

(2015) 04 GUJ CK 0025

In the Gujarat High Court

Case No : Special Criminal Application No. 2543 of 2012

Balkrishan Gopiram Goenka

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 9
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(8), 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 141
Penal Code, 1860 (IPC) — Section 120B, 415, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 15

Citation : (2015) 04 GUJ CK 0025

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : H.B. Punani, APP, Advocates for the Respondent

Judgement

V.M. Pancholi, J.—This petition is filed under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), wherein, the petitioner has prayed that Record and Proceedings of FIR being RC-20(A)/2008 - GNR, be called from the Court of learned Special Judge, CBI, Court No. 3, Mirzapur, Ahmedabad and after perusing the same, quash and set aside the said FIR and all proceedings initiated pursuant thereto.

2. Heard learned Senior Counsel Mr. Prakash M. Thakkar with learned advocate Mr. Tanvish Bhatt, learned advocate Mr. Jay Kansara and Ms. Gargi Vyas for Wadia Ghandy and Co. for petitioner and learned advocate Shri R.C. Kodekar for respondent No. 2 - C.B.I. and learned APP Ms. Punani for respondent No. 1 - State of Gujarat.

3. Learned Senior Counsel for the petitioner submitted that the FIR being RC-20(A)/2008 - GNR came to be registered before Gandhinagar CBI, ACB for the offences punishable under Sections 120B, 420, 467, 468, 471 and 511 of

Indian Penal Code and under Section 15 of the Prevention of Corruption Act, 1988. The said FIR came to be filed against one B.C. Macwana, the then Assistant Commissioner, Central Excise, Rajkot, M/s. Welspun Gujarat Stahl Rohren Limited and against unknown person. In the said FIR, mainly it has been alleged that an information has been received from reliable source that Shri B.C. Macwana, the then Assistant Commissioner, Central Excise, Rajkot, during the period 2005-2006, entered into criminal conspiracy with M/s. Welspun Gujarat Stahl Rohren Limited, Varasamadi, Taluka Anjar, District Kutch (hereinafter referred to as "the company" for short) for causing pecuniary advantage to themselves by cheating, by preparation of false documents, using them as genuine and by abuse of their official position. It is stated in the said FIR that after the earthquake of 26th January 2001, the Government declared various plan for rehabilitation of human beings and industries and tax relaxation policies. One such tax relaxation measure was issuance of Notification No. 39/2001-CE dt. 31.07.2001. This notification was specifically meant for the units located in the Kutch District. As per the said notification, central excise duty amount paid by the unit could be refunded on fulfilling certain conditions. One of such conditions was that the commercial production of the unit should have started not later than 31.12.2005. it is alleged that the company, vide letter dated 24.12.2005 addressed to the concerned authority informed that they would be commencing commercial production by 27.12.2005. The company also applied for necessary certificate referred to in para 3 of the aforesaid notification for claiming refund. Copies of the necessary documents required for availing said benefit were also enclosed with the said communication. One Shri S.P. Gawade, Assistant Commissioner, Central Excise, Bhuj, visited the factory premises on 27.12.2005 to verify the commencement of the commercial production and installation of plant and machinery. The said officer, vide his report dated 02.01.2006, informed that the unit was still under construction and no installation and erection of the machinery was found in order, as foundations were not yet completed. He also found certain other materials on the spot on the basis of which it is alleged that on 27.12.2005, the company had not commenced the commercial production, as such, was not eligible for availing the exemption under the provisions of the aforesaid notification. Thus, a committee was set on 05.01.2006 by the Commissioner of Central Excise, Rajkot to verify the application submitted by the units which were set up after 31.07.2001. Shri B.C. Macwana, Assistant Commissioner, Rajkot headed this committee. Said Shri Macwana carried out the verification proceedings and submitted his report dated 16.01.2006. In the said report, he has stated that the company had installed all the machinery as per the CA's certificate and had commenced the production. It is alleged in the FIR that said Shri Macwana intentionally and willfully concealed the fact that the unit had not commenced the commercial production in order to cause undue pecuniary advantage to the unit for availing the refund of the duty. It is further alleged that on receipt of contradictory report, the Chief Commissioner of Central Excise ordered for investigation in the matter. The concerned officer carried out the investigation and during the course of the inquiry it was revealed that the

company had fabricated its record in respect of the production and supply of the goods. The unit was visited by Directorate General of Central Excise Intelligence, Ahmedabad officers on 01.07.2006 and it was found that even on that day only a small part of the factory was constructed till then. The condition of the so-called installed plant and machinery was not sufficient to commence production even on 01.07.2006. Thus, it is alleged that the accused have committed the alleged offence.

