(2000) 04 AP CK 0066

In the Andhra Pradesh High Court

Case No : Criminal P No. 1444 of 2000

K. Neelakanta Rao and another — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 11-04-2000

Acts Referred:

Constitution of India, 1950 — Article 20(2)
Criminal Procedure Code, 1973 (CrPC) — Section 236, 273, 403, 482
Customs Act, 1962 — Section 111, 112
Foreign Exchange Regulation Act, 1973 — Section 13, 67
Imports and Exports (Control) Act, 1947 — Section 5
Sea Customs Act, 1878 — Section 167

Citation : (2000) 4 ALD 540 : (2000) 1 ALD(Cri) 751 : (2001) 74 ECC 554 : (2000) 122 ELT 7

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Mr. T. Pradyumna Kumar Reddy, for the Appellant; Mr. v. Gopala Krishna Gokhle, SC for Economic Offences (Central Excise) and Excise Department, for the Respondent

Judgement

1. This petition u/s 482 of Cr.PC seeks stay of trial in CC No.8 of 2000 on the file of the Special Judge for Economic Offences, Hyderabad in which the petitioners arc accused of contravention of offences under Sections 112A and 111 of the Customs Act punishable u/s 135 of the Act pending adjudication of the proceedings in OR No.2 of 1998 (ADGN) customs dated 11/12-2-1998 pending before the Commissioner, Customs and Excise, Hyderabad.

2. The facts germane to this case may be stated briefly as follows:

Al to A3 in the case are said to have carried gold from Sharjah to Hyderabad. According to the Customs Authorities, as it was not declared and as after its disclosure the duty in foreign exchange was not paid in respect of the said gold, it was liable to be confiscated u/s 111(d) of the Customs Act. The petitioners herein who are accused Nos.4 and 5 are said to have abetted the offence committed by Al to A3 inasmuch as they were in unauthorised possession of foreign currency which they proposed to make available to A1 to A3 for payment of customs duty. It is alleged that under these circumstances, the foreign currency notes are also liable to be confiscated u/s 111(d) of the Customs Act read with Sections 13 and 67 of the Foreign Exchange Regulation Act, 1973 and also liable to pay penalty in respect of the same.

3. Thus, the prosecution case is fhat the petitioners herein are liable for punishment u/s 135(1)(a) and (b) and (ii) of the Customs Act for having abetted the illegal bringing of gold and for unauthorised possession of foreign currency notes as mentioned above.

4. The contention of the learned senior Counsel for the petitioners Sri C. Padmanabha Reddy in support of the prayer for direction to stay the proceedings in CC No.8 of 2000 on the file of the Special Judge for Economic Offences, Hyderabad is based on the fact that adjudication proceedings in OR No.2 of 1998 (ADGN) Customs dated 11/12-2-1998 are pending before the Commissioner, Customs and Central Excise, Hyderabad. The contention is that continuation of the criminal proceedings in the said CC before the adjudication proceedings are concluded would deprive the petitioners of taking advantage of an order favourable to them in the adjudication proceedings.

5. The argument proceeds as under. The adjudication of confiscation and penalty proceedings in respect of the seized goods requires for lesser standard of proof than the proceedings for prosecution of the accused in respect of the same Acts and if adjudication of confiscation and penalty proceedings requiring lesser standard of proof are ultimately dropped, then there remains nothing to require the accused to face in the criminal trial where far stricter standards of proof are required.

6. In support of this contention, the learned Counsel for the petitioners Sri C. Padmanabha Reddy draw sustenance from some judgments of the Delhi High Court in the case of S.K. Sinha v. S.K. Singat and another (1987) 32 DLT 91 (Del) and another judgment of the Delhi High Court in the case of Willi Lemback v. Rajan Mathur and another XI 1992 (3) Cri. 692 in which the earlier mentioned case (supra) has been referred to. In S.K. Sinha''s case (supra), the following observations are relevant:

"In criminal matters the degree of proofrequired is far more strict. If the departmental authority has no good case, for purpose of adjudication, cannot claim to have a good case for purposes of criminal prosecution, particularly when the prosecution is also based on the same set of facts and evidence. It will be most unjust to require the petitioner to go through the entire process of prosecution in the circumstances of this case".

Similar view was expressed in the other cited judgment of the Delhi High Court in the following terms:

"Admittedly the petitioner is being prosecuted on the same set of facts and circumstances, which were before the Collector of Customs at the time of his verdict he found the appellant to be innocent and exonerated him of the charge of smuggling. It thus does not appeal to the reason as to how the petitioner can be allowed to be prosecuted for the same set of facts and on the basis of the same evidence which were before the Appellate Authority at the time of adjudication".

7. The contention of the learned Counsel for the petitioners based on these observations is that as the adjudication proceedings are pending in respect of same set of facts which constitute the basis for the prosecution of the accused for the offence u/s 135 of the Customs Act, the proceedings of the prosecution should be stayed till the adjudication proceedings are concluded. The further extension of this contention as stated by the learned Counsel for the petitioner is that if the adjudication proceedings turned out to be favourable to the petitioners, they would then be in a position to seek quashing of the criminal proceedings.

8. On the other hand, the learned Standing Counsel for the Central Customs and Excise Department Sri Gopalakrishna contends that this view of the Delhi High Court goes contrary to the view expressed by a Constitution Bench of the Supreme Court in the case of Assistant Collector of Customs and Another Vs. L.R. Malwani and Another, , and neither stay of the proceedings nor quashing of the proceedings could be ordered under the facts and circumstances of the case.

