

(2011) 03 KAR CK 0028
In the Karnataka High Court
Case No : Criminal R.P. No. 230 of 2011

Bimal Jain and Naresh Ahuja

APPELLANT

Vs

P.K. Batra, Joint Director, BIS

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 239, 245 (2), 397
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2011) 03 KAR CK 0028

Hon'ble Judges : K.N. Keshava Narayana, J

Bench : Single Bench

Advocate : R. Veerendra Sharma, for the Appellant;

Judgement

K.N. Keshava Narayana, J.—In these two revision petitions filed u/s 397 of Code of Criminal Procedure, the Petitioners have sought for quashing the order dated 14.09.2010 passed by 9th Addl. CMM, Bangalore, in Spl. C.C. Nos. 47/97 and 48/97, refusing to order for their discharge on the application filed by them u/s 239 r/w 245(2) of Code of Criminal Procedure.

2. The Petitioners in CrI.R.P. No. 230/2011. have been arrayed as accused Nos. 2 and 3 in Spl. C.C. No. 47/97 and Petitioners in CrI.R.P. No. 229/11 have been arrayed as accused Nos. 1 and 4 in Spl. C.C. No. 48/97. They are accused of having committed the offences punishable under Sections 3 and 7 of the Essential Commodities Act for violation of the provisions of Clause (3) and (4) of the Mild Steel Tubes (Quality Control Order) 1978. On the basis of the complaint lodged by Joint Director, Enforcement, Bureau of Indian Standards, Bangalore, Market Police, Bangalore, registered case in Cr. No. 237/93 against the owner of M/s. Khandelwal Brothers Limited, SJP Road Bangalore and others. After investigation, the I.O. filed "B" report. The complainant filed protest petition against the said "B" report. An independent complaint u/s 200 of Code of Criminal Procedure was also filed by way of protest to the "B" report filed by the police. After recording the sworn statement of the complainant, the learned

Magistrate took cognizance of the offences alleged and issued summons to the Petitioners. The Petitioners herein appeared before the Prl. City Civil and Sessions Judge, Bangalore, who was the then jurisdictional Court, accused 2 and 3 sought for their discharge inter alia on the ground that the materials on record does not make out any offences against them.

3. The learned trial Judge by order dated 08.02.2000 ordered discharge of not only accused 2 and 3 but also ordered, discharge of the other accused who did not even ask for discharge by appearing before the court. The said order of discharge came to be questioned before this Court by Bureau of Indian Standards in CrI.R.P. Nos. 467/00 and 468/00. This Court by order dated 26.09.03 found fault with the order of the learned Prl. City Civil and Sessions Judge in ordering discharge of the Petitioners and also noticed that there are prima facie materials to proceed against the accused, therefore, set aside the order passed by the trial Court discharging the Petitioners and remitted the matter to the trial Court to proceed with the case in accordance with law.

4. When the matter was set down for trial, the Petitioners once again sought for discharge by filing an application u/s 239 and 245(2) of Code of Criminal Procedure. The said application was opposed by the complainant. By considered order dated 14.09.10, the jurisdictional Magistrate rejected the said application relying mainly on the order passed by this Court in CrI.R.P. Nos. 467/00 and 468/00. In these revision petitions filed u/s 397 of Code of Criminal Procedure, the Petitioner have sought for quashing the order passed by the learned Magistrate rejecting their application for discharge.

5. I have heard the learned Counsel appearing for the Petitioners. Perused the records produces.

6. The principal contention urged by the learned Counsel for the Petitioners is that subsequently the very Bureau of Indian Standards has clarified in their letter dated 18.08.05 as to which of the categories of Steel tubes require I.S.I. marks and as per this clarification, the pipes said to have been seized in the case on hand from the custody of the Petitioners did not require. ISI marks, therefore, no case is made out against the Petitioners, as such the learned Magistrate ought to have discharged the accused, In this regard, he placed reliance on the unreported decision of the Delhi High Court passed in W.P. No. 3711/93. A copy of the letter dated 18.08.05 said to have been issued by the Bureau of Indian Standards is enclosed to this petition.

7. Of course, in this letter, certain clarification are issued to the effect that only three categories of steel tubes require ISI mark and the tubes other than these three categories does not require I.S.I. mark. The contents of this letter are required to be proved before the trial Court by the accused by way of defence. The contents of this letter cannot be prima facie material to order discharge of the accused. The judgment of the Delhi High Court relied on by the learned Counsel for the Petitioner is also in consonance with the contents of the letter

dated 18.08.05.

8. Be that as it may, reading of the order of this Court, dated 26.09.03 passed in CrI.R.P. No. 467/00 and 468/00 makes it clear that while setting aside the order of discharge passed by the learned PrI. City Civil and Sessions Judge, this Court did not reserve liberty to the Petitioners to renew their request for discharge. This Court after setting aside the order of discharge has remitted the matter for further proceedings. This Court has recorded a finding that there is sufficient material to proceed with the case against the Petitioners herein. It is in the light of the observations made by this Court, the learned Magistrate has rejected the application filed for discharge.

9. Having regard to the order passed by this Court in the earlier proceedings. I find no error committed by the learned Magistrate in rejecting the application filed by the Petitioners for discharge. The order questioned in this petition does not suffer from any perversity or illegality. It was not open to the Petitioners to seek discharge having once failed in their attempt by virtue of the order of this Court.

10. In this view of the matter, I find no merit in this petition, Accordingly, revision petitions are dismissed.