

(1992) 07 DEL CK 0064

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 2139 of 1991

Bhavnesk Kumar @ Pappu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 31-07-1992

Acts Referred:

Citation : (1992) 3 Crimes 777 : (1992) 24 DRJ 136 : (1993) ILR Delhi 352 : (1992) 2 RCR(Criminal) 534

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : J.K. Srivastava and S.S. Dass, for the Appellant;

Judgement

Usha Mehra, J.

(1) A very interesting legal point has been raised by Mr. S.S. Dass, counsel for the respondent/Union of India on the maintainability of this petition. According to him even though adjudicating authority has exonerated the petitioner, pursuance to which criminal action initiated by the respondent on the same facts and circumstances cannot be sustained, yet the petitioner should first approach the trial court u/s 245(2) Cr. P.C. instead of invoking the inherent jurisdiction of this Court.

(2) In order to deal with this contention, in nutshell the case of the prosecution is that on 23rd April, 1988 two trucks Nos. HYO-7141 and Hyo 2297 were intercepted by U.P. Police at Ghaziabad Delhi border. 167 gunny bags containing 6012 kgs. of synthetic yarn were seized from truck No. HYO-714.1 and 149 gunny bags containing 5643 kgs. of the same material were seized from truck No. HYO-2297. The seized trucks and the yarn were handed over by the police to the Directorate of Revenue Intelligence, New Delhi who seized the goods on 24th April, 1980 under the Customs Act, 1962. Kulwant Singh was the driver of Truck No. HYO-7141. He was arrested pursuant to the same. That that the truck driver Angrej Singh ran away on seeing the police. On interrogation it was found that

the two trucks belong to Patiala Transport Company, New Delhi and Shri Ajaib Singh was the partner of the said Transport Company. Case was investigated and the statements of Kulwant Singh, Baldeep Singh alias Kala and Ajaib Singh were recorded. Statement of Shiv Ram sharma and Nihal Singh said to be the employees of the said Patiala Transport Company were also recorded. Residence of the petitioner was raided but nothing incriminating was found. On the basis of the statement of Shiv Ram Sharma and Nihal Singh personal driver of the car of Ajaib Singh, petitioner was implicated. Ajaib Singh in his statement stated that owner of the smuggled goods were Rajesh Gujral alias Rajan and Ramesh Kumar Wadhera. Kulwant Singh driver did not name the petitioner with the offence charged.

(3) Shiv Ram Sharma in his statement had stated that a week before S. Ajaib Singh had instructed him that he should inform Rajan. or Pappu or Ramesh on telephone Nos. 514155 or 7213766 or 592063 as and when any truck coming from Up side reaches Delhi. Nihal Singh in his statement stated that Ajaib Singh had been transporting foreign goods illegally for Pappu, Rajan and for Ramesh. These goods belong to Pappu, Ramesh and Rajan. They had been keeping foreign goods in their godown at Sanjay Gandhi Transport Nagar, G.T. Kamal Raod. These facts and circumstances as well as the statements were placed before the adjudicating authority who vide its order dated 29th August, 1991 came to the conclusion that no case is made out against the petitioner. In the words of the adjudicating authority which are reproduced as follows:

"IN respect of the liability of S/Shri Rajan, Pappu and Ramesh Kumar Wadhera, there is no statement on record of either of these three person nor their involvement in the dealing of smuggled goods. The statement of the manager of the Transport Company, Shri Shiv Ram Sharma is only the evidence on record regarding involvement of these three persons. However, this evidence is not substantiated by any there evidence on record to cover the statement given by Shri Shiv Ram Sharma. Searches conducted on the residential premises of all the three persons, Shri Rajan, Shri Pappu and Shri Ramesh Kumar Wadhera also did not lead to recovery of anything incriminating. In the absence of any other corroborative or incriminating evidence I am considering to drop the proceedings against these three persons."

(4) Having come to the above conclusion, after considering the whole evidence, that the petitioner was not involved in the alleged prime, there is no other or further material with the respondents to continue with the criminal proceedings. The petitioner should not be allowed to be dragged in fruitless and purposeless litigation. Mr. Srivastava, counsel for the petitioner stated at the bar which fact has not been denied by the respondent that the proceedings which were initiated under Coffposa Act were revoked by the Lieutenant Governor suo motu, as there was no evidence available to substantiate the charge against the petitioner. Since the adjudicating authority which adjudicated the matter departmentally found that there is no incriminating evidence available against the petitioner, hence

exonerated him. On the same facts and circumstances the criminal proceedings which were initiated by the department cannot continue before the ACMM.

