

(2016) 09 KAR CK 0069
In the Karnataka High Court
Case No : Criminal Petition No. 3411 of 2011

Panchamahal Plastics Pvt. Ltd.

APPELLANT

Vs

Dy. Commr. of C. Ex., Mangalore

RESPONDENT

Date of Decision : 20-09-2016

Acts Referred:

Citation : (2017) 346 ELT 539

Hon'ble Judges : Anand Byrareddy, J.

Bench : Single Bench

Advocate : S/Shri Bipin Hegde and K. Manjunath, Advocates, for the Petitioner;
Smt. Geetha C. and Shri N.R. Bhaskar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.— Heard the learned counsel for the petitioner. This petition is filed in the following circumstances. The complaint was filed against the petitioner under Section 200 of the Code of Criminal Procedure for the offence punishable under Section 9(1)(b), 9(1)(bb), 9(1)(bbb) and 9(1)(c) of the Central Excise Act, 1944. It was alleged that the first petitioner a firm manufacturing PVC rigid pipes falling under Chapter Sub-heading 3917.00 of the Schedule to the said Act. It was found by the respondents that the finished goods namely the rigid PVC pipes were shown as "PVC Scrap" in their books with an intention to avoid payment of excise duty. It is on verification and inspection that this mischief had come to light and accordingly proceedings had been initiated in C.C. No. 186/2002.

2. It transpires that the Magistrate had discharged the accused on the ground that there was no valid sanction obtained for prosecuting the petitioners. That order was challenged by the respondent before the Revisional Court. The Revisional Court in turn had allowed the revision petition and has remanded the matter to the Magistrate to proceed in accordance with law from the stage of framing of charges and it is that which is under challenge in this petition.

3. The learned counsel for the petitioner contends that there was no valid sanction obtained in initiating prosecution. However, there is no provision of law under which such sanction was mandatory and hence the said contention is not tenable. Secondly, it is contended that the complaint was not accompanied by an affidavit as indicated by the Supreme Court in the case of Mrs. Priyanka Srivastava and Another v. State of Uttar Pradesh and Others reported in (2015) 6 SCC 287. The said direction issued in the above said judgment was in the context of a complainant who had filed prior application under Section 154(1) and 154(3) while filing a petition under Section 156(3) should be indicated by an affidavit and that without going through such procedure in the first instance to invoke the authority of the Magistrate under Section 156(3) would lead to an abrasion. However, it is found that Section 154(1) would be attracted in respect of cognisable offences and the question of any such steps being taken under Section 154 does not arise in the present case on hand as the complaint was filed under Section 200 of the Code of Criminal Procedure.

4. Secondly, the offences alleged are non-cognisable as found from the provisions of the Central Excise Act, 1944. Therefore, the mandate as found in Srivastava's case would not apply to the present case on hand. Consequently, the petition fails and is rejected.