

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRL.A. NO. 436/2019 @ SLP(CRL) NO. 5951/2016

SHANTILAL KISHANLAL SABOO

APPELLANT(S)

VERSUS

**KRISHNAMURTHY NAIDU GOVIND SWAMI NAIDU PULLAYAGARI
& ORS.**

RESPONDENT(S)

WITH

CRL.A. NO. 437/2019 @ SLP(CRL) NO. 9524/2016

O R D E R

1. Leave grated.
2. The complainant and the State have come in appeal before this court.
3. The facts lie in a narrow compass. The case of the complainant is that Respondent No.1 instead of paying the price of the goods to the appellants, who is manufacturer and supplier of the goods, paid the price to a third party, who is a fictitious person created by the broker. They allegedly recovered price of goods from various parties representing to them that the goods belonged to them etc. They purposely kept the complainant's name in dark so as to deprive the complainant of price of goods.
4. The Criminal Writ Petition No.162/2016 had been filed by the appellant/accused in Crime No.164/2015 registered with Latur Rural Police Station. It was alleged that the complainant/Latur Solvent Extraction Pvt. Ltd., is a manufacture of the cattle feed involved in selling and dispatch of the products to various parties all over India. He maintained relations with the broker at Mumbai, namely,

Resex Traders, Mumbai. At the instance of the broker the goods were directly supplied by the complainant to the purchaser/accused at Bangalore.

5. The complainant came with the case that instead of paying the price of the goods to the complainant the price of goods received was paid by the accused persons to third parties which did not exist and fictitiously created by the broker i.e. Resex Traders, Mumbai. The High Court by the impugned order has quashed the first information report with respect to the respondent in W.P. No.162/2016 and adjourned the two writ petitions which were heard together i.e. W.P. No.47/2016 and Criminal Writ Petition No.467/2016. It was submitted that other two writ petitions have been dismissed later on. Be that as it may.

6. After hearing the learned counsel for the parties at length and considering the documents on record, in particular Invoice No.13-14/266 dated 1.10.2013, we are of the considered opinion that the goods were sent by Latur Solvent Extradition Private Limited to Balaji Enterprises and broker was Resex Traders, Mumbai. Considering the aforesaid, prima facie, there was obligation to make the payment directly to the Lature Solvent Extraction Pvt. Ltd., by Balaji Enterprises, Bangalore.

7. In view of the aforesaid, we are satisfied that the High Court ought not to have quashed the FIR with respect to the offence in question vis-a-vis to respondent(s). Consequently, we have no hesitation to allow these appeals and quash the impugned orders passed by the High Court. We make it clear that we have not commented on the merits of the matters. It is stated that the charge-sheet has been filed in this case and other two cases also charge-sheets have been filed.

8. Resultantly, the appeals are allowed and the impugned orders passed by the High Court are quashed, trial Court to proceed in accordance with law.

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

.....J.
[ARUN MISHRA]

.....J.
[DEEPAK GUPTA]

NEW DELHI;
MARCH 06, 2019.

ITEM NO.8

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s). 5951/2016

(Arising out of impugned final judgment and order dated 10-06-2016 in WP No. 162/2016 passed by the High Court of Judicature at Bombay at Aurangabad)

SHANTILAL KISHANLAL SABOO

PETITIONER(S)

VERSUS

KRISHNAMURTHY NAIDU GOVIND SWAMI NAIDU PULLAYAGARI
& ORS.

RESPONDENT(S)

WITH

SLP(CRL) NO. 9524/2016 (II-A)

(FOR EXEMPTION FROM FILING O.T. ON IA 20342/2016)

Date : 06-03-2019 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE DEEPAK GUPTA

For the parties

Mr. Shashibhushan P. Adgaonkar, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR

Mr. Anil V. Katarki, Adv.
Mr. T.R.B. Sivakumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(NARENDRA PRASAD)
COURT MASTER

(JAGDISH CHANDER)
COURT MASTER

(Signed order is placed on the file)