

C.C.i. and E., Bangalore Vs. Microsign Engineering Products

C.C.i. and E., Bangalore Vs. Microsign Engineering Products

SooperKanoon Citation : sooperkanoon.com/377745

Court : Karnataka

Decided On : Dec-20-1996

Reported in : 1997(94)ELT308(Kar)

Judge : Chidananda Ulial, J.

Appeal No. : Criminal Appeal No. 379/92

Appellant : C.C.i. and E., Bangalore

Respondent : Microsign Engineering Products

Advocate for Def. : Shri Kumar, Kumar and ;K.M. Rajashekar, Advs, for S. Shankaranpa, Adv.

Advocate for Pet/Ap. : Shri B.H. Satish, H.C.G.P.

Judgement :

1. The instant appeal is filed by the State challenging judgment dated 22-6-1992 passed by the Special Court for Economic Offences, Bangalore in C.C. No. 742/1984 whereby the said court acquitted the accused.

2. The facts of the case in brief are as follows :

That the Deputy Chief Controller of Imports and Exports being authorised under Section 6 of the Imports and Exports (Control) Act, 1947 had filed a complaint as against the respondents/accused before the Special Court for Economic Offences,

Bangalore (hereinafter referred to as 'Special Court') for the offences alleged to have been committed by them under Section 120-B read with Section 420 and Section 5 of the Imports and Exports (Control) Act, 1947. The complaint against the respondents/accused is that accused No. 1 is a fictitious firm floated by accused No. 2. Accused No. 3 is a businessman of Bombay dealing in licence for iron and steel, accused No. 4 is a commission agent dealing in imports of iron and steel materials and accused No. 5 is the son of accused No. 4. Accused No. 2 had created bogus documents and forged documents such as S.S.I. certificate from the Industries and Commerce Department, Government of Karnataka bearing No. 08/01/10385/PMT/SSI dated 26-9-1978, a forged firm order purported to have been issued by M/s. Al Shariff Stores, P.O. Box 1107, DERA-Dubai, United Arab Emirates, a forged bank certificate dated 4-9-1980 purported to have been issued by Smt. K.S. Leelavathi, Officer working in Vijaya Bank stating that the financial transactions of the accused No. 1 firm were good, a false certificate purported to have been attested by a Chartered Accountant, showing the local sale turnover for the last three years, the S.S.I. number mentioned in the forged certificate was not issued to accused No. 1 firm but to M/s. Eswara Plastic Industries, No. 6, 1st Main B Street Mysore Road, Bangalore, that the signature of Sri Gangadharappa, the Joint Director of Industries and Commerce Department, Government of Karnataka was forged in the SSI Certificate; that in part-II of the application for EEPC the signature of the Sponsoring Officer was forged.

That the respondent/accused No. 2 having floated the fictitious firm, respondent/accused No. 1 then applied to the Joint Chief Controller of Imports and Exports, Bangalore on 2-1-1981 for issue of Import Licence for manufacture of SS utensils. The firm had enclosed along with the application, a treasury challan for Rs. 50/- and a forged firm order purported to have been issued by M/s. Zee Cheen & Company, No. 10, Howard Road, Singapore-13, xerox copy of the forged SSI Certificate, IT declaration and a xerox copy of the EEPC registration-cum-membership certificate and that on the basis of these documents, licence No. P/L/2852599, dated 8-1-1981 for Rs. 9,30,000/- was got issued in favour of the fictitious firm/respondent/accused No. 1 with a condition that the SS Articles should be exported to M/s. Zee Cheen & Co. for a minimum FOB value of Rs. 18,63,425/- and the period of export obligation would be six months from the date

of importation of the said consignments and the goods cleared under the licence should be utilised only for the purpose of fulfilling the export order against which the licence was issued and no portion thereof shall be utilised or disposed of otherwise. The licence in question was despatched by registered post on 12-1-1981 and the same was received by respondent/accused No. 2. On 17-1-1981 the firm addressed to the JCCI & E Bangalore to return to the firm on 22-1-1981 and that the firm produced a legal undertaking before the Controller of Imports and Exports on 9-3-1981 and the same was accepted on the very same day and a letter of acceptance was issued. On 24-3-1981 the JCCI & E asked respondent/accused No. 1 to return the letter of acceptance since the legal undertaking should be executed before the clearance of the first consignment.