4. The Investigating Officer carried out the investigation and thereafter filed the charge-sheet against the concerned accused including the petitioner. Petitioner, thereafter, filed discharge application before the learned trial Court. However, the learned trial Court has rejected the application for discharge filed by the petitioner by an order dated 26.06.2012. Petitioner has, thereafter, preferred this petition under Article 226 of the Constitution of India and under Section 482 of the Code for quashing and setting aside the FIR and all the consequential proceedings initiated pursuant thereto.

5. Learned Senior Counsel Shri P.M. Thakkar appearing for the petitioner submitted that name of the petitioner is not reflected in the FIR and there is no evidence on record to indicate the involvement of the petitioner with the crime in question. Petitioner is a Managing Director of the company and is residing at Mumbai. Petitioner is falsely implicated by the Investigating Agency merely because he is the Director of the company. Learned Senior Counsel submitted that petitioner is sought to be involved in the offence punishable under the provisions of Indian Penal Code on the basis of vicarious liability. He further submitted that the principle of vicarious liability is not applicable for the offence punishable under Indian Penal Code. There is no specific allegations in the impugned FIR against the petitioner that how he has committed the alleged offence. Petitioner is looking after the affairs of other group of company and he was not the Chairman of the company during the period between 2005-2006. In fact, the father of the petitioner viz. G.R. Goyanka was the Chairman of the company at the relevant time and the petitioner was not looking after the project during this period.

6. Learned Senior Counsel further submitted that the petitioner has not availed any benefit under the Excise Act. Thus, no loss is caused to the exchequer. In this transaction, petitioner has not received any wrongful gain. Thus, no prima facie offence under Section 420 of Indian Penal Code is made out against the petitioner. Learned counsel further pointed out that the application for exemption was admittedly applied to be withdrawn by the company on 17.07.2006 before the registration of the FIR and therefore even the company has not received any wrongful gain. He has further submitted that the petitioner has not committed any forgery of document as alleged in the FIR. Petitioner has not signed any document as alleged in the FIR or in the charge-sheet. The so-called forged documents were not used for any purpose by the petitioner. Thus, ingredients of offence of forgery are also not made out against the petitioner.

7. Learned counsel for the petitioner further pointed out from the record that the Central Excise Department had initiated the proceedings under Section 9 of the Central Excise Act against the company and its officers with regard to the similar set of allegations made in the impugned FIR. The Central Excise Department compounded the offence. Thus, the allegations made in the proceedings initiated under the Central Excise Act have come to an end and therefore the impugned FIR, which is filed for the same set of allegations cannot be permitted to be proceeded further in the eye of law and therefore the same may be quashed and set aside. Learned counsel referred to page 114 of the compilation i.e. the order dated 19.09.2008 passed by the Chief Commissioner, Central Excise and submitted that the allegations made in the proceedings under the Central Excise Act and the allegations made in the FIR as well as the charge-sheet by the CBI are one and the same. Thus, when for the same allegations, the offence is compounded by the Excise Authorities by imposing the penalty, for the same allegations, petitioner cannot be prosecuted under the provisions of IPC. Learned Senior Counsel, therefore, submitted that there cannot be two different prosecutions for one solitary incident and petitioner cannot be prosecuted twice for the same offence even in different proceedings and he cannot be compelled to suffer double jeopardy, especially when the earlier offence has been compounded by the competent statutory authority. In fact, no new material is produced by the CBI in support of the offences mentioned in the FIR or in the charge-sheet. Therefore, the impugned FIR and the charge-sheet filed pursuant thereto are required to be quashed and set aside.

8. Learned Senior Counsel referred to Section 415, 420, 467, 468, 471 of IPC and submitted that ingredients of the alleged offences are not at all made out against the petitioner in the impugned FIR or in the papers of charge-sheet and therefore the same may be quashed and set aside qua the petitioner. Learned Senior Counsel further submitted that the impugned FIR is filed with a mala fide intention and instituted with an ulterior motive for putting pressure on the petitioner and therefore the same be quashed and set aside.

