
(2012) 05 DEL CK 0630

In the Delhi High Court

Case No : Criminal M.C. 3193 of 2011 and Criminal M.A.11352 of 2011

Directorate of Revenue Intelligence

APPELLANT

Vs

Narendra Sogani and Others

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Customs Act, 1962 — Section 111, 135(1)

Citation : (2012) 2 JCC 1305

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Satish Aggarwala, for the Appellant; S.C. Chawla, for respondent nos.1, 3 and 4, for the Respondent

Judgement

V.K. Shali, J.—By virtue of the present petition filed u/s 482 Cr.P.C., the petitioner has assailed the orders dated 13.7.2010 and 28.1.2011. By the first order, the learned Court of ACMM had imposed a cost of ` 2,000/- on the petitioner on the ground of adjournment which was granted for production of Prosecution evidence. So far as the order dated 28.1.2011 is concerned, the same is being assailed on the ground that the petitioner's evidence has been closed. Briefly stated, the facts of the case are that the petitioner, Directorate of Revenue Intelligence (DRI), through its Intelligence Officer, M.T. Murli filed a complaint u/s 135(1) (b) of the Customs Act, 1962. The allegations made in the complaint were that on specific information by the officers of the DRI, an ambassador car, bearing registration No. RNI-600, was intercepted at Kacha Bagh, Delhi on 27.6.1990 at about 10:30 hrs. The said car, along with its four occupants, namely, Narendra Sogani, Ajay Jain, Kanhiya Lal Sharma and Shambu Singh Daroga were escorted to DRI Office at CGO Complex, New Delhi for search of the occupants of the car as well as the car itself. It is alleged that on search of the car thoroughly, it resulted in recovery of seven bricks of silver wrapped with canvas bags totaling 211 kgs. from a secret cavity behind the backrest of the rear seat. In addition to this, 28 foreign marked gold biscuits were also

recovered from the possession of one accused, Ajay Jain. The said gold biscuits were wrapped with adhesive tape and tied to his waist with the cloth. The value of the silver was ` 14,13,700/- and the value of the gold was ` 10,61,515/-. The articles were seized and on the basis of the said information, a complaint was filed against the petitioner.

2. The complaint came up for hearing, for the first time, before the Court of the learned ACMM on 4.12.1991. It took the petitioners nearly 15 years to produce the pre-charge evidence. On 8.12.2006, after production of the pre-charge evidence, a charge u/s 135(1)(b) of the Customs Act was directed to be framed against the four respondents for having acquired possession and carrying/keeping/ concealing and dealing with the gold and silver which they had reason to believe was liable to confiscation u/s 111 of the Customs Act. After framing of the charges also, nearly five years had gone by and the post-charge evidence could not be completed. This was despite the fact that sufficient number of opportunities were granted to the petitioner. Ultimately, on 13.7.2010, the learned ACMM, after examining PW6 and PW7, took note of the fact that no other witness was present. An adjournment was sought on behalf of the petitioner on the ground that there were five more witnesses who were to be summoned but they have not received any report from the Department in respect of three witnesses. On request of the petitioner for the grant of further opportunity, one more opportunity was granted, subject to payment of cost of ` 2,000/-. The cost was directed to be paid to the accused persons and the matter was adjourned to 28.1.2011. The petitioner also filed an application u/s 311 Cr.P.C. for summoning of Court witnesses which was allowed on the ground that the case has already been adjourned for another date.

3. The first grievance of the learned counsel for the petitioner, Mr. Satish Aggarwala, is that he has no objection to the payment of costs to the Delhi High Court Legal Services Committee but there is no provision in the Cr.P.C. under which this cost can be imposed by this Court and be given to the accused persons. It has been contended that the accused have been substantially responsible for the delay and by directing the payment of costs to them, it will be putting premium on their conduct. It is, accordingly, prayed that this portion of the order deserves to be set aside.

4. So far as Mr. S.C. Chawla, the learned counsel for the respondent nos.1, 3 and 4 is concerned, he has stated that he has no objection in case the cost is not given to the accused persons and the same is paid to the Delhi High Court Legal Services Committee.

5. I have carefully considered the submissions made by the learned counsel and have also considered the two orders, bearing Nos. CrI.M.C. 1792/2010 dated 24.5.2010 and WP(CrI.) 1146/2010 dated 7.2.2011, which have been referred to by the learned counsel for the petitioner passed by this Court where the cost, which had been imposed by the learned ACMM, had been set aside and not given to the accused persons.

