

(2008) 02 KAR CK 0036

In the Karnataka High Court

Case No : Criminal Petition No's. 3828 and 4215 of 2002

Manohar Chatlani @ Manu

APPELLANT

Vs

The Central Bureau of Investigation

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 195, 195 (2), 340
Delhi Special Police Establishment Act, 1946 — Section 5, 6
Penal Code, 1860 (IPC) — Section 120 B, 420, 468, 471

Citation : (2008) ILR (Kar) 2466 : (2008) 6 KarLJ 50

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : C.V. Nagesh, in Criminal Petition No. 3828/2002 and H.S. Dwarakanath, in Criminal Petition No. 4215/2002, for the Appellant; Ashok Haranahalli, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The petitioners in these two petitions arrayed as accused 1 to 6 in C.C. No. 2767/2001, pending trial for offences punishable under Sections 120B, 420, 468 and 471 IPC, on the file of I Addl. Chief Metropolitan (Special) Magistrate (For C.B.I. Cases) at Bangalore, have sought to quash proceedings pending in C.C. No. 2767/2001.

2. In brief, the case of prosecution is as follows:

Accused No. 1 - Ram T. Harpnlani @ Ram is the sole proprietor of M/s. Japan Mannequin Company, engaged in manufacture and sale of mannequins (life size dolls, used for displaying garments in readymade showrooms). Accused No. 3 Mr. Manohar Chatlani @ Manu is stated to be proprietor of M/s. Sona's Favourite Shop, which is also engaged in manufacture and sale of mannequins. During the period between September and November 1994, accused 1 & 3 entered into a criminal conspiracy to cheat the department of Central Excise (hereinafter referred to as "Department") in the matter of payment of Central Excise duty

and in furtherance of such conspiracy, accused No. 1 floated a firm called M/s. Favourite Mannequin Company at No. 27, K. Kamaraj Road, Bangalore and raised invoices in the name of non-existent firms for the purpose of avoiding Central Excise duty. The Intelligence Bureau of Department of Central Excise conducted raid on premises and collected material to establish that M/s. Japan Mannequin Company/accused No. 2 have avoided payment of Central Excise duty totalling Rs. 25,74,978/- (for goods worth Rs. 1,07,59,808/-). Against show cause notice and levy of penalty, accused 1 & 3 were before Collector of Central Excise/ adjudicating authority,, on 13.12.1994, the Collector of Central Excise, relying upon certain false affidavits filed by accused Nos. 4 to 6 at the instance of accused No. 1 & 3 made an order in favour of II accused. These false affidavits were filed before Collector of Central Excise (Sri M.V. Reddy), knowing fully well contents therein were false, with fraudulent and dishonest intention to create false belief that M/s. Sona's Favourite Shop was in existence and there were no clandestine clearances. Further, accused Nos. 1 & 3 with dishonest and fraudulent intention to cheat the department, with active connivance of accused No. 5-Nanik A. Mehboohani, showed on record that accused No. 5 was running an independent unit in the name and style of M/s. Favourite Mannequin Co., at No. 27, K. Kamaraj Road, Bangalore, for period between 1988 and 1990. The accused were fully aware said company was non-existent.

3. The above investigation was conducted by Deputy Superintendent of Police of Central Bureau of Investigation (for short, "C.B.I."). Though in the First Information Report, the adjudicating authority - Sri M.V. Reddy, who was the then Collector of Central Excise was arrayed as accused, at the time of filing report it is stated, investigation did not conclusively prove commission of offence by Sri M.V. Reddy, therefore, it was decided not to file chargesheet against him.

4. The order passed by Collector of Central Excise (hereinafter called as "order in-original") was called in question by the Department before Customs, Excise & Gold (Control) Appellate Tribunal (for short, "CEGAT") in Appeal No. E/308/96/Md, which was decided by Order No. 1326/1998 dated 10.07.1998. Against this order, the department was before the Supreme Court. The civil appeal was dismissed by the Supreme Court in terms of following order:

As delay has not been properly explained and there is no justification for condoning the delay, I.A. and appeal are accordingly dismissed.

