant to file an appeal, as such the appellant filed the instant appeal.

2. The F.I.R. of the present case was lodged by Mr. Pervez Hasbani, Deputy Collector (Refund) disclosing that as per information, accused Asif Iqbal, Clerk of Collectorate of Sales Tax, West Karachi was involved in forgeries, manipulation, falsification and preparation of bogus invoices. M/s.

Magna Teck Industries claiming illegal refund in connivance with Tariq Saeed, Clerk Central Excise Collectorate, Karachi and collected the cheque issued in the name of M/s. Magna Teck Industries from courier service 'Worldwide Express', Karachi. The receipt of the said cheque indicates that appellant Asif Iqbal, has allegedly hired the services of Muhammad Yasin for submitting forged documents and claiming illegal refund. The said Muhammad Yasin was in contact with Asif Iqbal, Inspector Sana of Sales Tax (West), Karachi and Inspector Sajid, Central Excise, Karachi.

3. After submission of the Final Report, the charge was framed against the appellant and other co-accused who did not plead guilty and claim trial. Hence, the trial was initiated and after recording the prosecution evidence, and recording of the statement of the appellant and other co-accused, the impugned judgement was passed. It is worth noting that co-accused Muhammad Yasin was acquitted from the charge, while the appellant was convicted as mentioned above. It is not out of place to point out that as per F.I.R., the name of courier services is given as 'Worldwide Express' but it is a fact that the concerned organization was T&T Courier Services and the witnesses were examined from the said courier services and none of the witnesses belonging from 'Worldwide Services' was produced by the prosecution, and record does not say anything regarding this anomaly which also creates doubt regarding the prosecution case.

4. The prosecution has produced and examined as many as 14 witnesses before the trial Court. Amongst them PW-1 Shahid Usman (Ex-4), PW-2 Muhammad Ramzan (Ex-5), PW-3 Syed Itifad Hussain (Ex-6), PW-4 Pervez Hisbani (Ex-7), PW-12 Aqil Ahmed (Ex-15) and PW-14 Anwer Aziz (Ex-19) are the witnesses, who have deposed something against or regarding the appellant. Amongst them the deposition of PW-2 Muhammad Ramzan (Ex-5) is irrelevant as he is only the witness of 'Memo of Arrest', as such he is just a

formal witness. The deposition of PW-1 Shahid Hussain (Ex-4) is a meaningful on two folds as this witness is being claimed as eyewitness and he is Dispatch Counter Clerk of T&T Express Courier Service and he said that he had delivered envelope (consignment) which was addressed to M/s. Magna Teck Industries. The witness further said that the appellant was already known to him, and he received the acknowledgement from the appellant which was produced by him as 'Ex-4A'. During cross-examination, this witness has admits that the acknowledgement/receipt does not contain the word 'envelope' but it is the case that he had delivered him an envelope. He further disclosed during cross-examination that the receipt did not show what was inside the envelope. I am of the view that from such a statement of this so-called eyewitness, the connection of the appellant with M/s. Magna Teck Industries or any other main culprits is not established.

5. The other important prosecution witness is PW-3 Syed Itifad Hussain, who is also an employee of T&T Courier Service. In his examination in chief, this witness has admitted that the appellant was performing duty in the Sales Tax Department as a Dispatcher. He further states that one Tariq Saeed introduced himself as Inspector Sales Tax in the office of the Sales Tax Department during the days when appellant was performing services as Dispatcher. The said Tariq Saeed once told the witness (PW-3 Itifad Hussain) that his packet would come and he should deliver the same to him but he did not agree with such proposal of Tariq Saeed. Although this witness was declared hostile and during cross-examination conducted by the prosecution, this witness has further caused serious dents in the prosecution case. During cross-examination, he admits that he has given a packet containing a cheque to the appellant and received Rs.72/- as charges from him at the office of Sales Tax. During cross-examination conducted by the prosecution as a hostile witness, this witness has admitted that the appellant used to visit the office of T&T Courier Services but he has voluntarily added that he used to

come there for delivery of the consignment of his office. This witness has also stated that he used to deliver the packets to the appellant frequently. From the statement of this witness, it is clear that the appellant, being a Dispatcher at the relevant time, was responsible to collect the consignments and he was also assigned to deliver such consignments to the office of the courier service as a routine.

6. The next notable prosecution witness is PW-4 Mr. Pervez Hisbani (Ex-&), who at the time of incident was performing duties as Deputy Collector, Sales Tax (West) Karachi (Refund). This witness has disclosed that the alleged cheque was issued by his office in the name of M/s. Magna Teck Industries and after preliminary inquiry, it was discovered that the said M/s. Magna Teck Industries is actually a fake/fabricated concern and the refund was obtained on the basis of fake document. According to him, the appellant has obtained the cheque issued by his office in the name of the said fake concern and he also produced the said cheque (Ex-7A). It has already been established that the appellant being Dispatcher used to collect consignments from the office of the courier service and also deliver the consignment there for onward transmission. It is a fact that the appellant being a dispatch clerk is not responsible for registration of M/s. Magna Teck Industries, for which it is claimed that the same is a fake and bogus concern. PW-12 Aquil Ahmed (Ex-15) and PW-14 Anwer Aziz (Ex-19) appear to be the witness of the department who are forced to give evidence against the appellant under some compulsion. PW 12 Aquil Ahmed states that he is an auditor of Sale Tax Department and the appellant used to come to him and request for expediting the process of tax refund of M/s. Premier Hosiery Mills. It is pertinent that the present case revolves around M/s. Magna Teck Industries and not regarding M/s. Premier Hosiery Mills. What is more, this witness in cross-examination admits that the appellant has never asked him for any illegal work. PW-14 Anwer Aziz says that the appellant has handed over him the document of M/s.

Magna Teck Industries but in cross; he admits that it was the routine work of the appellant as a Dispatcher. Hence, this witness evidence is not of any worth in favour of the prosecution case.

7. Another aspect of the case is considerable. The process of registration is a manifold process in which the physical verification is also required and the same must be done by some of the officials of the Sales Tax Department attached to the registration process. In such a situation, I am of the view that the plea taken by the appellant in response to question No. 11 of his statement recorded under Section 342 CrPC appears to be correct, wherein he states as;

"I am innocent. I have never worked for or remained associated with M/S Magna Teck Industries, the actual culprits have not been touched while I being a poor employee have been falsely implicated. I pray for justice."

8. If such a scam has taken place in the department, why the responsible officers of the department were not put to task for registration of a fake concern with the office of the Sales Tax Department. Even, no effort was taken during the investigation to associate those who are involved in the scam and only a Dispatcher is involved as the culprit. In view of the above discussion, it can safely be said that there are so many doubts in the prosecution case and apparently the low grad employees of the department were made scapegoats to save the skin of the influential black-sheep of the department.

9. Since, the prosecution could not establish the case against the appellant; therefore, through short order dated 21.08.2019 the instant appeal is allowed and the appellant is acquitted from the charge. He is on bail; his bail bond stands cancelled and surety is discharged. These are the reasons for the said short order.

Dated : _____

JUDGE