(2014) 08 AHC CK 0271

In the Allahabad High Court

Case No : Criminal Misc. Case Nos. 1635 and 1407 of 2009

Jogendra Singh APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 195, 196, 197, 340
Customs Act, 1962 — Section 108, 114(1), 132, 135, 135(1)(a)
Penal Code, 1860 (IPC) — Section 120B, 120B, 193, 211, 34
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2014) 310 ELT 443

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Advocate : Tripurari Ray, Ajai Kumar Singh Tomar, Avnish Kushwaha, Vikrmaditya Gupta and Rajesh Singh Chauhan, Advocate for the Appellant; K.K. Singh, Manish Mani Sharma, Nisar Ahmad, Agendra Sinha, H.K. Mishra and R.B.S. Rathour, Govt. Advocates, Advocate for the Respondent

Judgement

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Ajai Lamba, J.—This order shall dispose of Crl. Misc. Case No. 1635 of 2009 titled ''Jogendra Singh and 14 others v. State of U.P. and Sri R.K. Singh'' and Crl. Misc. Case No. 1407 of 2009 titled ''Raghuraj Singh and 2 others v. State of U.P. and Shri R.K. Singh''. Both the petitions are being disposed of vide a common order, because in both the cases the petitioners seek relief under Section 482 of the Code of Criminal Procedure (for short ''Cr.P.C.'') of quashing charge-sheet bearing No. 35-A of 2003, dated 29-10-2008 filed by Police Station Krishna Nagar, Lucknow in the court of Special Chief Judicial Magistrate (Economic Offence), Lucknow arising out of case crime No. 14 of 2002 in which cognizance of offence under Sections 452, 342, 504, 506, 392, 367, 193, 211, 34, 420, 467, 468, 471, 347, 120B of the Indian Penal Code has been taken vide order dated 4-3-2009.

2. For reference to record, Crl. Misc. Case No. 1635 of 2009 titled ''Jogendra

Singh and 14 others v. State of U.P. and Sri R.K. Singh'' is being taken up.

3. It has been contended by learned Counsel for the petitioners namely Shri Tripurari Ray, Advocate, assisted by Shri Ajai Kumar Singh, Advocate, that the petitioners are all employees of the Government of India serving in the Department of Revenue, Ministry of Finance, ranging from Secretary level to the level of Sepoy. The facts culminating in filing of impugned charge-sheet, in brief, as pleaded on behalf of the petitioners, are that officers of the Directorate of Revenue (for short ''DRI'') intercepted consignments of cargo at Mumbai which had been cleared by customs authorities at ICD, Hyderabad. It was found that chalk powder/marble powder was being exported as "Neproxen". Total value of the goods was in excess of rupees three crores. During the investigation of the case under the Customs Act, 1962 (for short ''Customs Act''), one accused namely Vimal Kumar Jain gave the name of respondent No. 2 - Shri R.K. Singh as the person who had helped the accused in clearing the hurdles at the port where consignment had been intercepted by the DRI. For the said purpose, respondent No. 2 who was then posted as Inspector of Central Excise at Lucknow travelled to Mumbai for which relevant arrangements had been made by the other accused facing proceedings under the Customs Act.

4. The above-noted incriminating material having come on record, notices were issued to Shri R.K. Singh (respondent No. 2), for the purpose of inquiry/ investigation by the officers of the DRI. Respondent No. 2 did not respond to the notices and, therefore, on 16-2-2001, during the morning hours, the DRI staff of Regional Unit, Lucknow with two officers of DRI, New Delhi namely P.K. Katiyar and D.P. Saxena (petitioner Nos. 8 and 9 in this petition) came to the residence of R.K. Singh and took him to Delhi. Even Vivek Chaturvedi, petitioner No. 7 from Lucknow office came to the house of respondent No. 2 along with the above-named persons.

5. Statement of R.K. Singh (respondent No. 2) was recorded under Section 108 of the Customs Act. Shri R.K. Singh (respondent No. 2) was produced before Additional Chief Metropolitan Magistrate, Delhi and transit remand was taken to produce him in a court at Hyderabad.

6. Subsequently, respondent No. 2 was also implicated in a case under COFEPOSA, but his detention was not approved by Advisory Board and, accordingly respondent No. 2 was released.

7. Be that as it may, in regard to incident of 16-2-2001, the impugned proceedings were initiated by the respondent which culminated in filing of charge-sheet dated 17-2-2003 bearing No. 34 of 2003. The case set up by respondent No. 2 is that he did not receive notices and that he was kidnapped from his house, and taken to Delhi. Allegation also is that Rs. 400/- were snatched from him on the way to Delhi.

8. It needs to be clarified that case crime No. 14 of 2002 was lodged at the instance of respondent No. 2 - R.K. Singh while naming three accused namely

petitioner Nos. 7, 8 & 9. These are the persons who allegedly visited the house of respondent No. 2 on 16-2-2001 to take him to Delhi for enquiry. Petitioner Nos. 8 and 9 accompanied respondent No. 2 to Delhi. Charge-sheet bearing No. 35 of 2003 was however filed against fifteen accused, including petitioner Nos. 7 to 9.