When the matter stood at that, the Deputy Superintendent of Police, C.B.I., registered a First Information Report on the basis of credible information, investigated and filed chargesheet against aforesaid accused/petitioners herein for aforesaid offences before the Special Judge at Bangalore. As the investigation did not conclusively prove commission of offences under prevention of Corruption Act, 1988, by a public servant, it was represented before 1 Addl. Chief Metropolitan (Special) Magistrate (For C.B.I. Cases) at Bangalore, who took cognizance of offences and issued process to accused.

5. I have heard Sri C.V. Nagesh, learned Counsel for petitioner in CrI.P No. 3828/2002. Sri Ajit Kalyan, learned Counsel for petitioners in CrI.P. No. 4215/2002 and Sri Ashok Haranahalli, learned Counsel for respondent/C.B.I., in both cases.

6. The submissions of learned Counsel for petitioners are as follows:

I. The Department was not successful before adjudicating authority, later before CEGAT and also before Supreme Court. In the circumstances, on the basis of credible information, C.B.I., should not have started investigation in respect of affidavits which are stated to have been filed in the above proceedings, which in fact were accepted by adjudicating authority and also by CEGAT, particularly when order-in-original and order of CEGAT were by the Supreme Court.

II. The proceedings before Collector of Central Excise is a judicial proceeding for the purpose of Section 193 I.P.C., therefore, unless a complaint is filed in terms of Section 196(2) Cr.P.C., no Court shall take cognizance of offences.

III. In the absence of specific permission by State Government, C.B.I., established under the Delhi Special Police Establishment Act 1946, had no jurisdiction to investigate into the matter, that too against private individuals.

The learned Counsel for petitioners has referred to Sections 4, 5 & 6 of the Delhi Special Police Establishment Act 1946.

7. In support of these submissions, learned Counsel for petitioners has relied on following decisions:

I. State of U.P. Vs. Ranjit Singh,

II. M.S. Ahlawat Vs. State of Haryana and Another,

III. State of Karnataka Vs. G. Lakshman and others,

The learned Counsel for C.B.I., has made following submissions:

I. The order passed by Collector of Central Excise (Order-in-Original) has not been confirmed by CEGAT, on the other hand against order of remand passed by CEGAT, the Department was before Supreme Court and the appeal was dismissed as barred by time. Therefore, it cannot be said adjudicatory proceedings have gone in favour of accused No. 1.

II. The Collector of Central Excise has not been defined as Court in terms of Section 195(3) Cr.P.C. The Collector of Central Excise is not bound to receive affidavits in lieu of evidence. Therefore, Section 193 IPC is not attracted to facts of case on hand.

III. The learned Counsel for C.B.I., would also submit the Collector of Central Excise has not recorded evidence and affidavits filed before him cannot be termed as evidence to attract Section 193 IPC, The learned Counsel would submit in terms of Section 3 of Evidence Act, "evidence" means and includes-

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents (including electronic records) produced for the inspection of the Court; such documents are called documentary evidence.

8. In the case on hand, affidavits were filed by accused before the Collector of Central Excise. The Collector of Central Excise was not duty bound to receive affidavit evidence. Therefore, Section 193 IPC is not attracted.

IV. The learned Counsel for C.B.I., would submit even if civil proceedings are concluded, there is no bar to initiate criminal proceedings. The civil proceedings would not operate as *resjudicata* and not binding on criminal proceedings.

V. The C.B.I., had power to investigate into offences committed by Sri M.V. Reddy, (the then Collector of Central Excise) a Central Government servant. Therefore, C.B.I., had power to investigate. Ultimately, if C.B.I., had not filed chargesheet against Sri M.V. Reddy, for want of conclusive material, that would not vitiate investigation.

VI. The Collector of Central Excise is not a Court.

9. The learned Counsel for respondent/C.B.I. has relied on following decisions:

I. Jagannath Prasad Vs. The State of Uttar Pradesh,

II. S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others,

III. Hamza Haji Vs. State of Kerala and Another,

IV. Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others,

V. Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another,

VI. Indo-China Steam Navigation Co. Ltd. Vs. Jasjit Singh, Additional Collector of Customs and Others,

10. Having heard learned Counsel for parties with reference to adjudicatory proceedings and contents of charge sheet filed against petitioners, I formulate following points for determination:

1) Whether initiation of investigation by C.B.I., and consequent prosecution are without jurisdiction, in view of the act adjudicatory proceedings in the matter of levy of penalty and collection of duty are decided in favour of petitioner and attained finality by virtue of orders passed by CEGAT and the Supreme Court?

