

(2011) 01 AHC CK 0194

In the Allahabad High Court

Case No : Criminal Revision No. 1755 of 2001 Connected with Criminal Revision No. 409 of 2000

Jalis Ahmad

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 132
Criminal Procedure Code, 1973 (CrPC) — Section 193, 228, 244, 245(2)
Customs Act, 1962 — Section 108, 108(3), 135
Evidence Act, 1872 — Section 25
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2011) 01 AHC CK 0194

Hon'ble Judges : Ashok Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ashok Srivastava, J.—The abovementioned two criminal revisions are intertwined, therefore, they have been heard together and are being disposed of by this common order. Criminal Revision No. 409 of 2000 has been filed on behalf of Union of India through Deputy Commissioner, Custom Preventive Division, Gorakhpur against one Jalees Ahmad of Varanasi.

2. Criminal Revision No. 1755 of 2001 has been filed by the abovementioned Jalees Ahmad against Union of India and Special Chief Judicial Magistrate, Varanasi. In fact, this criminal revision is an off-shoot of Criminal Revision no. 409 of 2000.

3. Criminal Revision No. 409 of 2000 has been filed against the judgment and order dated 24.12.1999 passed by V Additional District & Sessions Judge (Jalees Ahmad Vs. State of U.P.) u/s 135 of Customs Act, 1962. Brief facts of the case are that on the basis of a secret information, officers of D.R.I., Varanasi alongwith independent witnesses, using surveillance, intercepted near Sampurnanand Sanskrit University, Chauka Ghat, Varanasi on 4.4.1998 at about

2.00 A.M. Truck No. UP 78/ N-2500. It was found that the said truck was being driven by one Jalil Ahmad. On interrogation he stated that the truck was loaded with coal. On further interrogation he informed the officers that 540 Kgs. of chinese silk thread was concealed in the first layer of the coal laden on the said truck. The driver also informed that the said raw silk was being smuggled for avoiding payment of custom duty. He further informed that one Shamshad Alam was owner of the truck and Ajmeri Munshi was the clerk of the owner. The driver also disclosed that the smuggled chinese silkyarn was got loaded at a particular place under the instruction of Shamshad Alam by Ajmeri Munshi. It was also disclosed by Jalil Ahmad that he had to hand over the said silk yarn to one Jalis Ahmad whose Varanasi tehelphone number was 210590. Jalil Ahmad had to inform Jalees Ahmad that the silk yarn had reached Varanasi and he should arrange to collect the same. Thereafter the custom officers took the truck, silk yarn and the driver Jalil Ahmad in their custody. Jalil Ahmad was examined by the customs officers under the provisions of Section 108 of the Customs Act twice. On the basis of the statements of Jalil Ahmad, various documents and other informations relating to the matter, a complaint was filed by Sri A.K. Ranjan, Assistant Commissioner of Customs against Jalil Ahmad (truck driver), Shamshad Alam (owner of truck), Ajmeri Munshi (clerk of Shamshad Alam) and Jalis Ahmad to whom the silky yarn was to be supplied. The complaint was filed in the court of Special Chief Judicial Magistrate, Varanasi who proceeded with the case. During the course of trial, two applications were moved before the learned Magistrate, one by Jalees Ahmad and the other by Shamshad Alam under the provisions of 245(2) Code of Criminal Procedure After hearing both the sides, the learned Magistrate dismissed both the applications vide its order dated 3.10.1998. It should be mentioned here that the relevant case is Criminal Case No. 126 of 1998. Feeling aggrieved by the order passed by the learned Magistrate on 3.10.1998 both Jalees Ahmad and Shamshad Alam preferred two separate revisions before the learned Sessions Judge, Varanasi. The criminal revision relating to Jalees Ahmad was Criminal Revision No. 569 of 1998 whereas the revision filed by Shamshad Alam was Criminal Revision No. 682 of 1998. Both the revisions were connected to each other by the learned 5th Addl. Sessions Judge, Varanasi to whose court both the revisions were transferred for disposal. The learned Addl. Sessions Judge disposed of both the revisions on 24.12.1999 allowing the revision relating to Jalees Ahmad whereas he dismissed the revision which related to Shamshad Alam.

4. We are not concerned here with the case relating to Shamshad Alam. Since the revision of Jalees Ahmad was allowed, the custom department felt aggrieved and it has filed Criminal Revision No. 409 of 2000 before this Court.

