
(2013) 03 DEL CK 0304
In the Delhi High Court
Case No : Crl. M.C. 2423/2010

Directorate of Revenue Intelligence

APPELLANT

Vs

Bhanu Chandra and Another

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Citation : (2013) 03 DEL CK 0304

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

G.P. Mittal, J.—The Petitioner Directorate of Revenue Intelligence (DRI) invokes inherent powers of this Court u/s 482 of the Code of Criminal Procedure ("the Code") for setting aside of an order dated 20.01.2010 passed by the learned Additional Chief Metropolitan Magistrate (A.C.M.M.)-01, New Delhi whereby in the complaint case filed by the Petitioner, directions were issued to it to supply copies of the documents which consisted of more than 300 pages. A prosecution u/s 132 and 135(1)(a) of the Customs Act, 1962 (the Act) was launched by the DRI against the Respondents in connection with the evasion of Customs Duty to the tune of Rs. 5,80,66,992/-. It is averred in the Petition that the Respondents were directed to be summoned for 03.12.2007. The DRI filed original documents on 02.08.2007 which are duly annexed. On 20.01.2010 when the case was fixed for recording the Petitioner's evidence and its witness was present, the Respondents sought to raise a plea for supply of the documents filed in support of the complaint by the DRI. The learned A.C.M.M. opined that since no effective hearing would be possible without the copies of the documents being made available to the Respondents, a direction was issued to the Petitioner to supply the documents.

2. Unfortunately, although according to the Petitioner it was a serious case of evasion of Customs Duty to the tune of over Rs. 5 crores, yet instead of supplying the copies of the documents in the Court of the learned A.C.M.M., the

Petitioner seeks to challenge the order dated 20.01.2010 on the technical ground that there is no provision in the Code of Criminal Procedure which obligates a complainant, in a case instituted otherwise on a police report, to supply the copies of the documents.

3. It is urged by Mr. Satish Aggarwala, the learned counsel for the Petitioner that there is no provision in the Code on the basis of which an accused could claim the copies of the documents filed with the complaint. He urges that the provision of 173(4) of the Code is applicable only to the police reports filed by the officer in charge of the Police Station. Drawing distinction between a State case and a private complaint case, the learned counsel for the Petitioner relies on Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, ; S.K. Verma, Inspector, Central Excise v. Ishaan Research & Ors. (Crl. Revision No. 308/2000 & Crl. M. 1551/2000) decided on 16.10.2000 and A.N. Lewis and Another Vs. The State, .

4. On the other hand, Mr. R.K. Handoo, the learned counsel for the Respondents urges that irrespective of the provision of law, the Respondents were entitled to be supplied the copies of the documents filed with the complaint to have a fair trial. It is urged that forcing a person to face trial without being provided with the copies of the documents, which are sought to be relied upon by the prosecution against him, would be violative of the principle of equality before law and equal protection of law under Articles 14 and 21 of the Constitution of India. The learned counsel for the Respondents urges that reliance on L.R. Melwani by the learned counsel for the Petitioner is misplaced as it nowhere lays down that in a complaint filed by a public servant other than a police officer the documents filed with the complaint are not required to be supplied to an accused.

5. It is important to note that the instant complaint by the DRI for offences punishable under Sections 132 /135(1)(a) of the Act was preferred against the Respondents on 28.07.2007. As stated earlier, the amount of customs duty alleged to be evaded was over Rs. 5 crores. Learned ACMM took cognizance and ordered for issuance of process. Copies of the Complaint etc. were directed to be delivered to the Respondents on 03.12.2007. Thereafter, the evidence of the witnesses of the Complainant (DRI) was not recorded because either the witnesses were not present or for administrative reasons. It was on 20.01.2010 that a request was made on behalf of the Respondents for supply of copies of the documents relied upon by the Petitioner (DRI) which request was allowed by the learned ACMM by an order dated 20.01.2010.

6. It is true that as per the judgment of the Supreme Court in L.R. Melwani, Section 173(4) of the Code is not applicable to Complaint cases. It is not applicable even when a Complaint case is filed by a public servant in discharge of his official duties.

7. In the case of S.K. Verma, a Coordinate Bench of this Court (R.S. Sodhi, J.) disposed of the Petition on 16.10.2010 with a short order directing the Trial Court

that the copies of the documents be supplied to the Petitioners (accused persons) at their own costs. Thus, technically, the Petitioner may be justified in refusing to supply the copies of the documents relied upon by it in the complaint pending adjudication before the Court of learned ACMM.

8. The question for consideration is whether the Petitioner instead of supplying the copies of the documents to the Respondents and giving them an opportunity of fair trial ought to have approached this Court invoking its inherent powers u/s 482 of the Code to keep away the documents from the Respondents which are the very basis of the Complaint.

9. As per Section 482 of the Code, the High Court in exercise of its inherent powers may make such orders as may be necessary (i) to give effect to any order under this Code, or (ii) to prevent abuse of the process of any Court, or (iii) otherwise to secure the ends of justice. The powers under the section, though wide, have to be exercised sparingly, carefully with caution and only when such exercise is justified.

10. In *Dinesh Dutt Joshi Vs. The State of Rajasthan and Another*, the Supreme Court held that:-

6. ... Section 482 does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases.

11. In *Janata Dal Vs. H.S. Chowdhary and Others*, the Court, while referring to the exercise of the inherent powers to make such orders as may be necessary for securing the ends of justice, clarified that such power has to be exercised in appropriate cases *ex debito justitiae* i.e. to do real and substantial justice for the administration of which alone, the courts exist. The powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the powers requires a great caution in its exercise. The High Court, as the highest Court exercising criminal jurisdiction in a State, has inherent powers to make any order for the purposes of securing the ends of justice, it being an extraordinary power, will, however, not be pressed in aid except for remedying a flagrant abuse by a subordinate Court of its powers.

12. The Petitioner has not been able to make out a case or to show that the order dated 20.01.2010 passed by the learned ACMM was abuse of the process of the Court or that the order is required to be set aside to secure the ends of justice.

13. On the other hand, in order to have a fair trial and to have its case expedited, the Petitioner (DRI) ought to have supplied the Respondents with the copies of the documents promptly so that the trial could have proceeded. The

Petitioner (DRI) is unable to make out a case for invoking the powers u/s 482 of the Code. Rather, the filing of the Petition appears to be mala fide; the same is accordingly dismissed. Pending Applications stand disposed of.