9. The accused in charge-sheet No. 35 of 2003 filed two petitions under Section 482 Cr.P.C. viz. Crl. Misc. Case No. 978 of 2005 titled ''Jogendra Singh and 11 others v. State of Uttar Pradesh'' and Crl. Misc. Case No. 977 of 2005 titled "Vivek Chaturvedi and two others v. State of Uttar Pradesh" - 2014 (308) E.L.T. 11 (All.). Both the petitions were allowed vide a detailed judgment running into 29 pages, dated 4-7-2006. The judgment which has been read in extenso in Court mentions all the events, sequentially. The relevant portion needs to be extracted therefrom extensively to consider whether the entire issue being raised at this juncture in context of the incident of 16-2-2001 has already been considered and adjudicated earlier by this Court in its jurisdiction under Section 482 Cr.P.C. Relevant portion from the said judgment reads as under:

"The officers of the Directorate of Intelligence and Investigation (for short DRI) intercepted two consignments of cargo in two containers at Nhava Sheva, Mumbai, which were cleared by customs authorities at ICD, Hyderabad. The said consignments were being exported in the name of two firms, namely M/s. Sri Vishnu Merchants, Plot No. 70, Soujanya Cooperative Housing Society, New Bowenpally, Secunderabad and M/s. Pashupathi Traders, Plot No. 4, Sri Mansion Building, Jyothi Colony, Secunderabad. The said two consignments were examined by the officers of DRI on 9-2-2001. As per the documents of export, the goods contained therein were cleared from ICD Sanathnagar, Hyderabad. The goods were consigned to M/s. Silverline Trading Company LLC, UAE and the description of the goods was "Naproxen" (a bulk drug). The said goods were into 235 drums, 45 of which were of hard board and the remaining were PBC drums. Labels found on the drums read as follows: Naproxen, (commercial grade), Batch No. NAP 10708, manufacturing - December 2000, Expiry date - November, 2005, new weight: 50 kg.

Since some fraud was suspected in consignment of the said goods, the officers of the DRI, after observing necessary formalities, drew representative samples, which were sent to the chemical examiner, Grade-I Nhava Sheva, Jawahar Customs House on 10-1-2001. The said samples were tested and the material therein was found to be not "Naproxen" but inorganic chemical ''calcium carbonate'' (commonly known as chalk powder/marble powder). Total declared value of consignments of goods were Rs. 3,19,97,306. The goods were seized under the provisions of Customs Act, 1962, on 15-1-2001. The investigation revealed that one Rajnish Agarwal of Hyderabad was the ring leader and Shri Sanjay Agarwal, brother of Sri Rajnish Agarwal, Rajesh Jain and Shri Naresh Jain of Dubai and Shri Vimal Kumar Jain brother of Sri Naresh Jain residing at Delhi and Shri Manoj Kumar Jain of Hyderabad were involved in this scam. Shri Rajnish Agarwal was knowingly and actively concerned with the export of Chalk powder cleared from ICD, Hyderabad on 3-1-2001 by mis-declaring the same as bulk drug namely Naproxen. The aforesaid consignment was being exported fraudulently to claim the customs duty exemption under DEPB Scheme. It was also found during the course of investigation that the bogus consignment was exported as per pre-determined strategy and active connivance of Shri Naresh Jain and Shri Rajesh Jain, who were accepting the same and were to send money meant for compensatory Hawala payments through banking channels in the guise of export proceeds. Shri Rajesh Agarwal was instrumental in procuring Chalk powder from M/s. Techno Minerals and getting the same packed and labelled at M/s. Apar Pharma. Sri Rajnish Agarwal took one Shri Janak Prasad Sharma to Shri V.K. Singh (C.H.S.) Customs House Agent and gave instructions to Shri Janak Prasad Sharma to sign the documents for export. On reference being given by Sri Ravindra Rastogi, his old friend, he contacted Shri R.K. Singh, opposite party No. 2, Inspector of Central Excise at Lucknow and sought his help to clear hurdles at Nhava Sheva port for the consignments intercepted by DRI, exported in the name of M/s. Shri Vishnu Merchants and M/s. Pashupathi Traders from ICD, Hyderabad.

In his statement Shri Vimal Kumar Jain (a copy of which has been annexed as Annexure No. 12 to the affidavit of the petitioner No. 1, Vivek Chaturvedi) stated that he sought help of opposite party No. 2, Sri R.K. Singh complainant, who was introduced to him by his close friend Shri Ravindra Rastogi. He managed his an trip from Lucknow to Mumbai and back and made necessary arrangements for his stay in Chanchal Hotel at Paharganj, Delhi and met all his expenses of journey and stay etc. Shri R.K. Singh, opposite party No. 2, on coming back from Mumbai told him that he could not be successful in getting the hurdles cleared for consignments. He had also advised that Sri Janak Prasad Sharma, who was involved in this scam, be sent to Nepal, so that truth may not come out. If is alleged that amount received from export of the said goods was actually used for hawala payments benefiting the persons involved doubly - one by making hawala payments and other by getting benefit under the D.P.E.D. Scheme from the Government and thereby cheating the Government of a huge sum of money.

Since the name of Shri R.K. Singh, opposite party No. 2, figured in the statement of Sri Bimal Kumar Jain, a notice was issued to him for the purpose of inquiry/ investigation by the officers of DRI fixing 19-1-2001 for his appearance, which was admittedly served on him, but he did not appear before the D.R.I. officers and after receiving the notice on 17-1-2001, he sent a reply on 18-1-2001 enquiring about the purpose for requiring his presence. He requested for supply of queries also. It is stated in his counter that in the meantime, he came to know that export consignments cleared for exportation after proper examination and legal formalities at ICD customs, Hyderabad by Hyderabad customs authorities had been detained and seized by Hyderabad DRI at Mumbai and therefore, he, with a view to cooperate with the inquiry sent suo motu statement in the letter form to the Additional Director General of D.R.I., New Delhi on 1-2-2001. He also attached a blank signed paper for the use of DRI as per their design. He denies any summons or notice for 14-2-2001. However, according to him in the morning of 16-2-2001 at about 6.30 a.m. the entire DRI staff of regional unit Lucknow with two officers of DRI, New Delhi, namely D.P. Saxena and P.K. Katiyar (petitioners 2 and 3) came to his residence, took him out of house saying that he was to go to local office of DRI, Lucknow only by force and deceitful means took him to Delhi via. Aligarh where a sum of Rs. 400/- was snatched from his pocket by Sri P.K. Katiyar for filling the fuel in the vehicle, wherein he was being carried away to DRI office, Delhi and reached there at about 6.30 p.m. He was then served with summons for inquiry/investigation.

