
(1998) 01 CAL CK 0007
In the Calcutta High Court
Case No : Criminal Revision No. 416 of 1996

Birla Tyres

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-01-1998

Acts Referred:

Central Excise Rules, 1944 — Rule 209A, 52(A), 92
Central Excises and Salt Act, 1944 — Section 11A
Constitution of India, 1950 — Article 20(2), 226
Criminal Procedure Code, 1973 (CrPC) — Section 177, 178, 179, 180, 181
General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (1998) 103 ELT 23

Hon'ble Judges : Asish Baran Mukherjee, J

Bench : Single Bench

Advocate : Milan Mukherji, for the Appellant; B.R. Ghosal and Amit Talukdar, for the Respondent

Final Decision : Dismissed

Judgement

Asish Baran Mukherjee, J.—This is an application u/s 482 of the Criminal Procedure Code with a view to quash a proceeding being R.C. Case No. 7(A) of 1996 started by the C.B.I, on 12th January, 1996 against the petitioners and others for alleged offences u/s 120B/420 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act.

2. The short case of the petitioners is that petitioner No. 1 is a company engaged in the business of manufacture of automobile tyres, tubes etc., petitioner No. 2 is a Vice President of the said company and petitioner No. 3 is the Senior Manager (Commercial) of the Company. The production unit of the Company is situated in the District of Balasore in Orissa and the Company has its clearing and forwarding agents all over India. The Company has its Head Office at 53, Syed Amir Ali Avenue, Calcutta.

3. The Commissioner, Central Excise & Customs, Bhubaneswar issued three identical show cause notices in the name of the petitioners being No. C-V(40) 15/ADJN-11A/26/95/255 44A, dated 29th June, 1995. The allegation is this that the petitioners did not maintain daily production register and tyres manufactured much in excess of the recorded version as contained in the statutory register, namely RG1. The allegation is that by means of suppression of production and clandestine removal of tyres the petitioner company has evaded Central Excise Duty to the tune of more than 10 crores. The further allegation is that the suppressed production for the period 1992 to 1995 were to the extent of 52787,23664 and 15212 tyres respectively. The further allegation is that the 55 tyres which were seized from the premises of the company at Balasore were removed clandestinely without payment of Excise Duty. It is also alleged that 36 Metric Tonnes of Carbon Black were found to be stored in another unapproved godown at Sambalpur. It is also alleged that the Company misused the Modvat credit facility on the same 36 Metric Tonnes of Carbon Black to the Tune of more than one and half lacs, but no intimation was given to the competent authority. The petitioner Nos. 2 and 3 were alleged to be the persons who are directly responsible for this clandestine removal.

4. About seven months after the service of the said notice an F.I.R. was lodged on 12th day of January, 1996 alleging that the petitioners and one G.P. Panda, Superintendent, Central Excise and Customs, Range I, Balasore District entered into a criminal conspiracy during the period 1992-95 and in furtherance of the said conspiracy, Mr. Panda had allowed the petitioners to suppress the actual production figures manufactured by the petitioner company and ultimately abetted the offence of evasion of Central Excise Duty to be paid by the Company to the Central Excise Department. The evasion has preliminary been estimated to be about 10 crores. It is also the allegation that in order to evade Central Excise Duty the petitioner Nos. 2 & 3 had maintained basic records like daily production register, namely, RG 1 in most irregular manner in violation of Central Excise Manual.

5. Respondent No. 2 having his office at Calcutta is in-charge of and has jurisdiction over the Bhubaneswar unit and has control over the respondents No. 3 & 4. It is the contention of the petitioners that the Commissioner of Central Excise & Customs, Bhubaneswar is the proper authority to investigate into the matter and to take action in accordance with law but the C.B.I. has resorted to this F.I.R. with a view to harass the petitioners. It is also pleaded that there being no mens rea which is a pre-requisite of a criminal offence, the allegations contained in the F.I.R. do not make out a case against the petitioners. It is also their case that unless on the basis of the show cause the matter is adjudicated by the Commissioner of Central Excise the starting of the F.I.R. is premature. It is further alleged that Sri G.B. Panda being a public servant, the investigation started without obtaining sanction from the appropriate authority is a violation of the mandatory provision of the Act. it is also alleged that before the F.I.R. was lodged the complainant did not satisfy himself as to the sufficiency of the

grounds and therefore the instant F.I.R. is liable to be quashed. Accordingly, the present instant F.I.R. is liable to be quashed. Accordingly, the present revisional application has been filed for the relief stated earlier.

