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2026 INSC 1280

Non-Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.1192 of 2021

P. Kathirvel

...Appellant

Versus

State

...Respondent

With

Criminal Appeal No. of 2026
(@SLP (Crl) No.10806 of 2026)

S.Gugan

...Appellant

Versus

The Commissioner of Customs & Anr.

...Respondent (s)

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. The two appeals are from two separate orders of the High Court of Judicature at Madras. However, the prayer for quashing under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) arises from the very same prosecution initiated with FIR No. RCMA1/12/A-0009 registered on 29.02.2012 by the Central Bureau of

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Investigation, Anti-Corruption Bureau, Chennai. The allegation was of misdeclaration by one M/s Majestic Impex which filed Bill of Entry through A6 and A7. The misdeclaration was with respect to the goods imported which were indicated as 'parts of air conditioners' in the Bill of Entry dated 02.09.2011 produced as Annexure P1 in Special Leave Petition (Crl) No.10806 of 2026. The goods were actually 'complete air conditioners' itself the clearance of which as 'parts of air conditioners' resulted in a revenue loss of Rs.42,05,597/-.

3. On the allegation of collusion and conspiracy, four officers of the Customs were roped in and arrayed as accused. A1, was the Assistant Commissioner of Customs with A2, an Appraiser both attached to the assessment unit and A3, an Examiner with A4, again an Appraiser of Customs attached to the clearing unit. A4 passed away and the prosecution against him stands abated. A2's application under Section 482, Cr. PC succeeded before another learned Single Judge of the same High Court as is evident from Annexure P5 dated 11.08.2017. We are here

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concerned with A1, in Crl. Appeal No.1192 of 2021 and A3 in SLP (Crl) No.10806 of 2026.

4. Before we commence the discussion, we have to notice that A3 impugned the decision of a Division Bench in a Writ Appeal filed against the order of the learned Single Judge. The Division Bench found that an intra Court appeal is not maintainable. We find no reason to interfere with the same. However, to avoid multiplicity of proceedings, especially with respect to the allegation relating back to 2012, we would consider the appeal as a challenge to Annexure P6 order dated 26.04.2018 passed by the learned Single Judge, refusing to interfere with the proceedings; which interference was sought on the ground of the sanction being defective, as having been granted only at the instance of the Central Vigilance Commission, which in effect was a review of the sanction declined at the earlier instance, on a mere change of opinion.

5. Insofar as the appeal by A1 is concerned, the contention of a defective sanction has not been taken, and the interference is sought on no *prima facie* culpability having been disclosed in the complaint filed or the FIR

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registered. A1 has urged his case for discharge on the ground that he had cleared the Bills of Entry specifically directing examination of the goods; which after examination, if found to be mis-declared, ought to have been sent back to him, which was not done.

6. We took up the matters separately but thought it fit to dispose of the appeals by a common judgment, especially since the proceedings initiated is from an identical case and the appellants herein had different roles to play on the very same transaction, which was alleged to be a conspiracy, in active aid of the misdeclaration attempted by the parties who benefitted from the misdeclaration. However, in the nature of the contention taken, we would consider the appeals one by one.

7. A3's appeal, as we noticed is on the defective sanction. Annexure P2 is the response to the request for sanction from the CBI, by the Commissioner of Customs, Sea Import, Customs House, G.O. Rajaji Salai, Chennai. The Commissioner of Customs has considered each of the allegations raised by the CBI with reference to the role of the officers at the assessment level and examination of the

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goods; which also involves A1, which we will deal with when his appeal is considered. For the present, suffice it to notice that the declared description of the goods was "*parts of air conditioner O' General 1.5 tone Split Indoor Unit, Model No. No.ASG-15A)*".

8. Insofar as A3, the Examiner of the Customs House is concerned, it is his duty to examine the goods with reference to the declaration made and if any discrepancy is found between the declaration and the goods imported, he has to bring it to the notice of his superior and return the Bill of Entry to the Assessing Unit for re-assessment/adjudication. It was categorically found that there was no *prima facie* evidence of criminal conspiracy, abuse of official position or receipt of any *quid pro quo* for the clearance of the goods. This, according to the Commissioner could at best merit action for Major Penalty under Central Civil Services (Classification, Control and Appeal) Rules, 1965 (CCS (CCA) Rules). It was categorically found that A1, the Assistant Commissioner and A2 the Appraiser had in good faith assessed the Bills of Entry based on the declaration made by the importer.

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Insofar as A3 is concerned, since the Commissioner; the competent authority, differed with the opinion of the CBI, referred it to the Vigilance Commission in terms of paragraph 11.2 (1) of Chapter 7 of the Vigilance Manual, Volume I.