It is alleged by the complainant, opposite party No. 2, that at Delhi he was given mental torture and inhuman treatment by DRI officers of New Delhi, who managed a dictated statement from him. He was produced before the Additional Chief Metropolitan Magistrate, Delhi next day i.e. 17-2-2001 wherefrom he was sent to the judicial custody with a direction to produce him at Hyderabad court. Thereafter he was produced before Economic Offences Court, Hyderabad on 23-2-2001 and was granted bail on 1-3-2001. It is also alleged by Shri R.K. Singh, opposite party No. 2, that he was falsely implicated in the said fraudulent scam of consignment due to departmental rivalry.

It is also his case that in his absence, his father Shri Lalit Mohan Singh, who is retired DIG (police) has made complaints to the authorities of D.R.I. and police also but no action was taken. He, on being released on 17-6-2001 from the custody, made complaints to police and ultimately moved an application on 22-12-2001 under Section 156(3) of Code to the Chief Judicial Magistrate, Lucknow, who after calling for a report from the police passed an order on 10-1-2001 directing the police to register and investigate the case. It was on the basis of this order that a case was registered at Crime No. 14 of 2002 by the police of Police Station Krishna Nagar, Lucknow on 15-1-2001 and after due investigation a charge-sheet was submitted against all the petitioners of the said two petitions. Opposite party No. 2 asserts that charge-sheet has been submitted on the basis of sufficient material and there is no legal infirmity in the order passed by the learned Magistrate rejecting the representation of the petitioners. It would be relevant to mention that when the case was registered by the police and the investigation was in progress, the petitioner Shri Vivek Chaturvedi filed a petition under Section 482 Cr.P.C. being criminal misc. case No. 997 of 2002 before this Hon''ble Court, wherein an interim order was passed staying the operation of order dated 10-1-2001 if the F.I.R. had not been registered and the investigation taken. It was also directed that the petitioner No. 1 Shri Vivek Chaturvedi was free to place his own version before the investigating agency if the investigation was in progress. Since the investigation has already commenced with the registration of the FIR on 15-1-2001 and this order was passed on 28-6-2001, it was of no consequence. Then Shri Vivek Chaturvedi, the petitioner No. 1, filed a writ petition No. 1993 (M/B) of 2002 seeking arrest of stay, which was granted and his arrest was stayed with a condition that he shall cooperate with the investigation. However, after investigation, the charge-sheet as said above was submitted by the police of Police Station Krishna Nagar, Lucknow on 12-2-2003.

Notice may also be taken of the fact that opposite party No. 2, Shri R.K. Singh (complainant) along with 15 others, was given a notice under the provisions of Customs Act, 1962 by Commissioner, Customs and Central Excise, Hyderabad and he (the opposite party No. 2, Shri R.K. Singh) was fined Rs. Twenty lacs under Section 114(1) of the said Act. He filed an appeal against the said order, which is pending. Shri R.K. Singh, opposite party No. 2, was also detained under COFEPOSA by Andhra Pradesh Government but his detention was not approved by the Advisory Board. Therefore, he was released from the custody on 15/17-6-2001. In the representation made by him he admitted his visit to Mumbai on the said date but maintained that it was for his personal work and denied the allegation that he had gone there for facilitating the exportation of mis-declared goods. He was also prosecuted under Section 135 of the Customs Act, but was discharged by the trial court on 25-11-2004. However, a revision petition No. 26 of 2005 filed by Deputy Commissioner (Legal) Customs and Central Excise, Hyderabad-II against the said discharge order, has been allowed on 9-1-2006. Now the opposite party No. 2, Shri R.K. Singh, has to face the trial there under Section 135(1)(b)(ii) of Customs Act, 1962.

It would also be significant to mention that when the two consignments were detained by D.R.I. Officers, Nhava Sheva, Mumbai and it was found that officers of Customs department of Hyderabad were also involved, a case was registered by the C.B.I. by drawing a formal F.I.R. on 8-8-2002 at R.C. 33(A)/2002 Hydd. and after due investigation 4 officers of Customs and Central Excise and two others have been prosecuted by charge-sheet, dated 10-11-2004, under Sections 120-B, 419, 420, 467, 468, 479 I.P.C. and Sections 13(2) r.w. 13(1)(d) of Prevention of Corruption Act and Sections 132, 135(1)(a) and (b)(ii) of Customs Act, 1962. Due sanction for prosecuting them has also been obtained as required under Section 197 of the Code. The trial is now pending before the Special Sessions Court CBI at Hyderabad vide criminal case No. 19 of 2004. Opposite party No. 2, Shri R.K. Singh - complainant, is not an accused in that case.

After submission of the charge-sheet by the police, the learned Magistrate summoned the petitioners for facing the trial by his order dated 15-3-2003. Two petitions under Section 482 of the Code being Criminal Misc. Case No. 557 of 2003, Vivek Chaturvedi and others v. State of U.P. and others and Criminal Misc. Case No. 670 of 2003, Jogindra Singh and others v. State of U.P. and others were filed before this Court, which were finally disposed of on 18-1-2005 by a common order, the operative portion of which is as follows:

"In the above circumstances, the impugned order dated 15-3-2003 is hereby quashed. The learned court below directed to proceed against the petitioners in accordance with law and also to consider as to whether sanction for prosecuting the petitioners is a must or not and also to see that whether there is any such material on record which requires sanction under Section 197 Cr.P.C. or not and if so, he should pass a detailed and reasoned order so as to enable that he did apply his mind with respect to sanction for prosecuting the petitioners.

Learned counsel for the petitioners, if he is aggrieved, may place such objections before the court concerned who after hearing learned counsel for the accused persons as well as the learned counsel for the complainant with respect to requirement and applicability of Section 196 Cr.P.C. or not at the stage of summoning the petitioners, shall pass suitable orders expeditiously, say, within a period of ten days from the date of appearance of learned counsel for the petitioners.

List/put of this case before the court below on 25-1-2005.

It is also provided that the application which has been moved by learned counsel for opposite party No. 2 under Section 340 Cr.P.C., may be moved by him before the court concerned who shall also take the said application into consideration and dispose of the same within the above said period.

In view of what has been stated above, both the above petitions stand finally disposed of."