6. I fully agree with the submissions of Mr. Satish Aggarwala that in the Cr.P.C., there is no specific provision under which the cost, which has been imposed on the Prosecuting Agency, can be given to the accused persons. Even otherwise also, it is normally not done in a criminal case where the cost is imposed on the Prosecution, the same be given to the accused persons, more so, where there is an allegation that the accused themselves have been responsible for the delay. In the instant case, the learned counsel for the petitioner has stated that he has no objection to the deposit of cost with the Delhi High Court Legal Services Committee and a statement has been made by the learned counsel for the accused persons also that he has no objection in case the cost is permitted to be deposited with the Delhi High Court Legal Services Committee. Therefore, this need not be gone into further. A consent order is passed, setting aside this portion of the order of the learned ACMM, directing the payment of cost to the accused persons. Let the cost be deposited with the Delhi High Court Legal Services Committee by the petitioner. To this extent, the order of the learned ACMM dated 30.7.2010 is set aside.

7. The second submission, which has been made by the learned counsel with regard to the second order dated 28.1.2011, is that the evidence of the petitioner ought not to have been closed, as the petitioners' application u/s 311 Cr.P.C. had been allowed, permitting the petitioner to produce four witnesses and he had taken out the summons and that they were served for 28.1.2011. It has been contended that once the witnesses were served, it was for the Court to have procured their attendance. It has been contended that the learned ACMM had erroneously observed that as no witnesses were present, therefore, the evidence of the petitioner was closed. It was contended that in terms of Section 246(2) Cr.P.C., after the Prosecution had produced the witnesses who had been examined at the stage of pre-charge, the petitioner can also produce other evidence in order to prove the guilt of the respondents. It was contended since the application of the petitioner u/s 311 Cr.P.C. was allowed and the witnesses were served, the Court ought to have procured their attendance.

8. Mr. Chawla has contended that the complaint, in the instant case, was lodged in the year 1991 and more than 21 years have gone by, but still the case is at the stage of complainants' evidence and if the case continues at this pace, it will take another decade to conclude the same. It is contended that the respondents want an expeditious disposal of trial and if the evidence is prolonged, the purpose of expeditious disposal not only gets defeated, but also it causes serious prejudice to the respondents, inasmuch as they have to be present on each and every date of hearing. It has been stated that the application of the petitioner was allowed for the production of evidence on their own cost and risk and the petitioner ought to have ensured the presence of the witnesses. Since this was not done, the learned Trial Court rightly closed the evidence of the petitioner.

9. I have carefully gone through the impugned order and have perused the record, including the Trial Court record.

10. There is no dispute about the fact that every accused has a right to have an expeditious disposal of his trial. This is now a Fundamental Right guaranteed to an accused person under Article 21 of the Constitution of India. In the instant case, the Prosecution was initiated by the petitioner in the year 1991 and more than two decades have gone by and still the Prosecution has not been able to conclude its evidence. If these things are permitted to be done at the pace at which the Prosecuting Agency wants to do, then it will take at least another decade for the accused to face the trial. This is totally unacceptable. Even if seen from the angle that the charge was framed against the respondents way back in 2006, and since then more than five years have elapsed, still the evidence of the petitioner has not been completed.

11. I have perused the orders of the learned Trial Court. Even after framing of the charges against the respondents, sufficient number of opportunities had been given by the Court and even on 13.7.2010, one final opportunity was given to the petitioner. If the petitioner did not complete its evidence, despite the final opportunity having been given, it cannot be said that the evidence of the petitioner had been erroneously closed. The application u/s 311 Cr.P.C. was also allowed by the Court, but on the date on which the application was allowed, the learned ACMM had noted that no witness was present. Merely because the petitioner had allegedly served the witnesses, it does not result in a situation absolving the petitioner of its responsibility of producing the witnesses. As a matter of fact, on 28.1.2011, the petitioner had filed an application for dispensing with the payment of costs, to which the learned Trial Court had not agreed to, but, at the same time, the learned Trial Court had erroneously noted that the cost was imposed as if the application u/s 311 Cr.P.C. was allowed, while as the cost was not imposed for allowing the application u/s 311 Cr.P.C. I feel that the order of the learned Trial Court cannot be found fault with, on account of the fact that sufficient number of opportunities had been given to the petitioner and the petitioner cannot be permitted to adduce evidence at its own whims and fancies. The trial of the case against an accused, whose liberty is in jeopardy, must be completed as swiftly as possible but, in the instant case, two decades having gone by, it cannot be said that the right, which is guaranteed under Article 21 of the Constitution of India to the respondents, is being observed in letter and spirit.

12. Because of the aforesaid reasons, I am not inclined to interfere with the orders passed by the learned ACMM. In addition to this, there is one more aspect that the order has been passed on 28.1.2011, while as the petitioner has filed the present petition after a delay of almost eight months, which clearly shows that the petitioner is taking its action at its own will, without realizing the importance of time. An order of closure of evidence can be assailed by way of a revision within a period of maximum of ninety days, while as, in the instant case, the petition u/s 482 Cr.P.C. is filed after expiry of almost 240 days. I, therefore, feel on this ground also, the petitioner's petition is hit by delay and latches.

13. In view of the above, the petition is partially allowed so far as the payment of cost to the respondents/accused is concerned. Trial Court record be sent back.
V.K. SHALI, J. MAY 08, 2012 tp