5. It should be further mentioned here that when the criminal revision of Jalees Ahmad was allowed, the proceedings before the learned Special Judcial Magistrate came to an end as far as the case of Jalees Ahmad was concerned. When Criminal Revision No. 409 of 2000 was filed before this Court, this Court vide its order dated 7.3.2000 stayed the operation of the order dated 24.12.1999

passed by learned Addl. Sessions Judge, Varanasi. As a consequence, the order passed by the learned Special Chief Judicial Magistrate dated 3.10.1998 stood revived. Therefore, an application was moved before the Magistrate by the Custom Officers to proceed with the matter which was allowed by him and it was directed that the case against Jalees Ahmad shall proceed in accordance with law. On 19.6.2001 an application was moved before the learned Magistrate by Jalees Ahmad that in view of the pendency of Crl. Revision No. 409 of 2000 before this Court, the trial of Jalees Ahmad may be stayed by him. The said application was heard and rejected. This order was passed by learned Magistrate on 16.9.2001. Jalees Ahmad felt aggrieved by this order and he came before this Court and filed Criminal Revision No. 1755 of 2001. After hearing the learned Counsel for the revisionist, this Court vide its order dated 12.7.2001 stayed the proceedings before the learned Chief Judicial Magistrate, Varanasi. Though in spirit the orders dated 12.7.2001 and 7.3.2000 of this Court are in contradiction to each other but I have to take them as they are.

6. The above facts show that the disposal of Criminal Revision No. 1755 of 2001 is dependant on the order to be passed by this Court in Criminal Revision No. 409 of 2000.

7. Now I am proceeding to consider in detail Criminal Revision No. 409 of 2000.

8. Jalees Ahmad had moved an application u/s 245(2) Code of Criminal Procedure Section 245(2) is as under :

245(2) - Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

9. In the instant case no evidence u/s 244 Code of Criminal Procedure has been recorded by the learned Magistrate, In fact sub-section 2 of Section 245 Code of Criminal Procedure deals with the situation which relates to a stage prior to recording of evidence u/s 244 Code of Criminal Procedure In the section it has been clearly mentioned that a Magistrate is competent to discharge an accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless. Here the legislature has used the word "groundless". If I go through the relevant records, it is evident that in the complaint case pending before the Special Chief Judicial Magistrate, the statements of Jalil Ahmad were there as recorded by the customs officers u/s 108 of the Customs Act, 1962. Besides other materials were also there. In Percy Rustomji Basta Vs. State of Maharashtra, , the Apex Court has said that an inquiry made by Customs Officers u/s 108 is deemed to be judicial proceeding within the meaning of Sections 193 and 228 of I.P.C. If a persons is summoned u/s 108 of the Customs Act, he is bound to appear and state the truth when giving evidence. If he does not answer, he would render himself liable to be prosecuted u/s 228 Code of Criminal Procedure If, on other hand, he answers and gives false evidence he would be liable to be prosecuted u/s 193 Code of Criminal Procedure

for giving false evidence in a judicial inquiry. Further in Harbansingh Sardar Lenasingh and Another Vs. The State of Maharashtra and Others, the Supreme Court has said that confessional statement recorded by an officer of customs under the Customs Act are admissible in evidence and are not hit by Section 25 of the Evidence Act.

Sub-section 3 of Section 108 of the Customs Act, 1962 is as follows :

108(3) - All persons so summoned shall be bound to attend either in person or by an authorised agent as such officer may direct; and all persons so summoned shall be bound to state the truth upon any subject, respecting which they are examined or make statements and produce such documents and other things as may be required :

10. From the perusal of this sub-section it is evident that it is lawful and reasonable to presume the truthfulness of the statement of a person recorded by a Custom Officer u/s 108 of The Customs Act, 1962. In the instant case, Jalil Ahmad was examined by the Customs Officers u/s 108 on 4.4.1998 and also on 16.9.1998. On 16.9.1998 he was brought in custody from the District Jail, Varanasi to the office of the Customs Department where he was further examined u/s 108. In his second statement he has also supported the complaint case filed before the Magistrate by the Customs Department. In nutshell the evidence which was available on record before the learned Special Chief Judicial Magistrate was sufficient and after considering them the learned Magistrate was of the view that the charges levelled against Jalees Ahmad were not groundless. On the other hand, the law relating to framing of charge is clear and established. The law is, if the allegations against the accused are taken to be true, a conviction is possible then a charge should be framed in the case.

11. In the case in hand, the learned Addl. Sessions Judge has dealt with the entire matter in a highly detailed manner as if he was writing the judgment in the case after full trial of it. He has quoted in his judgment all the possibilities which may arise or may not arise after conclusion of the trial of the case. While writing the judgment the learned Addl. Sessions Judge failed to understand what Section 245(2) Code of Criminal Procedure says. He has miserably failed to appreciate the meaning of the word "groundless" as appearing therein and as a consequence he has arrived at a wrong conclusion. On the basis of the above discussion, I am of the view that Criminal Revision No. 409 of 2000 filed by Union of India has got force and it should be allowed.

12. Accordingly Criminal Revision No. 409 of 2000 is allowed. The order passed by the learned Addl. Sessions Judge on 24.12.1999 in Criminal Revision No. 569 of 1998 is quashed and set aside and the order passed by learned Special Chief Judicial Magistrate,, Varanasi on 3.10.1998 is restored as far as it relates to Jalees Ahmad.

13. As a consequence Criminal Revision No. 1755 of 2001 is dismissed. The interim stay orders stand vacated.

14. Let a copy of this order be sent to the learned Sessions Judge, Varanasi for its onward transmission to the court concerned who will dispose of the matter at an early date in accordance with law.