

Mohammed Sabir vs Central Board of Indirect Taxes and Customs (Erstwhile Central Board of Excise and Customs)

Mohammed Sabir vs Central Board of Indirect Taxes and Customs (Erstwhile Central Board of Excise and Customs)

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Court : Kerala

Decided On : Nov-01-2023

Judge : Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Crl.Rev.Pet/1015/2023

Appellant : Mohammed Sabir

Respondent : Central Board of Indirect Taxes and Customs (Erstwhile Central Board of Excise and Customs)

Judgement :

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.PETITION NO. 1015 OF 2023 AGAINST THE ORDER
DATED 07.05.2022 IN CRL.A.NO.321/2019 OF VI ADDITIONAL
DISTRICT COURT, ERNAKULAM (CRIME NO.13/2013 OF
DIRECTORATE OF REVENUE INTELLIGENCE CALICUT REGIONAL
UNIT, KOZHIKODE) REVISION PETITIONER/APPELLANT/ACCUSED:
MOHAMMED SABIR, AGED 40 YEARS, S/O BALAKRISHNAN,

KUNJIKKELOTH HOUSE, PULLURAMPARA P.O. THIRUVAMBADY, KOZHIKODE, PIN - 688002. BY ADVS. MANU TOM BALAMURALI K.P. K.R.JITHIN M.B.SOORI SHAJI T.M. RENIL IQUBAL K. HARIPRIYA.M
RESPONDENT: CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (ERSTWHILE CENTRAL BOARD OF EXCISE AND CUSTOMS) DEPUTY COMMISSIONER OF CUSTOMS, AIR CUSTOMS, CALICUT INTERNATIONAL AIRPORT KARIPUR, CALICUT, REPRESENTED BY CENTRAL GOVERNMENT STANDING COUNSEL, HIGH COURT OF KERALA, PIN - 682031. BY S.MANU, STANDING COUNSEL, CENTRAL BOARD OF EXCISE THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 01.11.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.G. AJITHKUMAR, J.

----- Dated this the 1st day of
November, 2023

ORDER

The petitioner questions the correctness, legality and propriety of the judgment of the Additional Sessions Judge- VI, Ernakulam in Crl.Appeal No.321 of 2019 by which the

judgment of the Additional Chief Judicial Magistrate

(Economic Offences), Ernakulam in C.C.No.302 of 2016 was confirmed.

2. In C.C.No.302 of 2016 the petitioner was the sole

accused. He stood trial for the offence punishable under Sections 132 and 135 of the Customs Act, 1962. The learned Magistrate found him guilty, convicted and sentenced to undergo simple imprisonment for six months under Section 132 of

the Customs Act and to undergo simple imprisonment for one year besides payment of fine of Rs.10,000/-, in default three months simple imprisonment under Section 135 of the Customs Act. He preferred CrI.Appeal No.321 of 2019

before the Sessions Court, Ernakulam. The Additional Sessions Judge-VI, Ernakulam, before whom the appeal came up for hearing, dismissed that appeal as per the

judgment dated 07.05.2022. The grievance of the petitioner

is that his appeal was dismissed without giving him an opportunity of being heard.

3. Heard the learned counsel for the revision petitioner and the learned Standing Counsel for the respondent-Customs.

4. The learned counsel appearing for the appellant would submit that owing to a practical inconvenience, he could not appear before the Sessions Court when the appeal

was taken up for consideration. The Appellate Court, however, proceeded to decide the appeal after hearing the counsel for the respondent alone. It is submitted that since the counsel of the appellant was not heard and no Amicus Curiae appointed to present the case of the appellant, the

judgment of the appellate court is invalid in the light of the

law laid down by the Apex Court in Md.Sukur Ali v. State of Assam [(2011 (4) SCC 729)]. The learned Standing Counsel for the respondent conceded that the Appellate Court decided the appeal without hearing the counsel of the appellant.

5. In Md.Sukur Ali (supra), the Apex Court held that in the absence of a counsel; whatever be the reasons, the case should not be decided against the accused. In such a

situation the court should appoint a counsel, who is practising on the criminal side as Amicus Curiae and decide the case after fixing another date and hearing him.

6. In the light of the aforesaid proposition of law,

judgment dated 06.02.2022 in Crl.Appeal No.321 of 2019 of

the Additional Sessions Court-VI, Ernakulam, which was

rendered without hearing the appellant-accused is unsustainable in law. Therefore, the Revision Petition is allowed and the judgment of Appellate Court is set aside. The appeal is remitted to the learned Additional Sessions Judge- VI, Ernakulam, who will decide the appeal, after affording an opportunity of being heard to both sides. Both parties shall

appear before the Additional Sessions Judge-VI, Ernakulam on 27.11.2023. Sd/- P.G. AJITHKUMAR, JUDGE dkr APPENDIX OF CRL.REV.PET 1015/2023 PETITIONER ANNEXURES ANNEXURE 1 THE TRUE COPY OF THE ORDER OF THIS COURT DATED 12/09/2023 IN CRL.M.C. NO.6841/2022.

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