2) Whether offences alleged against petitioners would fall within the purview of Section 193 IPC?

3) Whether C.B.I., could not have investigated into the matter, in the absence of

complaint u/s 195 Cr.P.C.?

4) Whether C.B.I., established under the Delhi Special Police Establishment Act, 1946, in the absence of notification by State Government had power to investigate into the matter?

Regarding point No. 1:

11. This is essentially question of fact and law. At the first instance, let me deal with fact situation.

12. On careful consideration of order-in-original and order passed by CEGAT, it is seen, department had alleged accused No. 1 had evaded payment of Central Excise duty by adopting following methods:

I. Under valuation of goods.

II. Clubbing of clearances.

III. Clandestine clearances.

13. The petitioners in order to substantiate M/s. Favourite Mannequin Company was in existence, had filed certain affidavits, as alleged in chargesheet. The Collector of Central Excise has answered issues relating to "under valuation" and "clubbing of clearances" in favour of II-petitioner and issue relating to "clandestine clearances" in favour of Department and confirmed levy of penalty.

14. In the appeal, CEGAT has decided these issues separately. The issues relating to "under valuation" and "clubbing of clearances" are answered in favour of petitioner-II. On the issue relating to "clandestine clearances", CEGAT has remanded the matter to Collector of Central Excise to determine quantum of penalty if clandestine clearances are more. The relevant portion of the order-in-appeal found para 16, reads thus:

16. We feel that as regards the plea for enhancement of penalty is concerned we notice that the matter pertaining to clandestine removal having been remanded, it would be proper in the facts and circumstances to direct the Collector to re-determine the quantum of penalty if the clandestine removals are found to be more than what has been confirmed in the impugned order.

Therefore, submission of learned Counsel for petitioners, adjudicatory proceedings as they relate to "clandestine removal" are decided in favour of ii-petitioner, cannot be accepted.

15. The next question for determination is when civil proceedings are concluded, whether criminal proceedings could be initiated on the issues conclusively adjudicated upon by civil Courts.

16. The Supreme Court in the case of Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, , relevant page 389, at para 32, has held:

32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein. While examining a similar contention in an appeal against an order directing filing of a complaint u/s 476 of the old Code, the following observations made by a Constitution Bench in *M.S. Sheriff v. State of Madras* give a complete answer to the problem posed:

15. As between the civil and the criminal proceedings we are of the opinion that the criminal matters should be given precedence. There is some difference of opinion in the High Courts of India on this point. No hard-and-fast rule can be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one Court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment.

16. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things slide till memories have grown too dim to trust.

This, however, is not a hard-and-fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just. For example, the civil case or the other criminal proceeding may be so near its end as to make it inexpedient to stay it in order to give precedence to a prosecution ordered u/s 476. But in this case we are of the view that the civil suits should be stayed till the criminal proceedings have finished.

17. In the case on hand CEGAT remanded the matter pertaining to clandestine clearances to the collector of Central Excise to redetermine quantum of penalty if clandestine clearances are found to be more than what has been confirmed in the order-in-original. The II-petitioner has not challenged this order. Therefore, findings recorded by the Collector of Central Excise and CEGAT and matter pertaining to clandestine clearances have attained finality as far as II-petitioner is concerned. The remand is only for limited purpose to redetermine quantum of penalty if clandestine clearance are found to be more than what has been confirmed in the order-in-original. Therefore, petitioner cannot contend matter

pertaining to clandestine clearances has been decided in favor of II-petitioner.

18. The matter pertaining to clandestine clearances has been decided in favour of Department. The Collector of Central Excise has to redetermine quantum of penalty if clandestine clearances are found to be more than what has been decided in the order-in-original. In these circumstances, petitioners cannot find fault with the C.B.I., to investigate into falsity or otherwise of affidavits filed by petitioners. For these reasons, I answer point No. 1 against petitioners.

Regarding Point No. 2:

19. The learned Counsel for petitioners, referring to Section 14(3) of Central Excise Act, 1944, has contended Central Excise Officer, includes Collector of Central Excise and proceedings before him are judicial proceedings, within the meaning of Sections 193 and 199 IPC. The learned Counsel has contended in this case on hand, Collector of Central Excise had received and recorded evidence. Therefore, if accused had given false evidence or fabricated evidence for the purpose of being used in proceedings before Collector of Central Excise and offences would fall within the purview of Section 193 IPC. Therefore, in the absence of complaint u/s 195(2) Cr.P.C. the Court below ought not have taken cognizance of offences alleged against petitioners and the impugned proceedings are void ab initio.

