



2023:KER:68484

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 1ST DAY OF NOVEMBER 2023 / 10TH KARTHIKA, 1945

CRL.REV.PET NO. 793 OF 2023

CRIME NO.73/2014 OF GENERAL, Other districts

AGAINST THE ORDER DATED 05.07.2023 IN CRL.M.P.200/20023 IN C.C. NO.592/2017 OF
THE COURT OF THE ADDL.CHIEF JUDICIAL MAGISTRATE (ECONOMIC OFFENCES), ERNAKULAM

REVISION PETITIONERS/ACCUSED NOS.1 & 2:

- 1 IBRAHIM KUTTY ALAKKAL
AGED 50 YEARS
S/O. MUHAMMADALI MOULAVI, ALAKKAL HOUSE,
VETTATHUR P.O., MALAPPURAM, KERALA., PIN - 679326
- 2 RAMEES K.T.
AGED 34 YEARS
KANNAMADHODI THEKKEKALATHIL HOUSE, VETTATHOOR,
PERINTHALMANNA, MALAPPURAM., PIN - 679326
BY ADVS.
MANU TOM
BALAMURALI K.P.
SHAJI T.M.
RENIL IQUBAL K.
HARIPRIYA.M
M.B.SOORI

RESPONDENT/COMPLAINANT:

DEPUTY COMMISSIONER OF CUSTOMS
AIR CUSTOMS, TRIVANDRUM. REPRESENTED BY THE SPECIAL PUBLIC
PROSECUTOR, HIGH COURT OF KERALA., PIN - 682031

**THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 01.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**ORDER**

Dated this the 01st day of November, 2023

This revision petition is filed under Section 397 read with 401 of Code of Criminal Procedure, 1973, challenging the correctness, legality and propriety of the order dated 05.07.2023. By that order the petition filed by the revision petitioners under Section 245 of the Code was dismissed. They are accused Nos.1 and 3 in C.C. No.592/2017 on the file of the Addl.Chief Judicial Magistrate (Economic Offences), Ernakulam.

2. C.C. No.592/2017 was initiated on a complaint filed by the Deputy Commissioner of Customs, Air Customs, Trivandrum. The accusation against the petitioners and their co-accused are the following:

2. On 26.10.2014 at around 4.45 A.M. the superintendent of Customs, Air Intelligence unit, International Airport, Trivandrum intercepted the 1st accused who had arrived by the Flight EK-522 at the Customs exit gate on the basis of a specific intelligence that a passenger arriving by Emirates Flight EK-522 from Dubai to Trivandrum would be trying to smuggle gold into the country by concealing on his person/checked in baggage. On examination of his travel documents, it was found that he was holding Indian Passport with No.K3486772 dated 12.03.2012. He was also in



possession of boarding pass issued by M/s. Emirates from Dubai to Trivandrum by flight No. EK- 522 dated 25.10.2014 with seat No.17F, Electronic Ticket Number ETKT1765853064943 and Indian customs declaration form. On verification of the Indian customs declaration form, the officers noticed that the Accused No.1. did not declare anything dutiable. But from his trolley bag, the yellow metal in the form of bars, square in shape wrapped in black coloured insulation tape were found and on examination it was found to be 24 carat gold weighing about 1 kg each. The total value was Rs.94,97,670/- and the total weight was 3.479 Kg. He attempted to smuggle gold to evade duty. Besides the 2nd accused also smuggled gold in a similar way; both at the instance of accused Nos.3 and 4.

3. Heard the learned counsel appearing for the petitioners and the learned Standing Counsel for the respondent.

4. The contention of the petitioners is that previous sanction as contemplated in Section 137 of the Customs Act, 1962, is essential for taking cognizance of the alleged offences. As per Section 137 the Principal Commissioner of Customs or Commissioner of Customs alone can accord sanction. Whereas, in this case, the authority which accorded previous sanction is the Commissioner (Central Excise, Customs and Service Tax) Thiruvananthapuram. In the view of the learned counsel, the said officer was not empowered to exercise the powers under



Section 137 of the Customs Act and therefore the sanction in the instant case is illegal.

5. The learned counsel for the petitioners submits that when such specific authorities are empowered to accord sanction; even by excluding superior officers like Principal Commissioner of Customs or Chief Commissioner of Customs, the sanction accorded in this case by an officer who held only charge and not by the officer empowered by the statutory provision is illegal.

6. The learned Standing Counsel for the Customs on the other hand would submit that the Central Government by notification dated 07.03.2002 notified the Commissioner of Central Excise to be the Commissioner of Customs and therefore the officer accorded sanction has every empowerment under Section 137 of the Customs Act. To that, the learned counsel for the petitioners would answer that the Central Government cannot exercise the powers of empowerment of various officers of customs for, Section 4(2) enables only the Central Board of Indirect Taxes and Customs to authorise officers to hold various offices and not the Central Government. I am unable to accept the said contention. Section 4(2) governs only authorisation of



the officers enlisted therein by the Board to appoint officers below the rank of Assistant Commissioner or Deputy Commissioner of Customs; whereas notification dated 07.03.2002 was issued to classify the officers and appoint Commissioner of Customs. Before amending Section 4(1) on 11.05.2002, it was the Central Government and not the Board the authority to appoint officers of Customs. Hence, the notification dated 07.03.2002 issued by the Central Government is quite valid.

7. The notification dated 07.03.2002 says that the Commissioner of Central Excise to be the Commissioner of Customs (Appeals) within their respective jurisdiction as specified under Rule 3 of the Central Excise Rules, 2002. Thus there is valid appointment of the Commissioner of Central Excise to be the Commissioner of the Customs. Hence, appointment of the officer officiating as the Commissioner of Customs could validly accord sanction. The petitioners cannot be heard to contend that such an officer did not have the power to discharge the functions and duties of the Commissioner of Customs under Section 137 of the Customs Act.

8. In that view of the matter, the contention of the



learned counsel for the petitioners that the sanction accorded for prosecution in this case is illegal cannot be prima facie accepted. Therefore the decisions namely **1979 KHC 668 (SC)- S.B. Saha & Others vs. M.S.Kochar, 2001 KHC 1149 (SC) - P.K.Pradhan vs. State of Sikkim, 2015 KHC 4473 (DC)- Nanjappa vs. State of Karnataka, 1990 KHC 307- E.K. Thankappan vs. Union of India, 1979 KHC 528-Ratila Banji Mithani vs. State of Maharashtra and others, 1966 KHC 374- Mohammed Safi vs. State of West Bengal and 2005 KHC 1892- State of Karnataka vs. C.Nagarajaswamy**, on which the petitioners place reliance for the proposition that a prosecution without valid sanction, where sanction for prosecution is mandatory, have no application in this case.

Accordingly, this Crl.Rev.Pet. is dismissed, however without prejudice to the right of the petitioners to raise their contention as a defence at the trial.

Sd/-
P.G.AJITHKUMAR
JUDGE



APPENDIX OF CRL.REV.PET 793/2023

PETITIONER ANNEXURES

ANNEXURE1

THE TRUE COPY OF THE E-COURT STATUS (ORDER SHEET) OF THE ABOVE PROCEEDING DATE I.E. ON 14/01/2022.

//TRUE COPY// PA TO JUDGE