

(1997) 12 MAD CK 0105

In the Madras High Court

Case No : Criminal O.P. No"s. 16713 to 1617 of 1997

M/s. A.B.C. Imports and Exports

APPELLANT

Vs

Assistant Director, Enforcement Directorate, Madras

RESPONDENT

Date of Decision : 09-12-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309, 482
Foreign Exchange Regulation Act, 1973 — Section 52, 57

Citation : (1997) 12 MAD CK 0105

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : A Raghunathan, for the Appellant;

Judgement

1. The prayer in all these petitions is to stay all further proceedings in E.O.C.C. Nos. 523, 522, 520, 521, and 519 of 1993 on the file of the

Additional Chief Metropolitan Magistrate, E.O. II, Egmore, Madras, pending disposal of Appeal Nos. 615, 618, 620, 621, and 617 of 1992

before the Foreign Exchange Regulation Appellate Board, New Delhi.

2. The facts that are relevant for the disposal of these applications are these :

By Order dated 12-11-1992 the Special Director, Enforcement Directorate imposed total penalties of Rs. 15 (sic) lakhs; Rs. 2,00,000/-; Rs.

1,00,70,000/-; 7,50,000/-; 1,35,000/-; on the petitioners herein respectively and called upon them to pay the said penalties within 45 days of the

receipt of the said order. The order was served on the petitioners in Nov. 1992. However, the penalty imposed were not paid despite the expiry

of 45 days. Therefore, reminder notices were also served on the petitioners in August 1993. Hence, the Assistant Director, Enforcement

Directorate filed the complaints against the petitioners u/s 57 of the Foreign

Exchange Regulation Act, 1973. These cases were taken on filed in

E.O.C.C. Nos. 523, 522, 520, 521 and 519 of 1993 respectively by the Additional Chief Metropolitan Magistrate, Madras.

3. In the meantime, the petitioners applied to the Reserve Bank of India for extension of time for payment of penalty since certain amounts in

foreign exchange were due by buyers for materials exported by the petitioners, and the same had not been realised within the stipulated period.

However this request was turned down. This necessitated the petitioners to file writ petition in this High Court to quash the order dated 2-7-1988

of the Reserve Bank of India.

4. During the pendency of the above writ petition, adjudication proceedings were also initiated. After the complaints were taken on file, the

petitioners had filed petitions before the trial Court for postponement of the commencement of the trial till the disposal of the writ petition. The trial

Court passed orders for postponement of the commencement of trial. However, on 31-7-1997, the writ petition was dismissed.

5. Even before the lodging of the above complaints in the Economic Offences Court, the petitioners filed appeals in the year 1992 itself against the

order imposing levy of penalty in the adjudication proceedings against the petitioners.

6. On the ground that appeals are pending before the Appellate Board, the petitioners filed Criminal Original Petitions before this Court for

quashing the said proceedings u/s 482 of the Code of Criminal Procedure. Initially, the above CRL. O.Ps. were admitted and stay ordered but

ultimately, the said quashing petitions were also dismissed since there was no bar to the institution of the complaints.

7. It is obvious on perusal of the petitions, grounds and other records filed along with them, that appeals before the Appellate Board were filed in

the year 1992 and they are still pending. Having failed in their attempts to stall the proceedings in the criminal prosecution by filing of writ petition

and consequent stay orders by the trial Court and the quashing applications, now the petitioners have approached this Court for simpliciter stay as

the commencement of trial in all these complaints has become imminent.

8. The only ground urged in all these petitions requesting stay of the proceedings in the above referred criminal prosecutions is that the appeals

before the Appellate Board pending from the year 1992 would become infructuous if the trial in the lower Court is taken up and the matters are

disposed of. It is further contended by the learned counsel that if the petitioners succeed in their appeals, the instant prosecutions against them

would not any longer be maintainable.