6. The matter was heard at length spreading over a number of days and the Id. Advocates representing the parties have placed on record exhaustive argument, as also written argument besides putting reliance on a number of decisions of different Courts including the Apex Court.

7. A preliminary objection was taken by the respondents in course of hearing of the revisional application touching on the maintainability of the present petition on the ground of lack of territorial jurisdiction over the matter. It is contended by the Id. Advocate appearing for the petitioners that in course of the order passed by this Court on 16th April, 1996 this Court came to a conclusion that this Court has territorial jurisdiction over the matter and as such the same point could not be canvassed by the opposite parties in course of a hearing of the main revisional application. However in order to meet the said point of maintainability the present petitioners have relied on identical arguments advanced earlier on the point of territorial jurisdiction, it is submitted that the Deputy Superintendent of Police, C.B.I, who lodged the F.I.R. is subordinate to and under the direct control of the Joint Director (Eastern India), C.B.I, whose office is situated in Calcutta. The entire investigation by the C.B.I, is to be conducted under the Supervision and control of the Joint Director (Eastern India) in the event of any order regarding investigation passed by this Court or a Court of law, the same has to be carried out by the Joint Director of C.B.I.

8. It is also contended for the petitioners that the reference to provisions of Criminal Procedure Code, namely 397 and 407 by the opposite party is the result of a total misconception as to the ambit to the revisional application since the application is one u/s 482 of the Criminal Procedure Code with a view to exercise the inherent power and to quash the investigation. Since the petitioners are not challenging any particular order passed by a Court, Subordinate to this Court the question of exercise of power u/s 397 and 401 of the Criminal Procedure Code does not arise at all. it was also argued by placing reliance on Sections 177/178/179 and 180 of the Criminal Procedure Code that the enquiry and trial is to be held by the Courts situated in Orissa and as such this Court has got no jurisdiction upon the said Courts. It is contended for the petitioners that this is a total misconception about the scope of the application which relates to the investigation of impugned proceedings conducted by C.B.I, and does not relate to any enquiry or trial, it is also contended that the entire accounting of the petitioner Company takes place at the Head Quarters situated in Calcutta and as such this Court has got jurisdiction to hear the application.

9. On merit it is argued for the petitioners that relevant provisions of Central Excise Rules and the Central Excises and Salt Act provide for initiation and carriage of proceedings relating to evasion of Central Excise Duty which also provides for confiscation and penalty in the event of offence being proved.

Section 11A of the said Act provides for recovery of duties. Rule 92 of Central Excise Rules provides for imposition of penalty and confiscation of goods. Rule 209A also provides for penalty in respect of certain offences. In other words, it is argued that Central Excises and Salt Act together with the Rules provide a Complete Code for investigation of offences and imposition of penalty and when a show cause notice has been served on the petitioners under the said Act and Rules the case registered by the C.B.I, is not maintainable, it is also argued that in the event of both the proceedings continuing side by side there is the possibility of conflicting decisions as also the possibility of imposing punishment in both the proceedings which will amount to double jeopardy and a counter to Article 20(2) of the Constitution. It is also argued that where there is a special law as also the general law, the proceeding instituted on a general law which in this case is the Indian Penal Code and which was started at a latter point of time is not maintainable in view of a proceeding under the special law having been started earlier, since Central Excises & Salt Act is a later statute which was enacted to prevent evasion of Central Excise Duty Proceedings started under this Act should be given precedents. It is also argued that when in the matter of evasion of Central Excise Duty, the Central Act should be treated to be as a Substitution for the Indian Penal Code in respect of offences for evasion of Central Excise Duty. Reliance has also been placed on Section 26 of the General Clauses Act and it is argued that an Act or omission constituted an offence under two or more enactments then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall never be liable to be punished twice for the same offence. The proceeding under Central Excises and Salt Act is a proceeding of a civil nature and a proceeding under Indian Penal Code is of Criminal nature. It is argued that the Civil proceeding should be given precedence over the Criminal proceeding. Reference has also been placed on decisions reported in 1966 Criminal Law Journal 207 1989 (1) Cal High Court Notes 458 and Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Birendra Chandra Chakravarty, . Accordingly it is contended that the proceeding started on the basis of the F.I.R. need be quashed.