It transpires from the above order that during the pendency of the said petitions an application under Section 340 of the Code was moved before this Court, for prosecuting the petitioners for fabricating a false document of refusal of sanction for prosecution under Section 197 of the Code. Without taking any cognizance of that application a direction was given to opposite party No. 2 to move the same before the learned Magistrate. The copy of letter, which is said to be forged and false, is annexed as Annexure-4 to the affidavit of Shri Vivek Chaturvedi, petitioner No. 1. This is dated 20-2-2002. It was on the representation of Shri R.K. Singh, opposite party No. 2, whereby he had requested for sanction for prosecution of petitioners. This letter is signed by Shri Nasim Arshi, Under Secretary to Government of India. Prayer for prosecution of Shri Nasim Arshi signatory of this letter and one Shri Chandra Has Rai was also made. Before the learned Magistrate, an affidavit was filed by Sri A.K. Singh, Special Secretary and Chairman of Central Board of Customs and Excise stating that the said letter was genuine and signed by Sri Nasim Arshi, Under Secretary to the Government of India in due discharge of his duties. The learned Magistrate has rejected the said application under Section 340 of the Code also holding that it was not expedient in the interest of justice to launch any prosecution. An appeal filed by opposite party No. 2, Shri R.K. Singh, under Section 341 of the Code is said to be pending before the learned Sessions Judge, Lucknow.

After quashing the summoning order, dated 15-3-2003 and remand of the matter for fresh disposal after giving due opportunity to the parties, objections and replies were filed before the learned Magistrate, who on a consideration of the matter passed the impugned order, dated 15-2-2005 holding that the prosecution of petitioners under Section 211 and 193 IPC was barred by Section

195 of the Code and he did not summon them under these two sections, but directed them to appear/surrender according to law. He has held that the petitioners have failed to prove that the act committed by them was in discharge of their official duty.

The petitioners have challenged the charge-sheet as well as the order, dated 18-2-2005 rejecting the objections/representation filed by them pursuant to the order of this Hon''ble Court, dated 18-1-2005.

Heard the learned counsel for the parties and perused the affidavit including counter, rejoinder and supplementary affidavits.

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In the present case, there was no evidence at all before the Investigating Officer to show prima facie participation of the accused petitioners not named in the F.I.R. There was also no evidence to show any conspiracy or any evidence to indicate that they had entered into any agreement to do any unlawful act or to commit an offence along with the other accused persons/petitioners. The alleged confessional statement of Shri Vivek Chaturvedi, which is said to have been given to the Investigating Officer also does not disclose about any conspiracy between accused persons. They had gone there with a view to persuade opposite party No. 2 to accompany the officers of Delhi to go there for the purpose of inquiry, where for he had already been summoned.

There being no evidence at all to prove any conspiracy, none of the accused petitioners could be prosecuted for the offence under Section 120-B IPC.

Learned counsel for opposite party No. 2 complainant urged that in the log book, the name of opposite party No. 2 was not shown. This is indicative of conspiracy. In the log book, there are certain columns prescribed, which are filled in by the driver and countersigned by the officer having control over the vehicle. There is no column for mentioning the names of all those who travelled in the vehicle. So, this argument is also bereft of any substance.

There is another allegation that while taking the opposite party No. 2 to Delhi enroute near Aligarh, Shri P.K. Katiyar snatched Rs. 400/- from opposite party No. 2 and paid the same towards the price of the petrol, which was filled in the vehicle, wherein he was being taken to Delhi and that on the case memo, Shri P.K. Katiyar endorsed that the amount of Rs. 400/- was paid by him. It is alleged that he made this endorsement to claim reimbursement of the amount from the Government. This was a subject matter of documentary evidence. The cash memo with endorsement was best proof. The petitioners have denied that any such sum was paid as price of fuel at any Petrol Pump in or near Aligarh or that any such endorsement was made by Shri P.K. Katiyar on any such cash memo or the said amount was claimed by him from the Government. The Investigating Officer could have collected the necessary documentary evidence in support of these allegations but no such evidence was collected and there being no evidence at all, this allegation also goes unsubstantiated by any material and therefore, it can safely be said that there is no evidence of snatching of any sum from opposite party No. 2 or making any endorsement on any cash memo by Shri P.K. Katiyar. No offence under Section 392 I.P.C. is prima facie made out against any of the petitioners as there is no evidence to that effect.

In view of the above, there is no shred of evidence against the petitioners of Criminal Misc. Case No. 978 of 2005 Jogendra Singh and 11 others to make out any prima facie case for trial against them and they have been unnecessarily dragged in the criminal case. The petition filed by them deserves to be allowed on this ground alone.

Now the case of S/Shri Vivek Chaturvedi, D.P. Saxena and P.K. Katiyar remains to be considered, who have inter alia, raised the plea that two of them namely, Saxena and Katiyar, who were assigned this task from his higher authority took Shri R.K. Singh, opposite party No. 2 to Delhi in discharge of their official duty and that they cannot be prosecuted without sanction of the Central Government as required under Section 197 of the Code.

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The question that surfaces for consideration at this juncture is as to whether the act complained of was committed by the petitioners in the discharge of their official duty. There is no allegation that there was any personal enmity or the petitioners had any personal vendetta against the opposite party No. 2 to falsely implicate him in any case. The case under the Customs Act against the opposite party No. 2 was under investigation on account of detention of the goods of the two consignments at Nhava Sheva Airport, Mumbai and the officials of D.R.I., who had intercepted those goods were not the petitioners, they were totally different officials, who had found that a fraud was being played by bogus consignments and the government was being cheated of the huge sum of money.