9. It is relevant to note in this context that against the imposition of penalty, as admitted by the petitioners in these applications, the appeals have

been filed in the year 1992 itself. The very same issue had been raised in the quashing applications filed earlier in this Court and the finding

ultimately given by this Court while dismissing those applications is that there was no bar to the institution of the complaints and that they can be

proceeded with. It is also mentioned in these petitions that the appeals being of the year 1992, there are fair chances of the same being taken up

for hearing in the near future. However, in my view, as found in the earlier quashing applications, the proceedings initiated by the respondent in the

year 1993 could not in any way be stalled merely because the appeals against the orders of imposition of penalty are pending.

10. It is significant to note at this juncture, that already the petitioners had availed of the stay from the trial Court pending disposal of the writ

petition before this Court and the stay of the proceedings pending disposal of the earlier quashing applications. After the disposal of the writ

petition and the earlier quashing applications, the stay pending disposal of the appeals before the Foreign Exchange Regulation Appellate Board,

New Delhi, would in my view, tantamount to disturbing the findings given in the earlier quashing applications.

11. Mr. Raghunathan, learned counsel would cite a decision held by the Division Bench of this Court in *The Assistant Director, Enforcement*

Directorate and Another Vs. Hameed Jahuffer alias S.A. Hameed and Another, wherein, it has been observed as follows :

We consider it necessary to point out that the right of appeal provided u/s 52 of the Act and the right of launching a prosecution u/s 57 of the Act

have to be harmoniously construed so as to ensure that neither the right of appeal u/s 52 of the Act against an order of adjudication and the right to

seek an order from the appellate authority to dispense with the pre-deposit of the penalty imposed are rendered illusory nor the right of the

authorities u/s 57 of the Act to launch prosecution against the party who fails to deposit the penalty as per the order of adjudication is affected.

On the strength of this observations learned counsel for the petitioners would contend that the prosecution u/s 57 of the Act pending the appeal u/s

52 of the Act would defeat the result of the order that would be passed by the Appellate Board. However, in my view, the above referred

observation by the Division Bench would not in any way help the petitioners since the very same Division Bench has made an observation, by

which, importance was stressed upon the filing of such applications to request the Board to dispose of the appeals at an early date. The relevant

observations are as follows :

Whatever may be the considerations in such cases, atleast in a case where the appeal has been presented within the period of limitation and with a

further application under the second proviso to Section 52 of the Act praying for disposing with the deposit of the penalty levied, the Appellate

Board is obliged to dispose of the claim made and that too within a reasonable period.

Therefore, it is for the petitioners to request the Appellate Board for early disposal of the appeals which were filed in the year 1992 and in the

event of the appeals being allowed by the Board, then the petitioners could very well point out to the trial Court to establish that the prosecutions

would not stand.

IIA. In this context, I must refer yet another observation made by the Division Bench in the above Judgment, which reads as follows :

We make it clear that the criminal Court shall be, within its rights, to judicially deal with the situation as pointed out by the Apex Court in P.

Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, .

12. The relevant observations of the Apex Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, reads as follows (Para 6) :

It may be that in an appropriate case the criminal Court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary

power u/s 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it

is imminent so that it may take also into consideration the order to be passed therein. Even here the discretion should be exercised judicially and in

such a way as not to frustrate the object of the criminal proceedings. There is no rigid rule which makes it necessary for a criminal Court to adjourn

or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing

on it is pending elsewhere. But this however, has no relevance to the question of maintainability of the prosecution.

13. In the light of the above discussion, I am of the view, that the continuance of the prosecution despite the pendency of the appeals before the

Appellate Board need not be stalled further. Therefore, the ground urged in these petitions seeking the stay of the proceedings before the Criminal

Court in lieu of the pendency of the appeals before the Appellate Board is not a sound one and as such, the request made on behalf of the

petitioners is liable to be rejected. Accordingly, CrI. O.P. Nos. 16713 to 16717 of 1997 are dismissed even at the stage of admission itself.

14. Petition dismissed.