(5) So far as the legal position of law is concerned it is well settled that if Administrative Tribunal or such like authority find no case against the person on the basis of all facts and evidence placed before it, then on the same facts and evidence criminal prosecution cannot be allowed to proceed. In this regard reliance can be placed on the decision of the Supreme Court in the case of Luis De Piedade Lobo Vs. Mahadev Vishwanath Parulekar and another 1984 Cr.L.J.513 and Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, . Similar view was taken by this Court in case of Jewels of India and Others Vs. The State and Another, and S.K. Sinha Vs. S.K. Shingal and Another, In view of these judgments, I will not hesitate to hold that after the adjudicating authority having exonerated the petitioner, it will serve no useful purpose to continue with the criminal proceedings.

(6) However, Mr. Dass has taken a legal objection that the petitioner should first approach the trial court instead of approaching this Court. According to him, the Magistrate has ample power to discharge the accused at any stage if he comes to the conclusion that the charge is "groundless". In this regard he has placed reliance on the provisions of Section 245 Cr. P.C. which is reproduced as under: Section 245 Cr. P.C.

"WHEN accused shall be discharged:- 1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded in the case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. 2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

(7) This Section is identical to Section 253 of Act V of 1898 except sub Section (1). Mr. Dass contended that so far as Sub Section (1) of Section 245 Cr. P.C. is concerned, it would be applicable after taking all the evidence. But Sub Section (2) makes it clear that the powers of the Magistrate under Sub Section (2) are unfettered. He can discharge the accused even prior to recording of the evidence, particularly when the Magistrate is satisfied that the charge is "groundless". Therefore, once the legislature has given this unfettered power to the Magistrate to discharge the petitioner, then this Court should not invoke its inherent jurisdiction.

(8) On the face of it, it appears to be a very tempting argument, one can fall for it. But a deeper study of the Provisions of Section 245 would show that it is not as simple as Mr. Dass want to point out. The Phrase, "at any previous stage of the case", has a bearing upon the duty of the magistrate to take all evidence and it is in just a position to that duty that sub-section (2) empowers the magistrate to discharge an accused at any previous stage of the case.

(9) The Magistrate can discharge the accused even before the date fixed for hearing, if upon the material before him, he is satisfied that the accused cannot possibly be convicted of the offence. He has also to hold that the charge is groundless. The word "groundless" appearing in this sub section has not been defined but acting judiciously, a Magistrate has to come to the "conclusion and for that he has to give reasonings. The word "groundless" has been interpreted to mean that the evidence is such that no conviction can be rested on it. and not that the evidence does not disclose any offence whatsoever. Therefore, while invoking the provisions of Sub Section (2) of Section 245, the Magistrate has to come to the conclusion on the basis of material placed before him that charge is groundless for whatever reason it may be. Moreover, the discretion used under Sub-Section (2) cannot be exercised arbitrarily. The word "charge" used in this sub section does not refer to framing of a charge. It is infact used in the sense of an accusation or allegation of an offence. Therefore, while exercising his power under Sub-Section (2) the Magistrate will have to reappraise the evidence and the allegations made in the complaint based on the set of facts and material collected by the prosecution meaning thereby that he will have to reappraise the whole evidence which has already been gone into by the adjudicating authority. That is not the impact of the decision of the Supreme Court in the case of Uttam Chand & Ors. Vs. Income Tax Officer, Central Circle (supra) referred to above. Therefore, it cannot be said that the petitioner should first approach the Magistrate u/s 245(2) and get himself discharged in stead of coming to this Court. After one year of the filing of this petition the petitioner cannot be asked to go back and invoke the provision of Sub-Section (2) and allow the Magistrate to give reasons and hold that the charge is "groundless" and then discharge the accused, I think, asking now the petitioner to invoke the power of the Magistrate u/s 245 Cr. P.C., is nothing but a mockery of Justice. This petition was filed on 3rd October, 1991 when the adjudicating authority had already delivered the order dt 29th August, 1991. The respondent appeared on 13th November, 1991 and now after almost a year, it will serve no purpose by asking the petitioner to go back to the trial court and get an order of discharge. Moreover, the petitioner is not asking to be discharged nor asking reappraisal of the evidence, which has already been gone into by the adjudicating authority. What he is asking in the present petition is quashing of the criminal proceedings. It is now settled by pronouncement of this Court as well as of Supreme Court that once Administrative Tribunal or Adjudicating Authority has exonerated the petitioner, then on the same facts and material criminal proceedings cannot continue and have to be ordered to be dropped. Therefore, there is no question of his seeking discharge. He is asking for quashing of those proceedings which in the eye of law are not maintainable. This to my mind, the High Court is the appropriate forum to do. The same facts and circumstances which have been gone into by the adjudicating authority and pursuance to which petitioner is exonerated I see no reason why criminal proceedings instituted against him and pending before the learned A.C.M.M. be not quashed. For quashing such proceedings, to my mind, this Court alone can do it by exercising its inherent power and Therefore, I find

no merit in the objection of Mr. Dass. With these observations, the petition is allowed and the criminal proceedings pending against the petitioner in the Court of A.C.M.M., New Delhi are hereby quashed.