The name of the opposite party No. 2 was disclosed by one of the accused of that case. His presence was required by Smt. Sanyogita Mishra, Superintendent, Directorate of Revenue Intelligence and investigation for making an inquiry from him. Summons were sent to him once for 19-1-2001 and other for 14-2-2001 but the opposite party No. 2 did not comply with those summons. Instead, he while seeking exemption on the ground of his illness, sent a signed blank paper with a letter to write any statement according to their own wish and design. This act of the opposite party No. 2, complainant was sufficient to annoy the officers. Conducting the inquiry/investigation. However, two officers to S/Shri D.P. Saxena and P.K. Katiyar of Customs and Central Excise were sent to Lucknow with a direction to take assistance of the petitioner No. 1 Shri Vivek Chaturvedi, Deputy Director, Customs and Central Excise posted at Lucknow and to ensure his appearance before the D.R.I. officials at Delhi on 16-2-2001.

It would be also worth to mention that when the opposite party No. 2 was in custody at Hyderabad in connection with the export of chalk powder in the name

NAPROXEN, an application for bail was moved by his counsel. The application was verified and signed by his father, Shri Lalit Mohan Singh, who is a retired IPS officer. Para 1 of this application states that the petitioners have been arrested by the respondents-Senior Intelligence Officers, Directorate of Revenue and Intelligence, Regional Unit, Hyderabad on 17-2-2001 at 11.30 a.m. at D.R.I., I.P. Bhawan, I.P. Estate, New Delhi.

It is submitted that the petitioner is a permanent resident of 60 B, Parag Narain Road, Lucknow. The petitioner is working as Inspector of Central Excise. On 16-2-2001, two officers of Directorate of Revenue and Intelligence came to the Petitioners'' house and served the summons upon the petitioners under Section 108 of the Customs Act to appear before the D.R.I., New Delhi on 16-2-2001 at 5.30 p.m. on which date, the petitioners appeared and the respondent recorded the statement of the petitioner.

Para 2 of the said application states:-

"It is submitted that the respondent shown the arrest memo on 17-2-2001 at D.R.I., Delhi and produced before the Chief Metropolitan Magistrate, Delhi for transit remand and the respondent after obtaining transit remand, the respondent remanded the petitioners in Central Jail, Tihar, Delhi and he was produced before the Special Judge for Economic Offences, Hyderabad. It is further submitted that the Chief Metropolitan Magistrate directed to produce the petitioners in custody before the Special Judge, Hyderabad on or before 20-2-2001."

A perusal of the aforesaid paragraphs as well as the other allegations made in the application under Section 437 of the Code for bail in the case under Section 135 of the Customs Act, 1962 reveal that no allegation was made at the earliest available opportunity that he was forcibly taken from his house or that any deceitful means was employed to take him from his house. The version of the petitioners in this regard is that since two of them were deputed from Delhi and one Shri Vivek Chaturvedi, petitioner was directed on telephone to cooperate, therefore, they along with other staff of the local Unit reached his house in the morning at about 6.30 a.m. and requested him to accompany S/Shri D.P. Saxena and P.K. Katiyar and he accepted their request and went inside the house and came back well dressed up and prepared for the journey. He was thereafter taken to Delhi in the said Ambassador Car, which was official car of petitioner Shri Vivek Chaturvedi to Delhi and produced there and his statement was recorded. Petitioner No. 1, Shri Vivek Chaturvedi did not accompany them.

It is submitted on behalf of the petitioner that the petitioners 2 and 3 took Shri R.K. Singh, opposite party No. 2 to Delhi in the official car in discharge of their official duty without using any force or employing any deceitful means, therefore, it would neither be an offence punishable under Sections 363 or 365 IPC nor they can be prosecuted without prior sanction of the Central Government. As stated in the bail application, opposite party No. 2 had himself gone in the vehicle on his own accord. No offence of abduction can be said to have been prima facie disclosed because in the definition of abduction in Section 362 of the Code it has been provided that "whoever by force compels, or by any deceitful means induce any person to go from any place, is said to abduct that person". The learned counsel for the opposite party No. 2 has urged that reaching of the officers in more than one vehicle and forcing the opposite party No. 2 to accompany them deprived him of his liberty and was an offence punishable under Section 365 IPC and that the force used by them could not be said to have been done in discharge of their official duty. He referred to the case of K. Kalimuthu Vs. State by D.S.P., , wherein it was held by Hon''ble Apex Court that the protection given under Section 197 Cr.P.C. is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution.

The said protection under Section 197 Cr.P.C. has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 Cr.P.C. can be invoked, it must be shown that the official concerned as accused of an offence alleged to have been committed by him while acting or purporting to act in discharge of his official duties.

"Official" according to the dictionary, means pertaining to an office, and "official act" or "official duty" means an act or duty done by an officer in his official capacity. Thus, use of the expression "official duty" in Section 197 Cr.P.C. implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. The section does not extend its protective cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duty.

It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty. There cannot be any universal rule to determine whether there is a reasonable connection between the act done and the official duty, nor is it possible to lay down any such rule. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty. If the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 Cr.P.C. does not get immediately attracted on institution of the complaint case.

Section 197 Cr.P.C. has been widened further by extending protection to even those acts or omissions which are done in purported exercise of official duty. That is, under the colour of office. Official duty therefore implied that the act or omission must have been done by the public servant in the course of his service and such act or omission must have been performed as part of duty which further must have been official in nature. The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in course of duty. For instance a public servant is not entitled to indulge in criminal activities. To that extent the section has to be construed narrowly and in a restricted manner.

If on facts, therefore, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 Cr.P.C. cannot be disputed.

It was also held that the bar created by Section 197 is absolute and complete hence Court cannot take cognizance of complaint against the public servant in respect of an offence alleged to have been committed in discharge of official duty unless sanction is obtained from the appropriate competent authority.

One of the test as noted above, in considering the question of requirement of sanction under Section 197 is that the omission or neglect on the part of the public servant to commit the act complained of could have made him liable or answerable for a charge of dereliction of his official duty. In the present case, two of the petitioners were deployed from Delhi and one was directed on phone to ensure presence of opposite party No. 2 at D.R.I., New Delhi on 16-1-2001 and in compliance thereof they went to their house and requested him and took to Delhi. As such the act committed by them was in discharge of their official duty because if the petitioners would have declined to follow the direction of their superior officers they would have been answerable for the charge of insubordination and dereliction of duty."