9. Learned Senior Counsel further referred to Section 320(8) of the Code and submitted that the composition of an offence under Section 320 shall have the effect of an acquittal of the accused with whom the offence has been compounded. He, therefore, submitted that when the company and its officers including the petitioner have compounded the offence with the Excise Department, they can be said to be acquitted for the charges levelled against them and therefore the petitioner has got the immunity from the prosecution so far as the offences punishable under the provisions of IPC are concerned.

10. Learned Senior Counsel has relied upon the decision rendered by the Hon'ble Supreme Court in the case of Rajesh Kumar Sharma Vs. Union of India (UOI) and Others, , and submitted that the purpose of compounding of offence against payment of compounding amount is to prevent litigation and encourage early settlement of disputes. Learned counsel has relied upon para 6 of the

aforesaid decision.

11. Learned Senior Counsel further relied upon the decision rendered by the Hon''ble Supreme Court in the case of Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, , and submitted that as per Kar Vivad Samadhan Scheme, Gujarat Cancer Society submitted an application. Certificate was issued under the said Scheme. However, thereafter the prosecution was lodged against the petitioner and other office bearers of Gujarat Cancer Society under Section 420 and 120B of the IPC. The Hon''ble Supreme Court held that Gujarat Cancer Society is immune from any criminal proceedings pursuant to the certificate issued under the said Scheme and the appellants are being prosecuted in their capacity as office-bearers of the Gujarat Cancer Society. As the customs duty has already been paid, the Central Government has not suffered any financial loss. The Hon''ble Supreme Court has further held that as per the Scheme, whoever is granted the benefit under the said Scheme is granted immunity from prosecution from any offence under the Customs Act including the offence of evasion of duty and therefore the complaint filed against the said appellants is unsustainable. Thus, the learned Senior Counsel submitted that in the present case also once the offence is compounded under the provisions of the Central Excise Act, the petitioner herein is granted immunity from the prosecution and therefore the impugned FIR and the charge-sheet be quashed and set aside qua the petitioner.

12. Learned Senior Counsel further relied on the decision rendered by the Hon''ble Supreme Court in the case of GHCL Employees Stock Option Trust Vs. India Infoline Ltd., , and submitted that summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. The Magistrate has to record his satisfaction with regard to the existence of a prima facie case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record. Learned counsel submitted that in the present case no specific allegation is made against the petitioner in the impugned FIR and he has been implicated on the basis of the statement of the co-accused and it is alleged that the petitioner has hatched conspiracy with other accused.

13. Learned Senior Counsel further relied upon the decision rendered by the Hon''ble Supreme Court in the case of G.N. Verma Vs. State of Jharkhand and Another, . In the said case, in the complaint, no allegation was made against G.N. Verma. The only statement concerning him is that he was the Chief General Manager/Deemed Agent of the mine and was exercising supervision, management and control of the mine and in the capacity was bound to see that all mining operations were conducted in accordance with the Act and the Rules. Thus, it was a general statement which does not contain any allegation and therefore the Hon''ble Supreme Court held that it is difficult to hold that the Chief Judicial Magistrate rightly took cognizance of the complaint and issued summons to G.N. Verma and therefore the complaint was quashed against him. Learned Senior Counsel submitted that in the present case also no specific allegations are

levelled against the petitioner and therefore in absence of the same, the impugned FIR and the charge-sheet filed pursuant thereto are quashed and set aside.

