
(1987) 10 DEL CK 0043

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 727 of 1987

Jewels of India and Others

APPELLANT

Vs

The State and Another

RESPONDENT

Date of Decision : 09-10-1987

Acts Referred:

Customs Act, 1962 — Section 135

Citation : (1990) 67 CompCas 391 : (1987) 3 Crimes 754 : (1987) 33 DLT 361(1) : (1988) 15 ECC 91 : (1988) 17 ECR 274 : (1987) 32 ELT 511 : (1988) 1 RCR(Criminal) 297

Hon'ble Judges : M. Sharief-ud-din, J

Bench : Single Bench

Advocate : N.C. Chawla and S. Kohli, for the Appellant;

Final Decision : Allowed

Judgement

Malik Sharief-ud-Din, J.—The petitioners are aggrieved of a complaint case No. 619/1 filed against them by the Customs Authorities under sections 135 and 132 of the Customs Act in which they were charged u/s 132 of the Customs Act. The allegation against the petitioners is that they had exported a consignment of precious stones which was grossly undervalued. This consignment of the precious stones was confiscated under sec. 113(d) and (i) of the Customs Act and a penalty of Rs. 50,000.00 was imposed on the petitioners u/s 114 of the Customs Act by the Collector of Customs. This was taken in appeal before the Central Board of Excise and Customs, New Delhi. The Central Board of Excise and Customs has set aside the order of the Collector after allowing the appeal. In effect, the Central Board of Excise and Customs came to the conclusion that the goods were not under-valued. In short, the Central Board of Excise and Customs did not believe in the allegation leveled against the petitioners in the adjudication proceedings. This finding was arrived at by the Central Board of Excise and Customs on 23rd of May 1980. The prosecution against the petitioners was actually initiated in February 1977 and the charges were framed on 27th June

1983.

2. The primary contention of Mr. Chawla is that if the Customs department had no case against the petitioners for purposes of adjudication proceedings as has been held by the Central Board of Excise and Customs, the petitioners cannot be prosecuted on the same facts.

3. Before I deal with this aspects of the matter I find it necessary to take notice of the preliminary objection of the counsel for the respondents that the petition is not maintainable as it is barred by the application of doctrine of res-judicata. This contention is also urged on the ground that the earlier petition Criminal Misc. (Main) No. 1959 of 1986 filed by the petitioners has been dismissed in limine. Mr. Chawla states that this petition was dismissed as withdrawn, and that since the petition has not been dismissed on merits, the doctrine of res-judicata is not applicable. Reliance in this regard is placed by Mr. Chawla on *Daryao and Others Vs. The State of U.P. and Others*, . In this judgment the supreme Court has very clearly opined that if the petition is dismissed as withdrawn it cannot be a bar to a subsequent petition under Article 32 of the Constitution. This is so held as in such a situation there will be no decision on merits by the court. The Supreme Court has held that the doctrine of res-judicata will only be applicable if the order is on merits as in that event there will be a speaking order in existence. In that view of the matter the objection is over-ruled as the earlier petition has been dismissed as withdrawn.

4. Adverting to the point at issue the admitted case of the parties is that the Collector of Customs' order imposing penalty upon the petitioners for gross under-valuation of the exported consignment has been set aside by the Central Board of Excise and Customs which has practically found that there was no under valuation. This was done on 23rd May 1980 while the prosecution on the basis of same set of facts was initiated in February 1977. Mr. Chawla's contention is that if the departmental adjudicating authority has found no contravention of the provisions of the Act, the petitioners cannot be prosecuted for the same, Reliance in this regard is placed on *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, . This case clearly upholds the contention raised by Mr. Chawla that the respondents cannot initiate prosecution on a set of facts and evidence which the departmental authorities themselves disbelieved to be existing, and that, in such a situation court will be justified in interfering u/s 482 of the Code of Criminal Procedure. In *S.K.Sinha vs. S. K. Shinghal and another*, 1987 (1) Crimes 842 following the judgment of *Uttam Chand and others vs. Income Tax Officer, Central Circle, amritsar* (Supra) I myself held that a decision by the Tribunal in the proper sense of the word is a decision of departmental authority recorded on the basis of set of facts and evidence and the least that can be said is that if the department does not feel aggrieved of the finding of the Tribunal and accepts it as final and correct, then it has to be contented with the same. The view Therefore expressed is that there is no rationale in the department prosecuting a person on a set of facts and evidence which according

to its own adjudication does not exist. In criminal matters the degree of proof required is far more strict and if the departmental authorities have no good case for the purpose of adjudication it cannot claim to have a good case for the purpose of criminal prosecution particularly when the prosecution is based on the same set of facts and evidence. In a situation such as this a criminal prosecution would in effect amount to prosecution. In this view of the matter I am of the opinion that this petition is to be allowed. It is accordingly allowed and the complaint case No. 619/1 pending in the court of the Additional Chief Metropolitan Magistrate, New Delhi, is quashed.