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"Obviously, the acts performed by the petitioners in taking the complainant/ opposite party No. 2 to Delhi can be said to have been done in discharge of official duty because the refusal or non-compliance of the orders would have made them liable for disciplinary action on the administrative side. Therefore, sanction was required in the present case under Section 197 of the Code before prosecuting them. This is why the Investigating Officer has also made a request through proper channel for according sanction for prosecution of the petitioners.

Once it is held that sanction was must and there being no sanction the petitioners cannot be permitted to be subjected to the ordeal of the trial and it would amount to the abuse of the process of the Court to permit them to be tried. The Central Government has already declined the sanction as is apparent from the annexure 4 to the affidavit. It was within the jurisdiction of the Central Government to accord or refuse the sanction for prosecution. The Central Government after examining the matter has declined the sanction. Order of the Central Government has been authenticated and communicated to all concerned including Shri R.K. Singh, opposite party No. 2. The opposite party No. 2 has filed an application under Section 340 of the Code before the learned Magistrate but it would appear from the order of the learned Magistrate that Shri A.K. Singh, Special Secretary-cum-Chairman of the Central Board of Customs and Central Excise filed an affidavit before him that the said letter was genuine and was issued and signed by Shri Naseem Warshi, Under Secretary to the Government of India. The learned Magistrate did not consider it appropriate to launch any prosecution against any one as the said letter communicating the decision of the Central Government was not forged.

The authenticity of this letter cannot be disputed. It has been issued by the Government of India, Ministry of Finance and signed by Under Secretary to the Government of India. Moreover, the opposite party No. 2 did not challenge it by way of any writ petition or other legal recourse so once the sanction has been declined, the court was not at all competent to take cognizance of the offence because the bar created by Section 197 is absolute and complete. The learned Magistrate committed legal error in holding otherwise.

There being a legal bar against the prosecution of the petitioners of Criminal Misc. No. 977 of 2005 and there being absolutely no evidence making out any prima facie offence against the petitioners of Criminal Misc. Case No. 978 of 2005, and the prosecution of these petitioners being abuse of the process of court, this is a fit case where the power under Section 482 of the Code should be exercised.

Both the petitions are, therefore, allowed. The impugned order dated 15-2-2005 including the charge-sheet submitted against the petitioners are hereby quashed."

(Emphasis supplied by me)

10. The respondent-complainant filed an appeal in Hon''ble Supreme Court of India against the judgment, portion of which has been extracted above, it being SLP (Criminal) No. 4313 of 2006 titled ''R.K. Singh v. Vivek Chaturvedi''. Special leave petition was dismissed vide order dated 11-9-2006 (Annexure-10).

11. The respondent-complainant filed review application in the Hon''ble Supreme Court, it being Review Petition (Criminal) No. 281 of 2006, which was dismissed vide order, dated 16-11-2006 (Annexure-11). The order reads as follows:

"We have carefully gone through the review petition and the connected papers. We do not find any merits in the petition for review, stands accordingly dismissed."

12. Above-noted facts and circumstances of the case clearly establish that the issue had been considered and settled upto the level of Hon''ble Supreme Court. However, the respondent-complainant wanted to somehow prosecute the petitioners. For the said purpose the respondent No. 2 devised a novel method which would indicate malicious prosecution.

13. Respondent-complainant had filed an application under Section 340 Cr.P.C. to plead that the order vide which sanction to prosecute some of the petitioners had been denied, was forged. Application was dismissed by the magistrate vide order, dated 18-2-2005 (Annexure-8). The magistrate recorded in its order, after considering the relevant material including the affidavit of Shri A.K. Singh, Commissioner, Central Board of Excise and Customs, Government of India, that there was no reason to proceed in the complaint made by the complainant - R.K. Singh. It has been held by the Magistrate that the communication sent by Shri Naseem Arsh, Under Secretary, communicating denial of sanction to prosecute is a genuine document.

14. The respondent-complainant preferred an appeal under Section 341 Cr.P.C. It would not be out of place to mention that the respondent-complainant started making representation/application to various authorities, including the President of India in regard to denial of sanction to prosecute.

15. While the appeal was pending, it appears that the respondent-complainant filed Writ Petition No. 5456 (M/B) of 2007 ''Ravindra Kumar Singh v. Union of India and another''. The petition was disposed of vide order, dated 24-8-2007 (Annexure-15) while recording thus:

"The petitioner has made a representation to the Principal Secretary, Home on 20-2-2007. The Principal Secretary, Home, U.P., Lucknow is directed to decide the representation of the petitioner within two months from the date of production of certified copy of this order. With these observations the writ petition is disposed of finally."

16. The respondent-complainant thereafter filed Writ Petition No. 487 (M/B) of 2008 titled ''Ravindra Kumar Singh v. Principal Secretary'' which was dismissed vide order dated 4-2-2008 (Annexure-16). Order reads as under:

"Heard learned counsel for the petitioner and learned A.G.A.

We have perused the F.I.R.

The petitioner has come to this Court against the order of investigation. This Court can not interfere in the investigation. The petition is dismissed. However, opposite party is directed to decide the investigation expeditiously."

17. The respondent-complainant thereafter filed Writ Petition No. 1556 (M/B) of 2008 titled ''R.K. Singh v. State of U.P. and others'' which was disposed of vide order dated 16-4-2008 (Annexure-18). Order reads as under:

"Heard learned counsel for the petitioner and learned A.G.A.

The S.S.P. Lucknow is directed to look into the matter and to decide the investigation expeditiously in accordance with law.

With these observations, the petition is finally disposed of."

18. Thereafter, the respondent-complainant filed a contempt petition under Contempt of Courts Act, 1971 in context of order, dated 16th April, 2008, extracted above bearing Crl. Misc. No. 2162 of 2008 (C) in which order was passed on 28-1-2009 (Annexure-19) in the following terms:

"The instant contempt application has been filed by the applicant alleging disobedience of the order dated 16-4-2008 passed by this Court in Writ Petition No. 1556 (MB) of 2008.

