

STATE TR. INSP. OF POLICE

v.

A. ARUN KUMAR & ANR.  
(Criminal Appeal No. 2602 of 2014)

DECEMBER 17, 2014

[DIPAK MISRA AND UDAY UMESH LALIT, JJ.]

*Code of Criminal Procedure, 1973 – s.239 – When accused shall be discharged – Allegations against accused no. 1 to 3 that they entered into criminal conspiracy with accused no. 4 and 5, in pursuance thereof filed false and fabricated document to claim duty draw back – Registration of case against respondents-accused under the provisions of Penal Code, Prevention of Corruption Act, and the Customs Act – Application by respondents u/s. 239 seeking discharge – Dismissal of, by the Special Court holding that a case for framing charges against respondents was made out – Revision by respondents – Allowed by the High Court since no case was made out to frame any charges against respondents – On appeal held: The material on record disclosed grave suspicion against the respondents – Special Court was right in framing charges against the respondents – Thus, order passed by the Special Court restored and that of the High Court set aside – Penal Code, 1860 – ss. 468, 471 and 201 – Prevention of Corruption Act, 1988 – ss.13(1)(c), 13(1)(d), 15 – Customs Act, 1962 – ss.132, 136.*

Allowing the appeal, the Court

**HELD:** The documents placed on record-copies of shipping bills and corresponding Exchange Control declaration forms which are part of charge-sheet disclosed grave suspicion against the respondents and the Special Court was right in framing charges against the

A respondents. The High Court was not justified in stating  
 that Section 15 of the Prevention of Corruption Act, 1988  
 could not be invoked. Since the duty draw back was not  
 actually availed, the prosecution rightly alleged that there  
 B was an attempt to commit offence under the relevant  
 clauses of Section 13(1) of the POC Act. It is not the  
 requirement of law that in order to charge an accused  
 under Section 15 of the POC Act he must also be charged  
 either under Section 13(1)(c) or 13(1)(d) of the POC Act.  
 Thus, the judgment and order passed by the High Court  
 C is set aside and that of the Special Court is restored.  
 [Para 6, 9, 10] [326-D; 329-E-H; 330-A]

*Ganga Kumar Srivastava v. State of Bihar* (2005) 6 SCC  
 211; *Sajjan Kumar v. CBI* 2010 (11) SCR 669: (2010) 9 SCC  
 368; *Union of India v. Prafulla Kumar Samal* (1909) 3 SCC  
 D 4; *Dilawar Balu Kurane v. State of Maharashtra* 2002 (1)  
 SCR 75: (2002) 2 SCC 135 – referred to.

#### Case Law Reference:

E	(2005) 6 SCC 211	Referred to	Para 6
	2010 (11) SCR 669	Referred to	Para 8
	(1909) 3 SCC 4	Referred to	Para 8
	2002 (1) SCR 75	Referred to	Para 8

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal  
 No. 2602 of 2014.

G From the Judgment & Order dated 28.08.2011 of the High  
 Court of Judicature of Madras in Crl.RC. No. 106 of 2009.

Vibha Dutt Makhija, T.A. Khan, Charul Sarin, Arivind  
 Kumar Sharma, B.V. Balram Das for the Appellant.

B.A. Khan, Ratnakar Dash, Madhurima Mridul, Sunil

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Fernandes, Astha Sharma, Mithu Jain, B. Karunakar, B. A  
Shajjmon, Vikash Singh for the Respondents.

The Judgment of the Court was delivered by

**UDAY UMESH LALIT, J.** 1. Leave granted. This appeal  
arises out of the judgment and order dated 22.08.2011 passed  
by the High Court of Madras in CrI. R.C. No.106 of 2009  
whereby it set aside the order of the Special Court dated  
19.12.2008 dismissing the application for discharge preferred  
by the Respondents herein.

2. On 08.02.2007 RC-1/E/2007-CBI/EOW/CHENNAI was  
registered under sections 120B read with section 420, 467,  
468, 471 IPC and 477-A IPC and section 13 (2) read with  
section 13(1)(d) of The Prevention of Corruption Act, 1988  
(POC Act for short) and section 32 of the Customs Act, 1962  
on the allegations that accused nos. 1-3 named therein had  
entered into a criminal conspiracy with accused no.4 who was  
Appraiser of Customs, Inland Container Depot (ICD), Irugur,  
Coimbatore and with accused no.5, Inspector of Customs,  
Inland Container Depot, Irugur, Coimbatore during 2004-2005  
and in pursuance of said conspiracy had filed false and  
fabricated documents to claim duty draw back to the tune of  
Rs.2.14 crores (approximately) from ICD, Irugur. It was alleged  
that said accused nos.1-3 had filed certain Shipping Bills and  
that the export documents were assessed by accused no.4 i.e.  
respondent no.1 and after such assessment the goods were  
examined by accused no.5 i.e. respondent No.2. After  
completion of the customs formalities the goods were stuffed  
in containers which were sealed and transported to Cochin for  
consignment to Dubai. It was alleged that accused no.1  
produced different sets of forged shipping bills by adding a digit  
before the total quantity of shipment thereby inflating the value  
of shipment and fraudulently claimed duty draw back. These  
forged shipping bills were endorsed by the respondents. A