9. The Central Vigilance Commission by Annexure P3 opined, without any reasoning, that the Commission is in agreement with the CBI and the Chief Vigilance Officer (CVO). Then a sanction order was passed by Annexure P4 which was challenged by A3 before the High Court. In fact, A2 also had challenged a similar *volte face* in his case, which ended in Annexure P5. Annexure P5 referred to a host of decisions of this Court and held so in paragraph 12: -

> *12. While law is thus settled, on the facts of the present case, the impugned sanction that has been given by the authority on the same material, which was available before the authority on the earlier occasion, when the refusal was made, cannot stand. The Sanctioning Authority having taken a lenient view earlier of declining to grant sanction has changed its opinion without any fresh materials and granted sanction, which cannot be allowed to stand. It is not permissible for the Sanctioning Authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such*

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> *exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end, to such statutory exercise. Per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction.*

10. The contention of the learned Counsel appearing for A3 is that the order sanctioning his prosecution is akin to that of A2 and is squarely covered by a judgment of this Court in ***State of Himachal Pradesh v. Nishant Sareen***[1]**.** The CBI has also not chosen to file an appeal from the judgment absolving A2 from the liability to face prosecution, for reason of there being no valid sanction.

11. In the ***Nishant Sareen***[1] a trap was laid and the respondent was caught red handed, accepting the bribe from the complainant. Prosecution in terms of the Prevention of Corruption Act, 1988 was initiated and sanction was sought under Section 19 before the Principal Secretary (Health), Government of Himachal Pradesh who was the competent authority. The Principal Secretary on

[1] (2010) 14 SCC 527

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the basis of the materials placed before her found no justification to grant sanction. Later, the Vigilance Department took up the matter with the Principal Secretary upon which a *volte face* was made and the sanction granted. This Court found that the sanctioning authority has merely changed its opinion without any new materials brought before such authority, making it clearly impermissible and held so in paragraphs 12 and 13, as extracted hereunder: -

> *12. It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us a sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.*

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> *13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such a course.*

12. We are of the opinion that the present case with respect to A3 squarely falls in the teeth of the declaration made by this Court in ***Nishant Sareen***[1] and the decision of the High Court extracted above in the case of the co-accused, A2, in the very same case. Admittedly, there were no materials brought before the Commissioner after its earlier order and merely on a nudge by the Vigilance Commission, the opinion was changed which, as held in the cited decisions, was not permissible.

13. Mr. Anil Kaushik, learned Additional Solicitor General appearing for the respondent CBI specifically pointed to paragraph 4 of the Vigilance Manual, Volume I of the Central Vigilance Commission, delineating a 'Procedure for obtaining sanction of other competent

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authority'. As per the said procedure, if the sanction is to be issued by any authority other than the Central Government, the CBI has to forward its final report to such authority for deciding on whether a sanction of prosecution is to be sanctioned or not. As per paragraph 11.2, if the competent authority does not accord sanction, the matter should be referred to its administrative ministry or department which could either direct prosecution to be sanctioned by the competent authority or an authority higher to the competent authority and if in support of the view of the competent authority, forward the case to the Central Vigilance Commission along with its own comments and all relevant materials for resolving the difference of opinion. If the Commission also advises grant of sanction for prosecution, but the Ministry or the Department concerned proposes not to accept such advice, the case should be referred to the Department of Personnel and Training (DoPT) for a final decision. The order declining sanction was also not communicated to the CBI, thus disabling them from challenging it.

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14. The above procedure was not followed, is the submission of the learned ASG. If the sanctioning authority did not follow the procedure and the Vigilance Commission did not think it fit to direct such procedure to be followed as per the Vigilance Manual, the net result would be the prosecution falling to the ground. It is too late in the day to direct consideration of a sanction with respect to the allegation regarding the clearance of Bills of Entry in the year 2012. We, hence, set aside, the sanction as granted by the Commissioner of Customs produced as Annexure P4, the order dated 30.09.2013. There shall be no proceedings taken against the appellant; arrayed as A3 in the prosecution.

15. Now, we come to A1, who was an Assistant Commissioner. Before we look into the records, we cannot but notice, with some anxiety, the conduct of the learned Senior Counsel who appeared for A1, the appellant in Criminal Appeal No.1192 of 2022. While vociferously asserting his case; which he is entitled to, we made some queries which the learned Senior Counsel took umbrage to. When we persisted with our attempt to get a clarification

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as to the procedure followed in Customs' Houses for clearing of goods, the learned Senior Counsel responded belligerently and repeatedly accused us of not hearing him.

16. We mention this only to caution the minority in the Bar, who takes every syllable uttered by a Judge to be a stance taken against the client he represents in Court and respond acrimoniously to the Bench. The majority of the learned Counsel appearing in Courts, quite aware of their relevance as a major stake holder in the justice delivery system, often term their submissions as 'assistance' to the Court. Rightly so; without which the Courts will be at sea, with the voluminous records and the long list of cases on the board, on any given day. It would be always in the fitness of things to carry on the assistance in a non-acrimonious mood, which the majority of the Bar realise, and do not place the Courts in an adversarial role. As we would presently see, if the proceedings were carried on amicably the Senior Counsel could have assisted us better, as the records, contain the answer to our queries; which we perused minutely, since despite the acrimonious repartees

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we realize that there is an aggrieved litigant behind, who shall not suffer.