9. In the case of L.R. Melwani (supra), the Constitution Bench of the Supreme Court had an occasion to deal with some what similar contention based on Article 20(2) of the Constitution of India and Section 403 of Cr.PC. In that case, an enquiry was held by the Customs Authorities and in the course of enquiry some of the goods said to have been smuggled were seized. After closure of the enquiry those goods were ordered to be confiscated and additional penalty was imposed on some of the accused. Thereafter, the Assistant Collector of Customs, Bombay after obtaining the required sanction from the Government filed a complaint against five persons including the appellant in their relative criminal appeal for various offences including the offence under clauses (37), (75), (76) and (81) of Section 167 of the Sea Customs Act, 1878 as well as Section 5 of the Imports and Exports (Control) Act, 1947. In the enquiry held by the Collector of Customs, he gave benefit of doubt to accused Nos.1 and 2 and they were exonerated in the adjudication proceedings. Despite this, the Assistant Collector sought to prosecute these persons (accused 1 and 2).

10. The question raised was whether prosecution is barred under Article 20(2) of the Constitution oflndia, which says that no person shall be prosecuted and punished for the same offence more than once. While stating that Article 20(2) of the Constitution was in terms not applicable, the Supreme Court proceeded to examine the contention with reference to Section 403 of Cr.PC and held as follows:

"in order to get the benefit of Section 403, Criminal Procedure Code or Article 20(2), it is necessary for an accused person to establish that he had been tried by a ''Court of competent jurisdiction'' for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. If that much is established, it can be contended that he is not liable to be tried gain for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made u/s 236 or for which he might have been convicted u/s 273. It has been repeatedly held by this Court that adjudication before a Collector of Customs is not a ''prosecution'' nor the Collector of Customs a ''Court''.

11. The Supreme Court also considered the question whether the findings of the Collector of Customs in such circumstances operate as the issue estoppel in the prosecution and answered and held that in the facts of the case that doctrine was not applicable. In that view of the matter, the Supreme Court rejected the contention that in view of the adjudication proceedings having been dropped against the concerned accused therein, the criminal prosecution of those accused must be quashed.

12. In view of this authoritative pronouncement of the Supreme Court, there is no manner of doubt that adjudication proceedings under the Customs Act irrespective of the result would not bar the criminal prosecution of the persons said to have committed the offence u/s 135 of the Customs Act.

13. The learned Counsel for the petitioners Sri C. Padmanabha Reddy, however, seeks to distinguish the judgment of the Supreme Court (supra) and seeks to press the judgments of the Delhi High Court (supra) on a slightly different footing. The contention is that in view of the judgment of the Supreme Court referred to above, while it is not possible to hold that dropping of adjudication proceedings u/s 111 or proceedings for imposing penalty u/s 112 of the Customs Act in terms bar a criminal prosecution of the alleged culprits for offence u/s 135 of the Customs Act, the proceedings have to be quashed in such a case on the ground that inasmuch as the criminal prosecution to result in conviction would require far higher standard of proof than the one required in adjudication proceedings and when adjudication proceedings themselves have failed, there is scarcely any chance of criminal prosecution resulting in conviction of the accused. The contention is that when there is hardly any chance of prosecution resulting in conviction of the accused, it would be a futile exercise to continue the prosecution and to secure ends of justice, such proceedings in prosecution must be quashed. In fact, that is the premise on which the judgments of the Delhi High Court proceeds.

14. In the light of the very categoric judgment of the Supreme Court, this contention cannot be accepted. Acceptance of this contention would go against the spirit of the judgment of the Supreme Court (supra).

15. Further, with great respect, there is a logical fallacy in this contention. This

contention proceeds on an assumption that a finding in adjudication proceedings is perfect and does not suffer from any infirmities and that every conceivable evidence available or which could be pressed into service has been placed before the adjudicating authority and has been properly appreciated by the authority so much so that there is no possibility of any improvement either in the presentation of the case in the criminal Court or the appreciation of the material by the criminal Court. This apparently would be unwarranted presumption. It is not inconceivable that there may be occasions where the presentation officer before the adjudication authority might have acted negligently, might have omitted to bring on record some crucial piece of evidence which was available. The adjudication authority might have committed a serious blunder in appreciating the material.

16. If it were so in a particular case, then it is not possible to contend that there is no chance of any improvement in the presentation of the case before the criminal Court and that there is absolutely no chance that the criminal Court may take a different view even on the basis more stringent standards of evidence.

17. However, if the facts of the case come within the four corners of Article 20(2) of the Constitution of India or u/s 403 of Cr.PC, the subsequent prosecution is barred not on the ground that the earlier judgment is free form any infirmities but because the law clothes it with finality.

18. The learned Counsel for the petitioner however contends that what has been prayed is mere stay and not quashing of the proceedings and as such this prayer may be granted till the adjudication proceedings are concluded. It is true that in some cases, it may be desirable for the criminal Court to wait for the conclusion of the adjudication proceedings with a view to take advantage of the findings arrived at therein but this is a matter for the trial Court to decide on the facts and circumstances of the each case whether a short adjournment of the criminal proceedings pending disposal of adjudication proceedings is desirable or not. In the meanwhile it directed that the adjudication proceedings shall be completed at the earliest.

19. Under these circumstances, this petition is dismissed.