A perusal of the said order shows that this Court while disposing of the writ petition of the applicant did not fix any time limit for the opposite party to comply with the order dated 16-4-2008.

In view of the aforesaid, it is directed that the opposite party shall ensure compliance of the order dated 16-4-2008 passed by this Court in Writ Petition No. 1556 (MB) of 2008 within one month from the date of production of certified copy of this order before him.

Learned counsel for the applicant shall file certified copy of this order before the opposite party within a week from today. List this case on 18-3-2009."

19. It appears that under pressure of order passed by the High Court, the investigating agency filed charge-sheet No. 35A/2003 dated 29-10-2008 that has been impugned in this petition. At this point of time, in the impugned charge-sheet, even Senior Officers in the Ministry of Finance, Government of India, who dealt with the issue of considering grant or denial of sanction to prosecute have been implicated. The accused include Senior Officers who were not even related to the incident of 16-2-2001. The Court has been informed that petitioner No. 1--Jogendra Singh, IRS, superannuated as Chairman, Customs and Central Excise Settlement Commission. Petitioner No. 15, Chandra has Mathur, IRS superannuated and earlier served as Member, Customs and Central Excise Settlement Commission. Likewise petitioner Nos. 10, 11, 13, 14 and 15 are IRS

Officers and hold senior positions. The said persons had no role to play in regard to the incident of 16-2-2001. Allegation is that the communication vide which Naseem Arshi, Under Secretary, Revenue Department, Government of India, had conveyed denial of sanction to prosecute, is forged.

20. Forgery can be defined as falsely making or altering a writing by which the legal rights or obligations of another person are apparently affected. There is no evidence of forgery of letter communicating denial of sanction to prosecute, available on record. Senior Officers in the Department of Revenue, Government of India have given their affidavit in regard to the entire process followed, until the Finance Minister, Government of India endorsing the fact that due process of law had been followed and sanction to prosecute the petitioners had been denied.

21. Shri I.B. Singh, learned Senior Advocate, assisted by Shri Manish Mani Tripathi, faced with the above-noted facts and circumstances has made a fair statement on behalf of his client namely Shri R.K. Singh, respondent No. 2, to the effect that he would not be able to justify that petitioner Nos. 1 to 6 and 10 to 15 have committed offences for which impugned proceedings have been initiated. It has been stated that let the proceedings against the said petitioners be quashed.

22. Shri R.K. Dwivedi, learned counsel appearing for the respondent-State, has also not been able to indicate any specific incriminating material that would establish even prima facie that the said petitioners have committed offences for which impugned proceedings have been initiated.

23. Learned counsel for respondent No. 2 has also given a statement that having gone through the entire material, respondent No. 2--complainant contests against petitioner Nos. 7, 8 and 9 of this petition and the three petitioners in Crl. Misc. Case No. 1407 of 2009, only for commission of offence under Sections 452, 342, 392, 367, 504, 506 of the Indian Penal Code. It has been stated that there is no justification for filing charge-sheet under the rest of the provisions for which impugned charge-sheet has been filed.

24. Considering the above, this Court is required to examine the case of petitioner Nos. 7, 8 and 9 namely Vivek Chaturvedi, P.K. Katiyar and D.P. Saxena and the petitioners in Crl. Misc. Case No. 1407 of 2009 ''Raghuraj Singh and 2 others v. State of U.P. and another'', only for the offences under Sections 452, 342, 392, 367, 504, 506 of the Indian Penal Code.

25. Considering the statement given by learned counsel for respondent No. 2 it becomes apparent that the said respondent is pressing charges against above-mentioned petitioners for house trespass, wrongful confinement, robbery, kidnapping/abduction and criminal intimidation. It further becomes apparent that it is the case of respondent No. 2 that the above named six petitioners committed offences in context of the events of 16-2-2001, when the respondent No. 2 was taken from Lucknow to Delhi.

26. Petitioner Nos. 8 and 9 namely P.K. Katiyar and D.P. Saxena are the persons who came from DRI, Delhi to Lucknow to take respondent No. 2 to Delhi for enquiry/investigation. Vivek Chaturvedi (petitioner No. 7) is the person who was posted at Lucknow at that point of time and gave assistance to P.K. Katiyar and D.P. Saxena.

27. Petitioner Nos. 8 and 9 namely P.K. Katiyar and D.P. Saxena took respondent No. 2 to Delhi in the car driven by Faridul Hasan (petitioner No. 3 in Crl. Misc. Case No. 1407 of 2009). Raghuraj Singh and Gore Lal (petitioner Nos. 1 and 2 in Crl. Misc. Case No. 1407 of 2009) are two Sepoys who assisted the officers.

28. Judgment rendered by this Court, portion of which has been extracted here above in extenso (in particular the emphasised portion), would establish that all the issue in context of the events of 16-2-2001 in taking respondent No. 2 to Delhi have been considered, adjudicated and decided. At the cost of repetition, the following excerpts, from above-extracted portion of the judgment, indicate adjudication on facts:

"The Investigating Officer could have collected the necessary documentary evidence in support of these allegations but no such evidence was collected and there being no evidence at all, this allegation also goes unsubstantiated by any material and therefore, it can safely be said that there is no evidence of snatching of any sum from opposite party No. 2 or making any endorsement on any cash memo by Shri P.K. Katiyar. No offence under Section 392 I.P.C. is prima facie made out against any of the petitioners as there is no evidence to that effect."

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No offence of abduction can be said to have been prima facie disclosed because in the definition of abduction in Section 362 of the Code it has been provided that "whoever by force compels, or by any deceitful means induce any person to go from any place, is said to abduct that person."

29. Perusal of the above-noted findings clearly establish that the allegation made by respondent No. 2--complainant to the effect that offence under Section 392 of the Indian Penal Code or Section 367 of the Indian Penal Code has been committed, has been found to be baseless.