10. The Id. Advocate appearing for the respondent has referred to prayer portion of the application u/s 482 of the Criminal Procedure Code where it has been prayed that the concerned record be called for from the concerned Court and thereafter quash the same. It is argued that the record of the said case which is pending in a Court at Orissa cannot be called for by this Court and as such it lack territorial jurisdiction. Refuting the argument advanced on behalf of the petitioners, it is contended for the Opposite Parties by placing a reliance on Sections 6/397/482 and 483 of the Criminal Procedure Code that this Court lacks territorial jurisdiction since proceeding in question is pending in a Court at Balasore. It is also argued that Sections 178/181 and 182 of the Criminal Procedure Code have found their place under Chapter XIII of the Code of Criminal procedure which relates to the jurisdiction of the Criminal Courts for the enquiries and trial. It is submitted that this touch has no relevancy so far as the

present petition is concerned since the F.I.R. was filed in a Court which is beyond territorial jurisdiction. Refuting the argument advanced for the petitioner that the F.I.R. has to be vetted by the superior officer of the C.B.I, having his office at Calcutta, it is submitted that this is absolutely immaterial how the F.I.R. is processed before it is lodged in any Court and the point of consideration shall be the place where the F.I.R. is filed. Regarding the contention that the petitioners' company had the Head Office situated in Calcutta, it is submitted that place of residence or the location of the office does not attract the jurisdiction in criminal cases unlike of Article 226 of the Constitution. Regarding the argument that the point regarding maintainability was not challenged when the matter was heard at length in the interlocutory stage, it is submitted on the basis of a decision reported in *Chandrika Misir and Another Vs. Bhaiya Lal, , Kiran Singh and Others Vs. Chaman Paswan and Others, , Supdt. of Taxes, Dhubri and Others Vs. Onkarmal Nathmal Trust and Others*, that the Point of lack of jurisdiction can be taken by the party at any stage of enquiry or trial. Such a plea can also be taken in the execution proceeding as well. Reference has been made to a decision reported in *State of Rajasthan and Others Vs. Swaika Properties and Another, , Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, that this Court should not go beyond the territorial jurisdiction in entertaining application. Reference has also been made in course of the written argument that originally the opposite parties wanted a decision from this Court only on the point of maintainability alone so that in the event of adverse order they could move the Apex Court but subsequently as directed by this Court they also submitted on merit.

11. On merit it was argued for the opposite party after narrating the F.I.R. that on the face of it the F.I.R. reveals that there is a conspiracy between the officers of the petitioner company and the officers of Central Excise Department in order to cheat the Government of India, Central Excise Duty to the extent of about 10 crores. In this connection reliance is made to Rule 52(A) of Central Excise Rules regarding the procedure of maintaining the gate pass and movement of Article from a factory as also the device in order to check the payment of proper Central Excise Duty. Since there was collusion and a conspiracy between the concerned Superintendent of Central Excise having his office at Balasore with the officers of the Company and the Company itself, the place of occurrence has been mentioned as Balasore within the jurisdiction of the Orissa High Court. Since no movement of manufactured goods can be made beyond the factory without obtaining proper gate pass, a party to a fraud with a view to indulging, issuing and giving stamp authority on the gate pass which does not reveal the actual picture of prima facie offences u/s 420 read with Section 120B of the Indian Penal Code as also offences u/s 467 and 468 of the Indian Penal Code are involved and since a public servant is also a party to the conspiracy, prevention of Corruption Act also comes into existence. It is argued that since the F.I.R. has been filed before the Special Judge at Bhubaneswar and since the F.I.R. discloses prima facie materials this Court should not interfere with the same at this stage.

Reliance has also been placed on a number of decisions of the Apex Court - which defines and illustrates the contingencies in which an F.I.R. can be quashed. In this connection reliance is placed on decisions reported in 1992 Supplementary (1) S.C.C. 378, 1992 Supplementary (1) S.C.C. 22, Union of India and others Vs. B.R. Bajaj and others, , Stree Attyachar Virodhi Parishad Vs. Dilip Nathumal Chordia and Another, , State of Himachal Pradesh Vs. Shri Pirthi Chand and another, , Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, , 1997 Calcutta Criminal Law Reporter 207, 1984 (3) Excise and Customs Cases 319, P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . In the result, it is concluded for the opposite parties that the present application should be dismissed.