14. On the other hand, learned advocate Shri R.C. Kodekar appearing on behalf of respondent No. 2 - CBI mainly submitted that the allegations are levelled against the company in the impugned FIR and during the course of the investigation it has been revealed that the present petitioner as a Managing Director of the said company involved and he has given direction to the other officers to forge the document and therefore prima facie he is involved in the alleged offence and therefore present petition be dismissed. He further submitted that the resolution was passed in the Board Meeting of the Company wherein a decision was taken to apply for getting excise benefit as per the notification dated 31.07.2001 and therefore an application was made on 24.12.2005. The petitioner was one of the members of the Board Meeting. Learned advocate Shri Kodekar further submitted that one of the conditions of the aforesaid notification was that the commercial production should have started not later than 31.12.2005. One of the officers Shri S.P. Gawade, Assistant Commissioner visited the site of the company and submitted his report, wherein, he has specifically stated that unit was still not constructed and installation and erection of the machinery was not found in order as foundation was not yet completed. Thus, a committee, presided over by Shri B.C. Makwana, Assistant Commissioner had visited the site of the company. Shri B.C. Makwana had carried out the verification and submitted a report wherein he has willfully concealed the fact that the unit had not commenced the commercial production in order to cause undue peculiar advantage to the unit for availing the refund of the duty. The Chief Commissioner of Central Excise, therefore, ordered for investigation in the matter. The officers of the Directorate General of Central Excise Intelligence, Ahmedabad unit carried out the investigation and during the said investigation it was revealed that company had fabricated its record in respect of the production and supply of the goods. Thus, learned advocate Shri Kodekar submitted that prima facie the ingredients of the alleged offence are made out in the FIR and after the registration of the FIR, during the course of the investigation, since it is revealed that petitioner is also involved in the said offence as Managing Director of the Company, charge-sheet came to be filed against him. Learned advocate Shri Kodekar referred to the statement of Shri Kuttan Mohanan Pillai. The said statement was given by the said person during the course of inquiry before the officer of the Central Excise and in the said statement he has stated that forged documents were prepared by he officers of the company. Thus, learned advocate submitted that by making representation in the form of the application, the company induced the Central Excise Department for giving the benefit of refund of excise duty. Thus, the Company was having intention to cheat the Department from the beginning. Learned advocate further submitted that compounding of a case under the Central Excise Act cannot prevent the agency like CBI to prosecute the concerned accused for the offences punishable under the

provisions of the IPC. Special Law does not prevent the prosecution under the IPC. Learned advocate has relied upon the decision rendered by the Hon''ble Supreme Court in the case of State of Orissa v. Debendra Nath Padhi, reported in (2013) 10 SCC 686. Relying upon the said decision, learned advocate Shri Kodekar submitted that at the stage of framing of charge, roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. Thus, learned advocate for CBI has submitted that the defence and the material relied upon by the petitioner cannot be looked into while exercising powers under Article 226 of the Constitution of India read with Section 482 of the Code by the High Court.

15. Learned APP Ms. Punani has also adopted the arguments canvassed by learned advocate Shri R.C. Kodekar appearing on behalf of respondent No. 2 - CBI.

16. I have considered the arguments canvassed on behalf of the learned advocates appearing for the parties. I have also gone through the documents produced on record. In the present case, the FIR came to be registered against one B.C. Macwana, the then Assistant Commissioner, Central Excise, Rajkot, M/s. Welspun Gujarat Stahl Rohren Limited and against unknown person for the offences punishable under Sections 120B, 420, 467, 468, 471 and 511 of Indian Penal Code and under Section 15 of the Prevention of Corruption Act, 1988. After the investigation, a charge-sheet came to be filed against the officers of the aforesaid company including the present petitioner. From the record, it appears that the petitioner is the Managing Director of the company. The company passed a resolution in its Board Meeting and decided to apply for getting excise benefit as per Notification dated 31.07.2001 and therefore the company submitted an application on 24.12.2005. However, from the record, it appears that before the registration of the FIR, an application seeking withdrawal of the benefit, which was sought under Notification dated 31.07.2001, was submitted by the company and therefore the company has not received any wrongful gain on the basis of its earlier application dated 24.12.2005 and therefore no pecuniary loss is caused to the Department. Thus, the ingredients of the alleged offence punishable u/s. 420 of IPC are not attracted.

17. It is also clear from the record and more particularly from the order dated 19.09.2008 passed by the Chief Commissioner, Central Excise that when the Central Excise Department had initiated the proceedings under Section 9 of the Central Excise Act against the company and its officers with regard to the similar set of allegations made in the impugned FIR, the department compounded the offence and therefore the allegations made in the proceedings initiated under Central Excise Act have come to an end. Thus, when the company and its officers including the petitioner have compounded the offence, initiation of proceedings under the provisions of IPC for the same type of allegations cannot be permitted. There cannot be two different prosecutions for the same incident and petitioner

cannot be prosecuted twice for the same offence even in different proceedings.