30. It has been considered by this Court in earlier judgment dated 4-7-2006 that there is no allegation of personal enmity of the petitioners against respondent No. 2; case under Customs Act against respondent No. 2 was under investigation on account of detention of two consignments at Mumbai; the officers, who had intercepted the goods, are not the petitioners, and are different officials; the name of respondent No. 2 was disclosed by one of the accused in the case under Customs Act; presence of respondent No. 2 was required by Smt. Sanyogita Mishra, Superintendent, Directorate of Revenue Intelligence for making enquiry from him; the officers/petitioner Nos. 7, 8 & 9 had come to the house of

respondent No. 2 on 16-2-2001 to ensure his presence before DRI official at Delhi in connection with official business; respondent No. 2 did not take any ground in regard to house trespass, kidnapping/abduction or snatching of money when he was produced before Metropolitan Magistrate at Delhi; in the application for bail filed on behalf of respondent No. 2, no allegation was made that respondent No. 2 had been forcibly taken from his house, or any deceitful means had been employed to take him from his house, rather it was the case of the respondent in those applications that respondent No. 2 accepted the request of petitioner Nos. 7, 8 & 9, went inside the house, came back well dressed and prepared for journey to Delhi.

31. In view of the findings to the above effect having been recorded in the earlier judgment, it cannot be said even prima facie that offence under Section 452, Indian Penal Code has been committed.

32. It is not the case of respondent No. 2 that the petitioners were not serving in DRI, or that the name of the respondent has not cropped up in the statement of one of the accused directly involved in the commission of offence under the Customs Act. It is further not in dispute that presence of respondent No. 2 was required for enquiry/investigation. That is so because notices had been sent to the said respondent before 16-2-2001. The respondent was accordingly taken to Delhi for enquiry in regard to the case under Section 135, Customs Act. In view of above noted facts, wrongful confinement as defined under Section 340, Indian Penal Code cannot be even alleged. There is no material available on record to indicate commission of offence punishable under Section 342 of the Indian Penal Code.

33. Considering the above-noted facts and circumstances of this case in context of the fact that the issue had already been adjudicated and decided in judgment dated 4-7-2006, this Court is of the considered opinion that no material has been collected by respondent No. 1 that can be translated into legal evidence indicating culpability of any of the petitioners in commission of offence, as alleged by respondent No. 2.

34. In view of the above-noted facts and circumstances of the case, in the considered opinion of this Court, this Court has adjudicated on the facts and circumstances of this case in relation to the events of 16-2-2001 and findings on merits have been recorded. Proceedings have been quashed. The judgment in this regard has been upheld by the Hon''ble Supreme Court of India as noted above. Even review application filed by respondent No. 2 has been dismissed. In such facts and circumstances of the case, the Investigating Agency could not have filed impugned charge-sheet in regard to the same event and the petitioners could not have been summoned to stand trial for the afore-noted offences.

35. This Court also records that the issue of necessity of sanction to prosecute under Section 197 Cr.P.C. in context of the actions of the petitioners has been

considered by the High Court in the above-extracted portion of judgment dated 4-7-2006. It has been held that there is legal bar against prosecution of the petitioners, because the acts done by the petitioners have been done in discharge of their official duties. Continuance of proceedings, would be an abuse of the process of the law for the reason that sanction to prosecute has been denied by appropriate authority. In such circumstances, cognizance of the offence could not have been taken by the Court below.

36. This Court has also considered the legality and propriety in respondent No. 1 and the investigating agency filing impugned charge-sheet bearing No. 35A/2003 on 29-10-2008, in regard to case crime No. 14 of 2002. From the above-noted facts and circumstances, it has become abundantly clear that after investigation of the case registered as crime No. 14 of 2002 had been concluded, charge-sheet bearing No. 35 of 2003 dated 12-2-2003 had been filed. The said charge-sheet bearing No. 35 of 2003, proceedings arising therefrom, including the order of summoning were challenged before this Court in Crl. Misc. Case No. 978 of 2005 ''Jogendra Singh and 11 others v. State of UP'' and Crl. Misc. Case No. 977 of 2005 titled ''Vivek Chaturvedi and two others v. State of Uttar Pradesh''. The said two petitions were allowed on merits vide detailed judgment dated 4-7-2006. The judgment has been upheld by Hon''ble Supreme Court of India by way of dismissing the appeal filed by Respondent No. 2. In such circumstances, it was clearly beyond the jurisdiction of the investigating agency to reopen the case, in regard to the same facts and circumstances and file charge-sheet dated 29-10-2008 bearing No. 35A of 2003. No justification for such conduct is coming forth from the side of Respondent No. 1-State. This Court is of the considered opinion that it was beyond the jurisdiction and scope of the investigating agency to have filed impugned charge-sheet in regard to the same facts and circumstances of the case, once the proceedings had been adjudicated and decided upto the Hon''ble Supreme Court of India.

37. Learned counsel for the respondent-State, in context of judgment rendered by this Court dated 4-7-2006, has not been able to point out that the issues arising out of impugned proceedings had not been adjudicated by this Court in the earlier judgment.

38. In the result, petition in regard to petitioner Nos. 1 to 6 and 10 to 15 is allowed and impugned proceedings are quashed in view of the statement given by learned counsel for the respondent No. 2 as noted above, as also because this Court in its jurisdiction under Section 482 of the Code of Criminal Procedure has already considered the facts and circumstances in earlier judgment dated 4-7-2006, and has quashed the proceedings initiated on filing of case crime No. 14 of 2002.

39. Petitions in regard to petitioner Nos. 7, 8 and 9 and the three petitioners of Crl. Misc. Case No. 1407 of 2009 are allowed for the reason that this Court has adjudicated the issue on merits in regard to incident of 16-2-2001 and had quashed the proceedings

40. For the reasons given above, both the petitions are allowed. Charge-sheet bearing No. 35-A of 2003 dated 29-10-2008 filed by Police Station Krishna Nagar, Lucknow in the Court of Special Judicial Magistrate (Economic Offence), Lucknow arising out of case crime No. 14 of 2002 as also order dated 4-3-2009 vide which cognizance of offence has been taken are hereby quashed.

