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**(2013) 10 CAL CK 0051**  
**In the Calcutta High Court**  
**Case No : C.R.R. No. 1986 of 2013**

Pramod Kumar Kishorpuria

APPELLANT

Vs

Superintendent of Police, CBI and Another

RESPONDENT

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**Date of Decision :** 08-10-2013

**Acts Referred:**

**Citation :** (2014) 1 CHN 298 : (2014) CriLJ 960

**Hon'ble Judges :** Joymalya Bagchi, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Joymalya Bagchi, J.—Order dated 13th September, 2012 passed by the learned Special Judge, CBI Court at Alipore, South 24 Parganas, in Special Case No. 1 of 2004 arising out of RC/7/E/96-Cal under sections 120B/420/511/468 & 471 of the Indian Penal Code and u/s 13(2) read with section 13(1D) of the Prevention of Corruption Act, 1988 has been assailed before me. The prosecution case as alleged against the petitioner is that the petitioner is the sole proprietor of M/s. Annapurna Yarn Fabric and the authorized person of M/s. Bluemenfeld Limited and had applied to the Director General of Foreign Trade, Calcutta using forged and fabricated documents for issuance of 3 separate advanced licences under Duty Exemption Export Scheme. In response thereto, one licence being No. P/K/2283861/C dated 17.02.95 for import of 210000 kgs. of duty free 100% mulberry raw silk with CIF value of Rupees 15373815/- against export obligation of 17500 kgs. of 100% mulberry raw silk made ups of FOB of Rs. 2,09,30,800/- was issued in favour of M/s. Annapurna Yarn Fabric; similar applications for two licences in the name of M/s. Bluemenfeld Limited were also made; to procure such licences, the petitioner used false and fabricated documents including false certificate purportedly authenticated and issued by The Central Silk Board, Bhagalpur; on the strength of such advanced licence, the petitioner in purported discharge of export obligations sought to export in collusion with the officials of the Customs department rags, polythene, waste cotton and other valueless items

mis-declaring them as silk made ups to various foreign exporters in order to obtain duty free import concessions under such license; pursuant to such conspiracy, on 2nd May, 1995, 4 consignments of rags, waste cotton etc. mis-declared as silk scarves and silk fabrics were sought to be exported in the name of M/s. Annapurna Yarn Fabric and similar 6 consignments of rags, polythene, waste cotton etc. mis-declared as 100% silk fabric were sought to be exported to Dubai through Calcutta port in collusion with Customs officials, however, the said consignments were seized on the suspicion of being mis-declared prior to shipment and adjudication proceedings for confiscation and penalty were initiated.

2. In respect of such fraudulent activity, F.I.R. being No. RC/7/E/96 dated 01.09.1996 against the petitioner, the officers of Customs Department and others was also registered under sections 120B/420/511/468/471 of the Indian Penal Code and investigation commenced.

3. Adjudication proceedings were decided against the petitioner and various penalties were imposed upon him and others. Appeals were preferred against the adjudication orders before the CEGAT (Customs & Excise Appellate Tribunal) Eastern Regional Bench, Calcutta.

4. During the pendency of such appellate proceeding, Kar Vivad Samadhan Scheme, 1998 (hereinafter referred to as "KVSS") under the Finance Act, 1998 was promulgated. The said Scheme came into force on 01.09.1988 and, inter alia, provided for settlement of disputes related to tax arrears under "direct tax enactment" and/or "indirect tax enactment" and also provided for immunity from institution of proceedings for prosecution under such "direct tax enactment" or "indirect tax enactment" or from the imposition of penalty under any of such enactments in respect of matters covered by such settlement. Section 88 of the Act provided for making of a declaration by a declarant of his intention to pay a sum as assessed by the Designated Authority in settlement of claims arising out of tax arrears. On payment of amount so stipulated by the Designated Authority, the latter would issue a certificate u/s 90(3) of the Act which would grant immunity from institution of prosecution as provided in section 91 thereof. Such immunity was however subject to exceptions engrafted u/s 95 of the Act.

