(2012) 01 DEL CK 0312

In the Delhi High Court

Case No : Criminal M.C. NO. 2452 of 2010

Directorate of Revenue Intelligence — APPELLANT

Vs

M/s. Rajendra Brothers and Another — RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Citation : (2012) 01 DEL CK 0312

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Satish Aggarwala, for the Appellant; Kanwar Udai Bhan Singh, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—This is a petition u/s 482 CrPC against the order dated 29.7.2010 of learned ACMM-I, New Delhi whereby the application u/s 311 CrPC filed by the petitioner i.e. Directorate of Revenue Intelligence was dismissed.

2. The petitioner had filed the said application u/s 311 CrPC for examining Sh.R.K.Chakrabarti, the officer who had accorded sanction for prosecution of the respondent, in the case at the pre-charge stage. Earlier, the pre-charge evidence of the petitioner was closed on 25.4.2006 and the petition against the said order was filed by the petitioner in this court vide Crl.M.C. 5048/2006 & Crl.M.A. 8529/2006. The said petition was dismissed by this court vide order dated 26.3.2009. While dismissing the application u/s 311 CrPC, the learned ACMM referred to the observations made by this court in the order dated 26.3.2009 against the petitioner and also imposed cost of Rs. 25,000/-

3. The impugned order has been assailed by the petitioner mainly on the ground that that the observations made by the learned ACMM as also the cost of Rs. 25000/- were unwarranted. The learned Special Prosecutor of the petitioner department Sh. Satish Aggarwala also drew my attention to various orders/ judgments passed by this court in different cases to contend that the ACMM Sh.

Ajay Pandey was biased against him and the petitioner department. However, during the course of arguments, the learned Special Prosecutor submitted that now, the petitioner was not insisting for examination of Sh.R.K.Chakrabarti to prove the sanction for prosecution and so, that part of the relief against the impugned order was not pressed.

4. Since the main relief u/s 311 CrPC for examining Sh.R.K.Chakrabarti to prove the sanction for prosecution was not pressed by the petitioner, the learned Special Prosecutor was informed that the observations which were made in the ACMM''s order were based on the observations which were made by this court in its order dated 26.3.2009. To this, the learned Special Prosecutor submitted that the ACMM had no power to make observations against him and the department and also to direct sending the copy of his order to the Directer General, DRI and further to impose the cost of Rs. 25,000/-

5. Since the petitioner evidence has already been closed way-back on 25.4.2006 and the petition against the order of ACMM has also been dismissed by this court way-back on 26.3.2009, the filing of the application u/s 311 CrPC by the petitioner at the stage of arguments on charge and application u/s 245 CrPC of the respondent was the main cause of the annoyance of the ACMM. The observations which were made by ACMM reflect his annoyance, but the fact remains that whatever was observed by him was based on the observations which were made by this court while dismissing the petition of the petitioner on 26.3.2009. This court in the said order has noted all the dates which were taken by the petitioner in leading the pre-charge evidence. This court had also noted that the ACMM had been extremely indulgent to the complainant/petitioner in granting time for producing the witnesses for recording the pre-charge evidence and that there was no justifiable explanation given by the petitioner/complainant as to why they were not able to conclude the pre-charge evidence within the time stipulated by the Trial Court. The observations which this court made in Para 17 to 19 were as under:

17. In the considered view of this Court the facts of both the cases are tell tale. There can be no manner of doubt that despite several opportunities both the DRI and the Customs have in their respective cases offered no justification for their failure to complete the pre-charge evidence. The explanation now offered is not convincing at all. If indeed the allegations that the evasion of duty involved is of crores of rupees, the lackadaisical approach of the DRI and Customs in pursuing the criminal complaints is even more inexplicable. The records show that the trial court adjourned the case on numerous occasions and yet the pre-charge evidence could not be completed.

18. This Court is, accordingly, of the view that keeping these criminal cases pending will not serve any purpose granting the complainant in both the cases any further time for completion of the pre-charge evidence is not warranted. The learned MM in each case was justified in declining the request of the Customs or the DRI as the case may be to recall witnesses.

19. Before concluding, a few observations would be necessary to make. These petitions are not the only ones before this Court in which the DRI or the Customs have challenged an order of the trial court closing the evidence of the prosecution. There are several such petitions where after awaiting for several years for prosecution witnesses to turn up, the trial court was left with no alternative but to close the prosecution evidence. It is high time that the DRI and Customs to do some serious analysis of the factors that leading to the closure of the prosecution evidence in so many complaints filed by them. If indeed, was repeatedly urged by Mr. Aggarwala, the revenue losses in each of the cases is considerable, then that only raises further questions as to why the DRI or the Customs are not completing the pre-charge evidence in time. As far as the present petitions show, in one case the complaint has been pending since 1995 and in the other case it has been pending since 1989. The records show that there was no prospect of the pre-charge evidence being concluded in the near future

6. In view of above, I do not see that the petitioner should have any cause of grievance in the learned ACMM making the observations in the impugned order. With regard to the imposition of cost also, there cannot be any dispute that the ACMM enjoys such a power u/s 309 of the Code of Criminal Procedure. Hence, I do not see any infirmity or illegality in the impugned order.

7. The petition being without any merit is accordingly dismissed.