19. In order to appreciate this contention, it is necessary to advert to facts. The petitioners are alleged to have filed false and fabricated affidavits before Collector of Central Excise. For the purpose of adjudication before Collector of Central Excise, the procedure envisaged under the provisions of Central Excise Act does not provide acceptance of affidavits as evidence. Even otherwise, under the Central Excise Act, 1944, evidence has to be recorded in the form of examination-in-chief, cross-examination and re-examination and affidavits alleged to have been filed before Collector of Central Excise cannot partake character of evidence to attract Section 193 IPC. Therefore, I answer this point against petitioners.

Regarding point No. 3:

20. The learned Counsel for petitioners, relying on judgments reported in 1999 SC 1201 (in the case of M.S. Ahlawat Vs. State of Haryana and Another, in the case of M.S. Ahktwat v. State of Haryana and Anr. has contended if procedure contemplated u/s 195 Cr.P.C., is not followed, entire investigation is vitiated. Therefore, learned Counsel for petitioners has contended there is legal bar to continue proceedings before Court below.

21. The learned Counsel for C.B.I., drawing my attention to Section 196(3) Cr.P.C., would submit, the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act, if declared by the Act to be a Court for the purposes of this section.

22. On careful consideration of relevant provisions of Central Excise Act, 1944, I

find Collector of Central Excise has not been defined as "Court" for the purpose of Section 195(3) Cr.P.C.

23. The learned Counsel for C.B.I., relying on judgment of Supreme Court, reported in Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, has contended affidavits filed before Collector of Central Excise had been forged elsewhere. The learned Counsel would submit bar contained u/s 195 Cr.P.C., would come into play only if forgery is committed when documents are in the custody of Court. In the judgment, reported in Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another, , the Supreme Court has held:

34. In the present case, the Will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(1)(b)(ii) was committed in respect to the said Will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents. The view taken by the teamed Additional Sessions Judge and the High Court is perfectly correct and calls for no interference.

24. In view of what has been held by the Supreme Court, contention of learned Counsel for petitioners there is legal bar to continue proceedings, as complaint was not filed in terms of Section 196 and 340 Cr.P.C., cannot be accepted, Therefore, I answer this point against petitioners.

Regarding Point No. 4:

25. The learned Counsel for petitioners, referring to Section 6 of the Delhi Special Police Establishment Act, 1946, has contended in terms of Section 6 of the Act, C.B.I., can not exercise power or jurisdiction, in any part of Karnataka. The learned Counsel for petitioners would further submit inclusion of Sri M.V. Reddy, the then Collector of Central Excise as an accused was a device adopted by C.B.I., to circumvent provisions of Section 6 of the Delhi Special Police Establishment Act, 1946. The learned Counsel for C.B.I., has contended in view of Section 5 of the Delhi Special Police Establishment Act, 1946, C.B.I., had power to investigate into offences committed by an officer of Central Government.

26. In the case on hand, when investigation was commenced, Sri M.V. Reddy, the then Collector of Central Excise, was an officer of Central Government. At first instance, Sri M.V. Reddy was arrayed as accused and there was investigation into offence alleged against him under the provisions of Prevention of Corruption Act. The investigation did not conclusively prove commission of offences by Sri M.V. Reddy, therefore, C.B.I., decided not to file chargesheet against him.

27. Thus, we find C.B.I., had power and jurisdiction to investigate into the matter, in terms of Section 5 of the Delhi Special Police Establishment Act, 1946. After completion of investigation, it was found investigation did not conclusively prove Commission of offences by Sri M.V. Reddy, therefore chargesheet was filed

against petitioners. In these circumstances, it cannot be said C.B.I., had deliberately included Sri M.V. Reddy, the then Commissioner of Central Excise to circumvent the provisions of Section 6 of the Delhi Special Police Establishment Act, 1946. For these reasons, I answer this point against petitioners.

28. In view of foregone discussion, I hold there are no grounds to quash proceedings and there is no legal bar to continue proceedings against petitioners before Court below. Accordingly, these two petitions are dismissed. The observations made herein shall not be read as expression of opinion on merits of the case.