(1999) 12 DEL CK 0063

In the Delhi High Court

Case No : Criminal M. (M) . No. 2884/99, 2972/99, 3092/99 and 3079/99 and Criminal M. No. 8975/99, 9086/99, 9334/99 and 9313/99

Munna Lal Khandelwal — APPELLANT

Vs

B. Hazra, Enforcement Officer
 Jitender Kalra Vs D.C. Verma, Air Customs Officer
 Madhav Saran and Narendra Gupta Vs Amlesh Chaudhary, Intelligence Officer — RESPONDENT

Date of Decision : 20-12-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Customs Act, 1962 — Section 132, 135(1)(6)
Foreign Exchange Regulation Act, 1973 — Section 5(1), 56

Citation : (2000) 1 AD 874 : (2000) 83 DLT 395 : (2000) 56 DRJ 94 : (2000) 67 ECC 757

Hon'ble Judges : M.S.A. Siddiqui, J

Bench : Single Bench

Advocate : Mr. Trilok Kumar Adv, for the Appellant; Mr. Satish Aggarwal, for the Respondent

Judgement

M.S.A. Siddiqui, J.—The petitioners Munna Lal Khandelwal, Jitendra Kalra, Madhav Saran and Narendra Gupta have filed four separate petitions u/s 482 Cr. P.C. (Crl. M. (M). Nos. 2884/99, 2972/99, 3092/99 & 3079/99). Since a common question of law is involved in the aforesaid petitions, they are being disposed of by this common order.

Facts of the Crl. M. (M.) No. 2884/99

2. On 12.9.1993, the Police intercepted a fiat car bearing registration No. PB-24-2300 and apprehended Suram Singh and Deep Chand, who were travelling in the car. A third person named Rajinder Chorkha, who was also in the car, however, managed to escape. Search of the said car by the Police resulted in the recovery of rupees fifty lacs in cash vide seizure memo dated 12.9.1993. Certain documents were also seized from the said Suram Singh and Deep Chand. Investigation into the matter was taken up by the Enforcement Directorate,

Jullundur on receipt of information from the Police Authorities. On 17.9.1993 and 18.9.1993, petitioner''s statements were recorded u/s 40 of the Foreign Exchange Regulation Act, 1973 (for short "the Act"). On completion of the investigation, a complaint u/s 56 of the Act was filed against the petitioner for the alleged violation of Section 9 and 9 read with Section 64 of the Act.

3. In the meanwhile, a show cause notice u/s 5(1) of the Act was also issued to the petitioner by the Enforcement Directorate for violation of the aforesaid offences and also for confiscation of the amount of rupees fifty lacs recovered from the aforesaid car. The petitioner contested the said adjudication proceedings and by the order No. DDE(APK)/III/05/96 dated 6.9.1996 and the addendum dated 30.1.1997 to the said adjudication order, the petitioner was completely exonerated by the Enforcement Directorate (Foreign Exchange Regulation Act), New Delhi, After the said order, the petitioner filed an application before the trial court seeking his discharge from the proceedings which was disallowed vide order dated 1.7.1999 passed by ACMM, New Delhi. Aggrieved thereby, the petitioner moved the Additional Sessions Judge, New Delhi by filing a revision petition which was also dismissed vide orders dated 12.8.1999 passed by the Additional Sessions Judge in Crl. R. No. 22/99. Not satisfied with the dismissal of the revision, the petitioner has come up before this Court u/s 482 Cr. P.C.

Facts of the Crl. M. (M.) No. 2972/99

4. On 14.6.1993, the petitioner''s wife Smt. Shashi Prabha reported at the customs counter of IGI Airport, New Delhi for getting customs clearance for the flight No. SU-557. On an inquiry by the Customs Officer, she disclosed that she was carrying US $ 9800. However, on her search US $ 16,600 were recovered from her possession. Her disclosure statement led to arrest of the petitioner. Consequently on 13.8.1993, a complaint u/s 132/135(1)(a) of the Customs Act was filed against the petitioner and his wife. By the order dated 9.4.1997, the Deputy Commissioner of Customs, IGI Airport, New Delhi ordered forfeiture of the foreign currency recovered from the petitioner''s wife and imposed a penalty of Rupees twenty thousand on the petitioner for abetting his wife in the smuggling of foreign currency. On appeal by the petitioner, the order dated 9.4.1997 passed by Deputy Commissioner of Customs was set aside by the Commissioner Customs. Thereafter ,petitioner filed an application before the ACMM, New Delhi seeking his discharge from the proceedings, which was rejected vide orders dated 1.7.1998. Aggrieved thereby, the petitioner moved the Additional Sessions Judge by filing a revision petition, which was also dismissed vide orders dated 12.8.1999. Not satisfied with the dismissal of the said revision petition, the petitioner has come up before this Court u/s 482 Cr. P.C.