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A chart was relied upon to show how the total quantity and the present market value differed by addition of a digit. The chart was as follows:

B	Name of the Firm	Total Qty. in Kg (Net Weight as declared in transference copy of Shipping Bill (presented to Cochin Customs))	Total Qty. (Net Weight as declared in GRF Form Shipping Bill) presented to RBI for matching for foreign Exchange Realisation	Present Market Value declared in transference Shipping Bill (Indian Rupee) Bill	Present Market Value declared in GR Form Shipping Rupee)
C					
D					
E	[1]	[2]	[3]	[4]	[5]
	M/s J.S. Babu, Inc.	79257	479257	17492880	117492880
F	M/s Samy Metal Industries	27176	187176	4850990	44850990
G	M/s Ayyappan Industries	38836	258836	8586055	63586055
	Total			30929925	225929925

3. A regular case was registered on the allegations as

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aforesaid and investigation was conducted by CBI which later filed charge sheet against said five accused on 28.04.2008. The allegations against respondent nos. 1 & 2 were: A

“..... A-4 Arun Kumar while preparing GR Forms is supposed to assess the value in Indian rupees for the value mentioned in US dollars by the Exporter. While preparing GR Forms, A-1 Manish Kumar Jain and A-2 R.V. Shanmugam prepared two such documents one showing correct weight in kg and value in US dollars and the other having inflated weight in kg and value in US dollars. A-1 Manish Kumar Jain and A-2 R.V. Shanmugam have put two before the weight inflating by 20,000 kgs and one before the value in US dollars inflating it by 1 lakh dollars. But A-4 Arun Kumar while endorsing it in the reverse of the form assessed and calculated the value of export in rupees and wrote the same in his own handwriting under his signature. But in the present market value mentioned in the GR Forms by the Exporter, a digit five has been added before the value in rupees, thus inflating the value by Rs.50 lakhs. This value, of course could not be the correct value if calculate at the rate of Rs.43.55 per US dollar. This was deliberately overlooked by A-4 Arun Kumar and he failed to prepare the GR Forms in consultation with the Shipping Bills where there is a difference of Rs.50 lakhs in each and every GR Forms submitted by the Exporter. When such malpractices by the Officers of ICD, Irugur came to the knowledge of the Directorate General of Central Excise Intelligence, A-4 Arun Kumar with the connivance of A-5 Santhosh Kumar, Sr. Tax Assistant (STA) destroyed all the Shipping Bills and A-5 Santosh Kumar made corrections in the Shipping Bills Register as instructed by A-4. Arun Kumar and Shri Bindusaran.” B C D E F G

“..... In pursuance of the said criminal conspiracy A-1 Manish Kumar Jain and A-2 R.V. Shanmugam prepared H

A two sets of Shipping Bills and GR Forms and exported  
 some stainless steel utensils in the name of M/s Ayyappan  
 Industries, M/s Shri J.S. Babu Inc. and M/s Samy Metal  
 Industries. In furtherance of the criminal conspiracy, A-1  
 B Manish Kumar Jain and A-3 N. Rajan prepared the  
 shipping bills. The documents were filed by A-1 Manish  
 Kumar Jain and A-2 R. V. Shanmugam at ICD, Irugur with  
 the connivance of A-4 Arun Kumar who allowed the export  
 of less quantity and entered inflated quantity in the  
 C Shipping Bills Register in conspiracy with A-5 Santhosh  
 Kumar, STA and also filed wrong GR Forms to RBI. But  
 before the duty draw back was allowed, the process was  
 stopped by the intervention of the Directorate General of  
 D Central Excise Intelligence and the accused persons  
 removed/destroyed the documents available with them  
 and tried to replace the documents with the actual export  
 documents by reconstruction process. While the actual  
 exports was only worth Rs.3.22 crores, with eligible duty  
 draw back of Rs.35,000/- by forging the Shipping Bills, GR  
 E Forms and Shipping Bills Register, the accused persons  
 attempted to claim inflated duty draw back of Rs.2.5  
 crores on inflated export of Rs.22.72 crores and thereby  
 attempted to cheat the Government of India.”