18. In the case of Rajesh Kumar Sharma (Supra), The Hon'ble Supreme Court, in para 6, observed as under:

"6. The guidelines for compounding are contained in the Circular No. 54/2005-Cus dated 30th December, 2005. Central Government had brought into force the Customs (Compounding of Offences) Rules 2005 (in short the "Customs Rules") and Central Excise (Compounding of Offences) Rules, 2005) (in short the "Central Excise Rules") with effect from 30th December, 2005. The purpose of compounding of offence against payment of compounding amount is to prevent litigation and encourage early settlement of disputes. The cases where compounding would be rejected are also spelt out in the said circular. The relevant Rule is Rule 5 of the Customs Rules which so far as relevant reads as follow:

Fixation of the Compounding Amount- For the purpose of compounding of offences under the various provisions of the Act, the compounding amount shall be as provided hereinbelow:-

(underlined for emphasis)"

19. In the case of Hira Lal Hari Lal Bhagwati (Supra), The Hon'ble Supreme Court, in para 29 and 30, observed as under:

29. In our view, in the present case, the alleged criminal liability stands compounded on a settlement with respect to the civil issues and, therefore, the First Information Report was erroneously issued and was totally unwarranted. From the aforesaid judgment, the proposition that follows in the instant case is that the Kar Vivad Samadhan Scheme, 1998 issued by the Government of India was a voluntary Scheme whereby if the disputed demand is settled by the Authority and pending proceedings are withdrawn by an importer, the balance demand against an importer shall be dropped and the importer shall be immuned from penal proceedings under any law in force. We are, therefore, of the opinion that this judgment squarely comes in the face of any argument sought to be propounded by the respondent that the Kar Vivad Samadhan Scheme, 1998 does not absolve the appellants from criminal liability under the Indian Penal Code. The learned single Judge of the High Court of Delhi, in our opinion, has not appreciated the fact that the continuance of the proceedings in the instant case would only tantamount to driving the present appellants to double jeopardy when they had been honourably exonerated by the Collector of Customs by their adjudication and further the GCS of which one of the appellants is the General Secretary in which capacity he is accused in the present case was granted amnesty under the Kar Vivad Samadhan Scheme, 1998. In our opinion, the present case does not warrant subjecting a citizen especially senior citizens of the age of 92 and 70 years to fresh investigation and prosecution on an incident or fact situation giving rise to offence under both the Customs Act and the Indian Penal Code when the matter has already been settled. Likewise, the respondent

herein has initiated criminal proceedings against Accused No. 2 and Accused No. 1, inter alia, on the ground alleging that the appellants in conspiracy with the co-accused named therein with each other have cheated the Government of India in terms of evasion of Customs Duty and by concealment of facts obtained CDEC in respect of MRI and Lithotripsy machines and by violating the provisions of "actual user" condition as per Import Export Policy and Customs Notification No. 279/83 dated 30.9.1983 and Customs Notification No. 64/88 dated 1.3.1988 during the year 1987-90, despite acknowledging the fact that Customs Duty has been paid by the appellants to the Customs Department and settled and that commission of offences under Section 120B read with Section 420 of the Indian Penal Code are made out.

30. In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field I.e. the Customs Act, 1962 the appellants have been therein under wholly discharged and the GCS granted immunity from prosecution. It is well established principle of law that the matter which has been adjudicated and settled need not to be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable. The true fact and import of the Kar Vivad Samadhan Scheme, 1998, in our view, is that once the said Scheme is availed of and all the formalities complied with including the payment of the duty, the immunity granted under the provisions of the Customs Act, 1962 also extends to such offences that may prima facie be made out on identical allegations i.e. of evasion of Customs Duty and violation of any Notification issued under the said Act.

20. In view of the aforesaid decisions, the learned Senior Counsel is right in submitting that in the present case once the offence is compounded under the provisions of the Central Excise Act and thereby the petitioner herein is granted immunity from the prosecution, the impugned FIR and the charge-sheet be quashed and set aside qua the petitioner.

21. In case of G.N. Verma (Supra), the Hon"ble Supreme Court, in para 18, 19, 20 and 25, observed as under:

"18. It is nobody's case that G.N. Verma was appointed as an agent of any mine. Also, the complaint does not allege or state anywhere that G.N. Verma acted or purported to act on behalf of the owner of the mine or that he took part in the management, control, supervision or direction of any mine. In fact his duties and responsibilities have not been described in the complaint. In the absence of G.N. Verma's duties having been spelt out in the complaint, it is not possible to say whether he was merely an administrative head of Karkata Colliery being its Chief General Manager or was he required to be involved in technical issues relating to the management, control, supervision or direction of any mine in Karkata Colliery. The averment in the complaint is bald and vague and is to the effect that at the relevant time G.N. Verma was the Chief General Manager/deemed agent and was exercising supervision, management and control of the mine and

in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the Rules, Regulations, Orders made thereunder.