Facts of the Crl. M. (M.) No. 3079/99 and 3092/99

5. On 17.5.1991, the Officers of the Directorate of Revenue Intelligence

(Headquarters), New Delhi, upon a secret information received, intercepted a maruti van bearing registration No. DL-IC-3820 and apprehended the accused Gurcharan Singh, Bhagwan Das and Praveen Kumar. Search of the said car resulted in recovery of 20 gunny packages containing 20 silver slabs, collectively weighing 310.905 kgs. valued at Rs. 20,95,499/-. Further investigation revealed that the petitioners were also involved in dealing with the smuggled silver. Accordingly, show cause notices were issued to them by the Directorate of Revenue, Intelligence, New Delhi. In the year 1991 a complaint was also filed against the petitioners under Sections 132/135(1)(b) of the Customs Act. On the complaint being filed, the Magistrate issued process against the petitioners. By the order dated 23.12.1996 passed by the Commissioner of Customs, New Delhi in case No. VIII (Head-quarter) 10/258/91/14913, the show cause notices issued to the petitioners were withdrawn on the ground that the evidence on record does not connect them with the silver seized in the case. The petitioners Narendra Gupta and Madhav Saran have filed the aforesaid separate petitions u/s 482 Cr. P.C. seeking quashing of the criminal proceedings emanating from the complaint filed against them on the ground that they have been exonerated by the order dated 23.12.1996 passed by the Commissioner of Customs, New Delhi.

6. The question for consideration is whether the prosecution against the petitioners can be sustained in view of the orders passed by the competent authorities exonerating them from the charges in question. Admittedly, all the petitioners have been exonerated by the competent authorities from the charges leveled against them. Learned counsel for the petitioners contended that the orders passed by the competent authorities have attained finality and since the very basis of the complaint has been knocked out, the petitioners'' ''prosecution on the same set of facts and evidence cannot be sustained. Reliance is placed on the decisions in P.S. Rajya Vs. State of Bihar, 1996 SCC (Cri) 897, Ramesh Kumar Vs. The State. 1985 Cri.L.J.681, Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, S.K. Sinha Vs. S.K. Shingal and another, IV- 1987(1) Crimes 842 (Delhi)M/s. Jewels of India & Others Vs. The State and Another. 1987(3)Crimes 754 (Delhi) Harbhajan Kaur Vs. Union of India & Others, 1993 JCC 447 (Delhi) G.L. Didwania and Another Vs. Income Tax Officer and Another, and Hitech Carbon Products & Anr. Vs. Inspector, Anti-Evasion Central Excise. N.D., 1999 III AD DHC 965 in support of the said contention.

7. It has to be borne in mind that a decision by a Tribunal or by a competent authority in the proper sense of the word is a decision of a departmental authority drawn on the basis of a set of facts and evidence. It bears repetition that the petitioner Munna Lal has been exonerated in the adjudicatory proceedings by the Special Director, Enforcement Director-ate (Foraging Exchange Regulation Act), New Delhi); the petitioner Jitendra Kalra has been exonerated by the Commissioner of Customs (Appeals), New Delhi and the petitioners Narendra Gupta and Madhav Saran have been exonerated by the Commissioner of Customs II, New Delhi. There is nothing on the record to show or suggest that the respondent has taken any appropriate proceedings to have

the aforesaid orders set aside in accordance with law. Thus, the aforesaid orders of the authorities mentioned above, have attained finality. Where the departmental authorities, whose task is to ensure strict compliance with the relevant provisions of a Statute are satisfied that there is ex facie no contravention of the provisions of any Act, it would be utterly unjust to force a person to face the ordeal of a trial on the same set of facts and evidence. The least that can be said in the case is that if the department does not feel aggrieved of the order of the competent authority and accepts it as final and correct, then I fail to understand as to how on the same set of facts and evidence, the department can foist criminal liability upon a person about whom it has accepted the findings of the adjudication proceedings. That apart in the case of P.S. Rajya Vs. State of Bihar (supra), it was held that the standard of proof required to establish the guilt in a criminal case is much higher than the standard of proof required to establish the guilt in the departmental proceedings. In the instant case the charges against the petitioners in the department proceedings and in the criminal proceedings are one and the same. If the charges which are identical could not be established against the petitioners in the departmental proceedings, one wonders what is there further to proceed against them in criminal proceedings. Thus, in view of the facts that the petitioners have been exonerated in the departmental proceedings, the very basis of the complaint does not exist and the petitioner''s prosecution on the same set of facts and evidence cannot be sustained. That being so, there is no prospect of the cases ending in conviction and the valuable time of the trial court would be wasted for holding the trial only for the purpose of formally completing the procedure to pronounce its conclusion on a future date. In this view of the matter, allowing the criminal proceedings to continue and thereby forcing the petitioners to face the ordeal of a trial would be an abuse of the process of law.

8. For the forgoing reasons, the petitions are allowed and the criminal proceedings emanating from the complaints filed by the respondent are quashed qua the petitioners. Petitioners'' bail bonds are discharged.