F 4. The respondents preferred application under section  
 239 of Cr.P.C. seeking discharge. The special court after  
 having considered the matter, came to the conclusion that a  
 case for framing charges against the respondents under  
 section 468, 471 and 201 IPC and under section 15 of the  
 POC Act and under sections 132 and 136 of the Customs Act  
 G was made out. The special court thus dismissed the application  
 by its order dated 19.12.2008. The respondents being  
 aggrieved preferred revision under section 397 read with 401  
 of Cr.P.C. before the High Court. During the pendency of said  
 H revision the special court framed following charges against the  
 accused:

Charge No.	Accused	Offences under section/s
I	A-1 to A-5	120-B r/w 511 IPC, 468, 471 and 201 IPC/Section 15 of the prevention of Corruption Act, 1988 and section 132 and 136 of the Custom Act.
II	A-1 to A-2	468 IPC
III	A-1 to A-2	468 r/w 471 IPC
IV	A-1 to A-3	511 r/w 420 IPC
V	A-1 to A-2	201 IPC
VI	A-4 to A-5	201 IPC
VII	A-1 to A-3	132 of the customs Act
VIII	A-4 to A-5	136 of the customs Act
IX	A-4 to A-5	15 of the Prevention of Corruption Act, 1988

5. The High Court took the view that there was nothing on record to justify framing of charges against the respondents. It was observed thus:

“..... It is to be stated that this Court is also constrained to state that even for raising such suspicion much less very strong suspicion; the prosecution has not produced a scrap of material either through statement or through any other document to make out a prima facie case against the petitioners for framing the charges.”

As regards charges under Section 15 of the POC Act, the High Court observed as under:

“.... Section 15 of the Prevention of Corruption Act, 1988,

A punishment for attempt, could be invoked only in the event of charge framed under clause (c) of clause (d) of sub-section (1) of Section 13. As far as the case on hand is concerned, the trial court has not charged the petitioners for the offence under Section 13(1)(c) or (d)."

B The High Court, thus accepted the submission that no case made out to frame any charges against the respondents and allowing the Revision by its judgment and order dated 22.08.2011, set aside the order dated 19.12.2008 of the  
C Special Court.

6. The present appeal challenges the correctness of the view taken by the High Court. By way of an additional affidavit, the appellant placed on record, copies of relevant Shipping Bills and the corresponding Exchange Control declaration forms. We  
D have heard Ms. Vibha Dutt Makhija, learned senior counsel appearing for the appellant who invited our attention to documents on record to bring home the point about discrepancy in the total quantity of shipment and the value of shipment in two sets of documents. It was submitted that the High Court was  
E not right and justified in observing that there was no material on record at all. Mr. B.A. Khan and Mr. Ratnakar Dash, learned senior counsel appearing for Respondent Nos.1 and 2, respectively supported the view taken by the High Court. It was  
F submitted by the learned counsel that there never existed two sets of shipping bills, that none of the witnesses deposed against the respondents that no duty draw back had been claimed at all and that the High Court was right in concluding that there was no material against the respondents. Relying on *Ganga Kumar Srivastava v. State of Bihar*<sup>1</sup> it was submitted  
G that no case for interference by this Court was made out.

7. We have gone through two sets of documents which were filed along with an additional affidavit. By way of sample,

H 1. (2005) 6 SCC 211.

Shipping Bill No.000810 is for the quantity of 3568 Kgs with value at Rs.7,88,830 whereas the corresponding Exchange Control Declaration (GR) mentions the quantity as 23568 Kgs i.e. to say digit "2" stands added and the value shown is Rs.57,88,830 i.e. to say digit "5" stands added. In the process, the value was inflated which would in turn increase the amount of duty drawback multifold. The documents placed on record which are part of the charge-sheet, certainly raise grave suspicion against the respondents.

8. The law on the point is succinctly stated by this Court in *Sajjan Kumar v. CBF*<sup>2</sup> wherein after referring to *Union of India v. Prafulla Kumar Sama*<sup>3</sup> and *Dilawar Balu Kurane v. State of Maharashtra*<sup>4</sup> this Court observed in para 19 thus:

"It is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

This Court the went on to cull out principles as regards scope of Sections 227 and 228 of the Code, which in our view broadly apply to Sections 238 and 239 of the Code as well. It was observed thus in para 21:

2. (2010) 9 SCC 368.
3. (1909) 3 SCC 4.
4. (2002) 2 SCC 135.

**A "Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.**

**21.** On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:

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(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

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(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

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(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

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(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but

before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

9. In our considered view, the material on record discloses grave suspicion against the respondents and the Special Court was right in framing charges against the respondents. We must also observe that the High Court was not justified in stating that Section 15 of the POC Act could not be invoked in the present case. Since the duty draw back was not actually availed, the prosecution had rightly alleged that there was an attempt to commit offence under the relevant clauses of Section 13(1) of the POC Act. It is not the requirement of law that in order to charge an accused under Section 15 of the POC Act he must also be charged either under Section 13(1)(c) or 13(1)(d) of the POC Act. The assessment of the High Court in that behalf is not correct.

10. In our view the instant case calls for interference by this Court. We, therefore, set aside the judgment and order passed

- A by the High Court and restore the order of the Special Court. The respondents thus continue to stand charged and must consequently face the trial. However, it must be recorded that this Court has considered the matter only from the stand point whether the respondents be discharged or not and we shall not
- B be taken to have expressed any opinion on merits. The matter shall and must be dealt with purely on merits by the concerned court.

11. We allow this appeal in the aforesaid terms.

C Nidhi Jain

Appeal allowed.