19. It has been laid down, in the context of Sections 138 and 141 of the Negotiable Instruments Act, 1881 in National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal that Section 141 is a penal provision creating a vicarious liability. It was held as follows: (SCC p. 336, para 13)

"13. ...It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability."

(emphasis in original)

It was then concluded: (SCC p. 345, para 39)

"39. (1) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction." 20. Insofar as the criminal complaint is concerned, it does not contain any allegation against G.N. Verma. The only statement concerning him is that he was the Chief General Manager/deemed agent of the mine and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the Rules, Regulations, Orders made thereunder. In the face of such a general statement, which does not contain any allegation, specific or otherwise, it is difficult to hold that the Chief Judicial Magistrate rightly took cognizance of the complaint and issued summons to G.N. Verma. The law laid down by this Court in Harmeet Singh Paintal (though in another context) would be squarely applicable. Under the circumstances, we are of the opinion that on the facts of this case and given the absence of any allegation in the complaint filed against him no case for proceeding against G.N. Verma has been made out.

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25. On the facts of this case, we would need to unreasonably stretch the law to include G.N. Verma as a person vicariously responsible for the lapse that occurred in the mine resulting in a fatal accident. We are of the view that under these circumstances, there is no basis for proceeding under Section 72-B of the Act against G.N. Verma."

22. In above view of the matter, I am in agreement with the argument canvassed by the learned Senior Counsel Shri Thakkar for the petitioner that since there is

no specific allegation in the FIR or in the charge-sheet against the petitioner and merely because the petitioner was the Managing Director of the company, he has been implicated in the offence, the petitioner cannot be made vicariously liable for the act and/or omission on the part of the company for the offence punishable under the provisions of the IPC.

23. The contention of the learned advocate Shri Kodekar appearing for respondent No. 2 - CBI that petitioner was one of the members of the Board Meeting of the company wherein the resolution was passed by the company whereby it was decided to apply for getting excise benefits as per the Notification dated 31.07.2001 and therefore the petitioner is involved in the aforesaid crime. However, the said contention is misconceived in view of the fact that merely because the petitioner was one of the members of the Board Meeting in which the Company had decided to give an application for getting the benefit of excise, it cannot be said that petitioner was having any intention to commit the alleged offence. No specific role is attributed to the petitioner with regard to the same. Further, the company has also decided to withdraw the application given for getting the benefit as per the Notification dated 31.07.2001 and therefore the company has given an application for withdrawal on 17.07.2006 i.e. before the registration of the FIR. Therefore, it cannot be said that the petitioner has committed the alleged offence. Moreover, it is not the case of the CBI that petitioner has wrongfully gained anything and/or any wrongful loss is caused to the Department. The reliance placed by learned advocate Shri Kodekar on the statement of Shri Kuttan Mohanan Pillai is also misconceived in view of the fact that the said person is co-accused in the charge-sheet which is filed against the company and its officers. In the statement given by the said co-accused, no specific allegations are made by the said co-accused against the petitioner.

24. Learned advocate for the CBI also relied on the decision rendered by the Hon'ble Supreme Court in the case of Debendra Nath Padhi (Supra). However, the said decision cannot be applied in the facts and circumstances of the present case. It is true that at the stage of framing of charge, roving and fishing inquiry is impermissible and the material relied upon by the petitioner cannot be looked into while exercising powers under Article 226 of the Constitution of India read with Section 482 of the Code. However, in view of the aforesaid discussion, when it is prima facie proved that the petitioner has not wrongfully gained anything and/or any wrongful loss is caused to the Department and the company and its officers including the petitioner have been granted immunity, in the opinion of this Court, there is no need to continue with the criminal prosecution against the present petitioner. Moreover, neither in the FIR nor in the charge-sheet any specific allegations are levelled against the petitioner that he has forged any document. Even otherwise, looking to the impugned FIR and from the papers of charge-sheet, the ingredients of the alleged offence are prima facie not made out so far as the petitioner is concerned.

25. Thus, in view of the aforesaid discussion, the impugned FIR being

RC-20(A)/2008 - GNR and all proceedings initiated pursuant thereto are nothing but a gross abuse of the process of the Court and therefore in the interest of justice, the same are required to be quashed and set aside. Accordingly, FIR being RC-20(A)/2008 - GNR and the charge-sheet filed pursuant thereto are hereby quashed and set aside qua the petitioner. Rule is made absolute.