That the respondent/accused No. 2 sold the licence issued to the respondent/accused No. 1 firm to accused No. 3 who agreed to purchase the licence. On the instructions of respondent/accused No. 3, respondent/accused No. 4 and respondent/accused No. 5 floated a fictitious firm M/s. Dwarkesh Importers, Steel Yard House, Bombay. Respondent/accused No. 5 opened a current account in the name of the said M/s. Dwarkesh Importers on 26-10-1981 and respondent/accused No. 5 signed as Thakker P in the application which was written by respondent/accused No. 4 and that the respondent/accused No. 5 had signed in the opening form for introducing a current account in the name of M/s. Dwarkesh Importers and opened a letter of credit against the licence issued to respondent/accused No. 1/firm in the Syndicate Bank, Colaba Branch, Bombay in favour of M/s. Nikka Beeki Kaisha Ltd., Tokyo, Japan for Japanese Yen equivalent to Rs. 9,30,000/- for the import of S S sheets/bars. The import documents were received through the foreign correspondents and on 17-2-1992 the documents were retired after respondent/accused No. 1/firm paid Rs. 13,56,000/-. That M/s. Jabee and Co., Bombay was entrusted with the clearing work by respondent/accused No. 3 and respondent/accused No. 3 filed Bill of Entry No. 2302/105 dated 20-2-1982 in the Customs House, Bombay for the clearance of 156 bundles of SS sheets/bars and a sum of Rs. 6,64,226.75 was levied as customs duty and it was paid through pay order of South Indian Bank Ltd., Bombay in favour of the Reserve Bank of India. That this pay order was presented by respondent/accused No. 3 and on instructions of respondent/accused No. 3,

the materials after clearance were stored in the godown of M/s. Zenith Traders and Warehousing Agency. The goods were delivered to the letter holder of M/s. Dwarkesh Importers on 23-2-1982, 24-2-1982, 25-2-1982, 25-2-1982 (sic) and 26-2-1982 on the instructions of the clearing agent instructed by respondent/accused No. 3.

That the respondent/accused No. 1/firm never engaged in the manufacture of SS Articles at Bangalore and the firm is a fictitious one. On 27-1-1982 the Joint Director, SSI, Bangalore informed the JCCI & E that the firm had not been issued with any SSI Certificate and there was no such firm at all.

That the respondent/accused Nos. 1 to 5 entered into a criminal conspiracy, obtained EEPC certificate from EEPC, Madras by producing forged and false documents and also obtained licence from JCCI & E, Bangalore by producing false documents in the name of respondent/accused No. 1 firm and imported stainless steel without utilising the same for which it was obtained, contravening the AU conditions and thus committed the offences punishable under Section 120-B read with Section 420, 471 read with Section 468 IPC and Section 5 of the Imports and Exports (Control) Act, 1947.

The prosecution had examined in all 21 witnesses and got marked 54 documents as Ex. P. 1 to P. 54. The Special Court on holding the trial, hearing the parties and on appreciation of evidence both oral and documentary had passed the impugned judgment whereby the Special Court was pleased to acquit the respondents/accused No. 1 to 5 of all the charges. Having being aggrieved by the said judgment, the State has preferred the instant appeal.

3. I heard the learned High Court Government Pleader, Sri B. H. Satish, appearing for the appellant/State, the learned Counsel, Sri Kumar, appearing for respondents 2 and the learned Counsel, Sri S. Shankarappa, appearing for the respondents 3 to 5. I have also perused the records pertaining to the case.

4. The learned Government Pleader while urging the grounds in the appeal submitted that the trial court failed to appreciate the evidence of independent witnesses, P. Ws. 2 and 3, that the respondent/accused No. 2 had signed the

application for obtaining the licence for import of stainless steel. He further pointed that the trial court had wrongly observed that the signature of the respondent/accused No. 2 having not been sent to the handwriting expert for proving his signature was not just and proper inasmuch as there was positive evidence on record given by P. Ws. 2 and 3 the manner in which the respondent/accused No. 2 affixes his signature and therefore, he submitted that the trial court would have held that respondent/accused No. 2 had affixed the signature in the register. He further pointed out that the trial court had erred in not holding that it is the respondent/accused No. 2 who had floated the fictitious firm in respondent/accused No. 1. He had submitted that there was ample evidence on record to show that respondent/accused No. 1 was fictitious firm and the respondent No. 2 is the person who was behind the same. It is also his argument that the trial court had failed to appreciate the evidence of P.W. 18, broker, in selling the licence; according to him, he is also an independent witness and he had given acceptable evidence before the trial court that it is respondent/accused No. 2 during the year 1981 took him to Bombay and sold the licence in question to respondent/accused No. 3 on premium and that therefore, according to him, the trial court ought to have appreciated that it is the respondent/accused No. 3 who had obtained letter of credit from respondent/accused No. 2 for importing stainless steel bars and further that the letter of credit was in connivance with respondents 4 and 5.