17. Be that as it may, in the case of A1, there is no ground raised against the sanction order as such. We already noticed from the appeal of A3 that the first order declining sanction, referred to the allegations of the CBI *juxtaposed* with the role of the officers at the assessment level and examination of the goods. The order clearly indicates that A1, the Assistant Commissioner and A2, the Appraiser (Assessment) had cleared the goods in good faith, relying on the declaration made in the Bills of Entry that the goods were 'parts of air conditioners'. It was categorically found that a fraudulent entry or a misdeclaration in the Bills of Entry would be beyond the reach of the Assessing Officer and that the assessment was made in good faith, with a caveat that the goods had to be examined by the Examiner. Examination of goods has to be carried out by the Appraiser and the Examiner at the Customs House, who are respectively A2 and A3. A3 has submitted that he had specifically noticed in his report that the goods were 'complete air conditioners' in which event, he had to return

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the Bills of Entry to the Assessment Wing, which he did not do.

18. The order declining sanction as referred to in A3's appeal finds the inaction of A3 liable to an action of Major Penalty under the CCS (CCA) Rules, in the absence of any *prima facie* evidence relating to criminal conspiracy, abuse of official position and receipt of illegal gratification on which ground the prosecution was found to be unwarranted. If A3, who was the Examiner, failed to discharge his duty to send back the Bills of Entry to the Assessment Wing despite recording that the goods are 'complete air conditioners' and the Bills of Entry shows a misdeclaration insofar as the goods being described as 'parts of air conditioners' there can be no criminal culpability found against A1. Relevant also is the fact that the order declining sanction of prosecution of A3, notices the sanction with respect to the Assistant Commissioner having been forwarded to the Ministry by the CBI and a request is made by the Commissioner that in considering the sanction against the Assistant Commissioner, the comments made by the Commissioner may be taken into

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consideration. The Commissioner would be more conversant with the procedure, rather than the Ministry Officials.

19. In fact, the order of the Commissioner aligns with the flow chart of the Bills of Entry among the Assessing Officers, Shed Examiner, Shed Appraiser and the Assistant Commissioner (Docks) as produced by the appellant himself at Annexure A1 along with Criminal M.P. No.141867 of 2018 which prayed for a stay of the proceedings before the CBI Court Chennai, which had posted the matter for framing of charges as per Annexure A2. The flow chart produced by the appellant clearly indicates the processing of Bills of Entry and the eventual clearance of goods. In fact, this was the specific query made by us, the answer to which though available in the records, the learned Senior Counsel failed to apprise us, despite it having been produced by his client.

20. The procedure starts with the filing of the Bills of Entry at the service centre and the assessment of the Bills of Entry, as per paragraph 7 of Chapter II of the Apprising Manual, Volume I by A2. A1 scrutinises the online and

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manual Bills of Entry and allows it as non-scrutinised Bills of Entry, as per Board's instructions in F.No.446-42/91 COC dated 06.08.1991. On the arrival of the goods, based on the Bills of Entry and the assessment made by the Assessment Wing, A3 examines the goods and herein, reported that 'found air conditioners and description of the imported items was as per invoice' (which implies parts of air conditioners). A4 verified the documents and the examination report of A3, without ascertaining what actually has been imported, referred the bills to the Assistant Commissioner (Docks); which ought to have been returned to A1.

21. We find no dispute raised against the flow-chart produced by the appellant by the CBI through a counter-affidavit.

22. The High Court notices that the Bill of Lading showed the correct description of goods as 'Air Conditioners' which is also seen from the charge sheet produced along with the records. Even if that be so, again the appellant herein could have been proceeded against for duty lapse and not alleged with criminal liability. The charge sheet

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also merely states that there was deliberate intention on the part of the appellant without anything to substantiate it. There is no allegation of any illegal enrichment or even a dishonest intention of the appellant in assessing the goods, as per the description shown in the Bill of Entry.

23. Insofar as A3 and A4, there is clearly dereliction of duty which however the competent authority found cannot result in any conspiracy being alleged and criminal culpability being fastened on them. Insofar as A1 is concerned, he is far removed from the physical examination of goods and only on the assessed Bills of Entry being retuned back could there be a verification by him, so as to ascertain the misdeclaration. A mere power conferred, coupled with a duty to random checking of goods cannot lead to inference of criminal culpability. The duty lapse, if at all, could have been proceeded with departmentally. We find hence that there can be no criminal culpability found against A1. We, hence, quash the proceedings against A1 and A3, the appellants herein, pending before the Principal Special Judge (VIII Additional Judge-CBI), Chennai as C.C. No.1 of 2024.

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24. We make it clear that the proceedings against the others, the importers, who are alleged to have made the misdeclaration with knowledge of the goods actually imported and that declared in the Bills of Entry, shall be proceeded with, untrammelled by any of the observations made by us in the above case; if not under the PC Act, under the IPC or the Customs Act, in accordance with law.

25. The appeals stand disposed of.

26. Pending application(s), if any, shall stand disposed of.

..... J.
(J. B. PARDIWALA)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI;
NOVEMBER 26, 2026.