5. In the instant case, on 26 October, 1998 the petitioner submitted declaration under KVSS in respect of tax arrears which was the subject-matter of the appellate proceedings. In terms of such declaration, the designated authority gave intimation to the petitioner to deposit the sum specified by it u/s 90(1) of the said Act and the petitioner upon depositing such sum, the authority issued certificates dated 07.01.1999 and 11.01.1999 (wrongly typed as 11.01.1998) respectively u/s 90(3) read with section 91 of the said Act. The aforesaid certificate granted the following immunity under the said Scheme is set out hereinbelow:

Now, therefore, in exercise of the powers conferred by sub-section (2) of section

90 read with section 91 of the Finance (No. 2) Act, 1998, the designated authority hereby issues this certificate to the said declarant-

(a) certifying the receipt of payment from the declarant towards full and final settlement of tax arrears, determined in order dated 23.12.1998 on the declaration made by the aforesaid declarant;

(b) granting immunity, subject to the provisions contained in the Scheme, from instituting any proceeding for prosecution for any offence under Custom Act, 1962 (specify enactment) or from the imposition of penalty under said enactment, in respect of matters covered in the aforesaid declaration made by the declarant.

6. In the meantime, upon conclusion of investigation, charge-sheet dated 24.12.1998 u/s. 120B/420/511/468 and 471 of the Indian Penal Code and u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act had already been submitted against the petitioner and others including officials of the Customs Department before the learned Chief Judicial Magistrate, Alipore, South 24-Parganas who took cognizance of the said offences and issued summons upon the accused persons. Thereafter, on 21.07.2000, prayer was made to transfer the case to the Court of the learned Judge, Special Court, Alipore as such court was the appropriate forum to try offences punishable under the Prevention of Corruption Act, 1988.

7. On 11th September, 2000, the learned Magistrate directed the case records to be sent to the Court of the learned Sessions Judge, Alipore for necessary orders. On 16th September, 2000, learned Sessions Judge, Alipore passed an order directing the learned Magistrate to hand over the charge-sheet to the prosecuting agency to do the needful as per law. On 22nd September, 2000, the learned Magistrate passed order permitting the prosecuting agency to take back the charge-sheet from the records. Pursuant thereto, on 07.02.2001 charge-sheet and other papers were handed over to the prosecuting agency. Thereafter, in 2004 impugned charge-sheet was filed before the learned Special Court, Alipore, South 24-Parganas under Sections 120B/420/511/468/471 of the Indian Penal Code with Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act against the petitioner and other accused persons.

8. Before the trial Court, the petitioner prayed for discharge inter alia on the ground that they were the declarants under KVSS and therefore they enjoyed immunity from the institution of the impugned prosecution as provided u/s 91 of the said Scheme. The trial Court dismissed such prayer on the ground that the allegations in the impugned charge-sheet disclosed grave offences of forgery and conspiracy with public servants to obtain undue favour punishable under sections 120B/420/511/468/471 and u/s 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988 to which immunity under KVSS did not extend.

9. This order has been challenged in this proceeding.

10. Learned Counsel appearing for the petitioner submitted that the order taking cognizance by the Special Court of the alleged offences was illegal as cognizance had already been taken of the self-same offences earlier by the learned Magistrate. Hence, he submitted that cognizance taken by learned trial court was not in consonance to the provisions of the Code and void ab initio.

11. Learned Counsel further submitted that the trial Court has erred in law and failed to apply the ratio laid down in *Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi*, to the facts of the case. He submitted that the petitioner is the Declarant under KVSS and was entitled to immunity from section 91 of the said Scheme. He further submitted that the ratios in *State, CBI Vs. Sashi Balasubramanian and Another*, and *M. Natarajan Vs. State by Inspector of Police, SPE, CBI, ACB Chennai*, are distinguishable inasmuch as they related to public servants to whom such immunity was not extendable and accordingly he prayed for quashing of the impugned prosecution.

12. KVSS was incorporated in Chapter IV of Finance (No. 2) Act, 1988 and came into force with effect from 01.09.1988. Let me first examine the relevant provisions of KVSS, 1988.

13. Section 87 of the Act contains the definition Clause.

Section 87(a) of the Act defines, "declarant" as follows:-

(a) "declarant" means a person making a declaration u/s 88.

Section 87(h) and (j) of Act defines "direct tax enactment" and "indirect tax enactment":

(h) "direct tax enactment" means the Wealth-tax Act, 1957 (27 of 1957) or the Gift-tax Act, 1958 (18 of 1958) or the income tax Act, 1961 (43 of 1961) or the Interest-tax Act, 1974 (45 of 1974) or the Expenditure-tax Act, 1987 (35 of 1987);

(j) "indirect tax enactment" means the Customs Act, 1962 (52 of 1962) or the Central Excise Act, 1944 (1 of 1944) or the Customs Tariff Act, 1975 (51 of 1975) or the Central Excise Tariff Act, 1985 (5 of 1986) or the relevant Act and includes the rules or regulations made under such enactment.