5. The learned Government Pleader further argued that the trial court would have discarded the evidence of witnesses, P. Ws. 14 and 18, for according to them respondents/accused No. 3 to 5 obtained letter of credit from respondent/accused No. 2 and imported stainless steel against the licence and disposed off the same in the open market in Bombay. The complaint of the appellant as against the impugned judgment is that the trial court would not have been carried by minor discrepancies and inconsistencies in the evidence of the prosecution, while appreciating that the respondents/accused persons have committed a white collar crime by scheming and conspiring with one another.

6. For the aforesaid reasons, he prayed that the impugned judgment be set aside and the respondents/accused 1 to 5 be convicted and sentenced in accordance

with law.

7. The learned Counsel, Sri Kumar, appearing for the respondent/accused No. 2 had argued that in preferring the appeal, the appellant/State had actually not pointed out what was wrong or the perversity in the impugned judgment passed by the trial court. While taking me through the evidence of P. Ws. 2 and 3, he pointed out that the evidence of these witnesses are of no consequence and relevance to the prosecution, for the reason that P.W. 3, postman had deposed before the trial court that in Ex. P. 1 postal acknowledgment, the signature is that of P.W. 2; let apart neither P.W. 2 nor P.W. 3 have given any evidence as against respondent/accused No. 2. While drawing my attention to the evidence of P.W. 2 particularly, the learned Counsel, Sri Kumar, had pointed out that in the entire list of the delivery slip in no part beneath the signatures or initials of the parties, the names of the parties were mentioned except in the case of Ex. P. 1, postal acknowledgment correlated to S. Nos. 2 and 3 dated 25-1-1991 in the delivery slip, Ex. P. 2 wherein there is the name written beneath the signature as 'C.B. Bhagath'. But the said signature in Ex. P. 2 though somewhat resemble the signature as in Ex. P. 1, postal acknowledgment, he further pointed that according to P.W. 3 the signature in Ex. P. 1 is of P.W. 2, postman. Therefore, he submitted that the prosecution had thus tried to connect the said two disputed signatures with that of the signature of the respondent/accused No. 2.

8. He further argued that there was no worth evidence either oral or documentary in the instant case. All that what is on record is the name of respondent/accused No. 2 as 'C.B. Bhagath' in delivery slip, Ex. P. 2. He further stated that obviously the signature in Ex. P. 1, postal acknowledgment is not affixed by the respondent/accused No. 2 at all at any point of time. The learned Counsel for respondent/accused No. 2 therefore argued that the appeal as against the respondent/accused No. 2 has to go in toto. In support of his argument, he had also cited before me the following decisions :

Firstly, AIR 1988 SC 1188, wherein the Supreme Court held that the acquittal order should not be disturbed by the High Court unless the findings of the trial court are perverse, : 1983 CriLJ334 on the point that the findings reached by the

trial court should not be disturbed merely because another view is possible, : ILR 1987 KAR3774 , on the point that the appeal by the State it must satisfy the court that there does exist some good and strong grounds apparent on the record for interfering with the deliberate determination by the Judge who had all the evidence on record but arrived at a wrong determination advantages to the accused, : 1995 CriLJ3663 on the point that the benefit of doubt always should go to the accused, 1985 Cri. LJ 161 on the point that disinterested evidence is not necessarily true and interested evidence is not necessarily false and : ILR 1987 KAR2317 on the point that in criminal case mens rea is essential ingredient of an offence and that although under Section 278B of I.T. Act when a person in charge deemed guilty there can be no point in proceeding against the company and that there is no statutory compulsion to prosecute company along with its officers who may be prosecuted without prosecuting company.

9. While summing up the argument, the learned Counsel for the respondent/accused No. 2 had submitted that there is no worth incriminating evidence to implicate the respondent/accused No. 2 and that being the position, he submitted that the appeal be dismissed as against respondent/accused No. 2.

10. The learned Counsel, Sri Rajashekar, for Sri Shankarappa, appearing for respondents/accused Nos. 3 to 5, submitted that the respondents/accused falsely implicated as they were not at all parties to the offence. He had pointed out that at best the respondents/accused Nos. 3 to 5 would have been the witnesses to the prosecution case but for the reasons that best known to the CBI, they have been arrayed as accused before the court below. He had also drawn my attention to the observation made by the learned Judge of the Special Court that respondents/accused Nos. 3 to 5 should have been the witnesses for the prosecution. He concluded his argument by submitting that for no reason at all the prosecution had implicated the said respondents/accused as accused in the case. He therefore prayed that the appeal be dismissed as against respondents /accused Nos. 3 to 5 also.