12. I have given my careful consideration to the submissions of the Id. Advocates representing the parties. It is true that at the outset Mr. Ghosal appearing for the opposite parties wanted to have a decision from this Court only on the point of maintainability of the application u/s 482 of the Criminal Procedure Code on the ground of territorial jurisdiction and he also argued on that point alone. Thereafter when his argument concluded and the petitioner started to argue, it was submitted on behalf of the petitioners that this Court has taken a decision on the point of territorial jurisdiction by order dated 16th day of April, 1996 while extending the interim stay and as such this Court is precluded from hearing the point again. It may be mentioned that this Court at no point of time took any final decision on the point of territorial jurisdiction. To quote the relevant provision from the said Order "at this stage it will have to be seen prima facie whether this Court has got jurisdiction and final decision can be taken only at the time of hearing of the application u/s 482 Criminal Procedure Code on merit." Therefore, the question of territorial jurisdiction as raised on behalf of the opposite parties at the time of the petitioner's prayer for extension of interim order that question was decided prima facie with a view to see whether the interim order passed earlier could be extended and while doing so, it has specifically been observed that the final decision on the jurisdiction point can be taken only at the time of hearing of the application u/s 482 Criminal Procedure Code on merit when a thorough argument is expected to be made by the parties. Accordingly, the Id. Advocate appearing for the petitioners was invited to argue on the point of territorial jurisdiction as well as on merit since an application u/s 482 Criminal Procedure Code is to be disposed of as a whole and as such apart from the technical points, a prima facie decision is to be made on merit as well since in its absence it cannot be said whether an F.I.R. is to be quashed at the initial stage or not. After the conclusion of the argument on behalf of the petitioners, opportunity was again given to the opposite parties to have [their] say in the matter of merit as well and thereafter they choose to argue on merit as well.

13. The argument advanced by the Id. Advocate appearing for the petitioners on the point of jurisdiction rests, mainly on the fact that for that matter Orissa is situated within the Eastern Zone of C.B.I, having its Head Quarter in Calcutta

and the Head Office of the petitioner-Company is also situated in Calcutta. It is true that in order to file an F.I.R., anywhere in the Eastern Region by the C.B.I. the approval is to be obtained from its Calcutta Office. It is true that the Company has its Head Office in Calcutta and as such final accounting is to be done here only. But at some time the allegation contained an F.I.R. when scrutinised minutely reveals that alleged evasion of Central Excise Duty took place in the factory itself which is situated at Balasore. Since as per Central Excises and Salt Act, no goods after manufacture can be taken out of the factory without payment of Central Excise Duty and since such payment is ensured by issuance of a gate pass by the appropriate authority of the Central Excise Department having his office at the relevant places the evasion, if any, must have taken place at Balasore where the factory is situated. Therefore, it cannot be said that simply because the Head Office is situated in Calcutta this Court has got jurisdiction since final accounting is to be done in Calcutta itself. It is true that an F.I.R. by the C.B.I. in this particular case must have been processed in Calcutta but it is the filing place which determines the jurisdiction. Besides it is the prayer of the petitioners in the application itself to call for the records from the Lower Court and since the records are lying in the Court at Balasore the same is beyond the jurisdiction of this Court and cannot be called for. Therefore, I came to the conclusion that in view of the facts and circumstances and since the inherent jurisdiction of this Court has been invoked such jurisdiction shall not be exercised by this Court since it appears to me to be a Border -line Case and as such it is fit and proper that inherent jurisdiction of the Orissa High Court ought to have been invoked in this case.

14. Regarding merit, it is true that on the point of fact a proceeding under the Central Excises and Salt Act has been started earlier in point of time in comparison with the F.I.R. It is also true that the said proceeding is still pending but in view of the allegation as contained in the F.I.R. a proceeding under the said Act cannot be a substitute for the F.I.R. giving rise to the Criminal proceeding. Apart from the question of evasion of excise duty which can obviously be realised by resorting to a proceeding under the said Act which is of a civil nature there is also the allegation of cheating and conspiracy and involvement of a public servant posted at Balasore. Having regard to the seriousness of the allegation the Criminal Proceeding cannot be allowed to stay till the decision of the Civil Proceeding specially when the petitioners have not yet submitted any show cause event. The circumstance which calls for interference of the High Court in this stage of pendency of investigation, so far as the quashing is concerned is not available in the present case since the F.I.R. on the face of it discloses prima facie offences. Therefore, I am of opinion that on merit also no case has been made out for quashing of the F.I.R. It cannot be said that it is one of the rarest of rare cases where inherent jurisdiction is to be exercised with a view to prevent abuse of process of the Courts. Accordingly, on merit also this application must fail.

15. In the result, the revisional application stands dismissed on contest. All stay

orders stand vacated.