11. Having heard both sides, the points for my consideration are (i) whether the impugned judgment passed by the learned Judge of the Special Court is

sustainable in law, and (ii) whether the same is called to be interfered with by this Court in the instant appeal.

12. My answer to the point No. (i) in the affirmative and the point No. (ii) in the negative for the following reasons :

13. The offence alleged in the instant case is under Section 120-B read with Sections 420, 471 read with Section 468 of IPC and Section 5 of the Imports and Exports (Control) Act, 1947. The substance of the accusation is that accused No. 2 had floated a fictitious firm in respondent/accused No. 1 and managed to obtain a forged SSI Certificate alleged to have been issued by the Joint Director of SSI, Bangalore and with the assistance of the same it had applied for membership in EEPC for inclusion of the firm as a member thereof and further obtained a licence bearing No. P/L/2852599 dated 8-8-1981 for Rs. 9,30,000/- with condition that the SS articles to be exported to M/s. Zee Cheem & Co. for a minimum FOB value of Rs. 18,63,425/- for a period of export obligation of six months from the date of importation of the said consignments and the goods cleared under the licence and that respondent/accused No. 2 sold the said licence to respondent/accused No. 3 and under the instructions of respondents/accused Nos. 3 to 5 floated yet another fictitious firm, M/s. Dwarakesh Importers Steel Yard House, Bombay and further opened current account in the name of the said M/s. Dwarakesh Importers and that the said M/s. Dwarakesh Importers opened a letter of credit against the licence issued to the respondent/accused No. 1 firm in the Syndicate Bank, Colaba Branch, Bombay in favour of M/s. Nikkaseeki Kaishe Ltd., Tokyo, Japan for Japanese Yen equivalent for Rs. 9,30,000/- for the import of SS sheets/bars and that the import documents were received from foreign correspondent on 17-2-1982 and that the documents were retired after respondent/accused No. 1 firm paid Rs. 13,56,000/- and that M/s. Jabee and Co. Bombay was entrusted with the clearing work by respondent/accused No. 3 who filed Bill of Entry on 20-2-1982 in the Customs House for the clearance of 156 bundles of SS sheets/bars etc.

14. From the above it is clear that white collar crime in the instant case was committed by the persons with neat scheme, probably for that reason the

investigation was entrusted to the CBI, the prime investigation agency of the country, but by going through the records, it is shocking that there was no worth investigation made by the CBI before filing the charge sheet to bring the culprits to law. It appears to me that in the instant case had been filed only for statistical purpose and no further. As a matter of fact, I am wonder-struck that while a racket is in obtaining false licence to import SS sheets/bars from foreign country by utilising precious foreign exchange of the country and that to prove such a diabolic fraud, the prosecution launched by none other than the CBI, the prosecution had tried to prove its case before the court below by examining no better witnesses than two postmen examined as P. Ws. 2 and 3 to prove the signatures of the respondent/accused No. 2 and to connect him to the fraud limited to collection of the import licence despatched by the Joint Chief Controller of Imports and Exports, Bangalore, by registered post on 12-1-1981. In my view the prosecution had miserably failed to prove the guilt of the accused. Hence, I find no error in the judgment of the learned Trial Court Judge.

15. For the aforesaid reasons, I do not find any substance in the appeal filed by the State.

16. As a matter of fact, I am not happy that the State had resorted to the instant appeal even when there was no proper investigation before filing the charge sheet and further when there was no proper prosecution of its case either, before the court below.

17. To depart from the discussion on the case in hand, I am but to observe here that the State as well can avoid such litigations when there was no proper investigation and prosecution of the case and that the State by resorting to the same is only burdening the courts by adding unnecessary and avoidable litigations of no consequence; lest I fear that the State will be unnecessarily burdening the courts with such litigations, more so, when the cry is to reduce if not wipe out totally the pendency of cases in the courts. We should not forget here that the State is the biggest litigant.

18. In the result, the appeal filed by the State does not merit consideration and the same stands dismissed.

19. In view of the above observation, I feel it is proper to forward a copy of the above judgment to the Chief Secretary to Government of Karnataka. Let the Registry do the needful at the earliest, in this regard.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com