14. Relevant portions of sections 88 and 89 of the Act which provides the manner of making a declaration under the Scheme reads as follows:

88. Settlement of tax payable. - Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 1998, a declaration to the designated authority in accordance with the provisions of section 89 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely:--

(f) where the tax arrear is payable under the indirect tax enactment-

(i) in a case where the tax arrear comprises fine, penalty or interest but does not include duties (including drawback of duty, credit of duty or any amount representing duty) or cesses, at the rate of fifty per cent of the amount of such fine, penalty or interest, due or payable as on the date of making a declaration u/s 88.

(ii) in any other case, at the rate of fifty per cent, of the amount of duties (including drawback of duty, credit of duty or any amount representing duty) or cesses due or payable on the date of making a declaration u/s 88.

89. Particulars to be furnished in declaration. - A declaration u/s 88 shall be made to the designated authority and shall be in such form and shall be verified in such manner as may be prescribed.

15. Section 90 lays down the manner of determination by the designated authority of the sum payable by the declarant for full and final settlement of tax arrears and the issuance of certificate in respect thereof. Section 90 is set out hereinbelow:

90. Time and manner of payment of tax arrear.--(1) Within sixty days from the date of receipt of the declaration u/s 88, the designated authority shall, by order, determine the amount payable by the declarant in accordance with the provisions of this Scheme and grant a certificate in such form as may be prescribed to the declarant setting forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrears:

Provided that where any material particular furnished in the declaration is found to be false, by the designated authority at any stage, it shall be presumed as if the declaration was never made and all the consequences under the direct tax enactment or indirect tax enactment under which the proceedings against the declarant are or were pending shall be deemed to have been revived.

Provided further that the designated authority may amend the certificate for reasons to be recorded in writing.

(2) The declarant shall pay, the sum determined by the designated authority within thirty days of the passing of an order by the designated authority and intimate the fact of such payment to the designated authority along with proof thereof and the designated authority shall thereupon issue the certificate to the declarant.

(3) Every order passed under sub-section (1), determining the sum payable under this Scheme, shall be conclusive as to the matters stated therein and no matter covered by such order shall be reopened in any other proceedings under the direct tax enactment or indirect tax enactment or under any other law for the time being in force.

(4) Where the declarant has filed an appeal or reference or a reply to the show

cause notice against any order or notice giving rise to the tax arrear before any authority or tribunal or court, then, notwithstanding anything contained in any other provisions of any law for the time being in force, such appeal or reference or reply shall be deemed to have been withdrawn on the day on which the order referred to in sub-section (2) is passed:

Provided that where the declarant has filed a writ petition or appeal or reference before any High Court or the Supreme Court against any order in respect of the tax arrear, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, furnish proof of such withdrawal along with the intimation referred to in subsection (2).

16. Section 91 of the Act provides for immunity from prosecution and imposition of penalty in certain cases:--

91. The designated authority shall, subject to the conditions provided in section 90, grant immunity from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment, or from the imposition of penalty under any of such enactments, in respect of matters covered in the declaration u/s 88.

17. Exception to such immunity is provided in section 95 of the Act, relevant portion whereof is set out hereinbelow:

95. Scheme not to apply in certain cases.--The provisions of this Scheme shall not apply--

.....

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1860), the Foreign Exchange Regulation Act, 1973 (46 of 1973), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Terrorists and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), the Prevention of Corruption Act, 1988 (49 of 1988), or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment.

18. In *Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi*, the Apex Court had the occasion of dealing with provisions of KVSS. Relying on *Sushila Rani Vs. Commissioner of Income Tax and Another*, , the Court held that the immunity u/s 91 of KVSS would extend to proceedings under any law for the time being in force. The Apex Court held as follows:

24. We have carefully gone through the Kar Vivad Samadhan Scheme, 1998 and the certificate issued by the Customs Authorities. In our opinion, the GCS is impugned from any criminal proceedings pursuant to the certificates issued

under the said Scheme and the appellants are being prosecuted in their capacity as office bearers of the GCS. As the Customs duty has already been paid, the Central Government has not suffered any financial loss. Moreover, as per the Kar Vivad Samadhan Scheme, 1998 whoever is granted the benefit under the said Scheme is granted immunity from prosecution from any offence under the Customs Act, 1962 including the offence of evasion of duty. In the circumstances, the complaint filed against the appellants is unsustainable.

25. We shall now analyse the judgment in the case of Sushila Rani (*supra*). That case also refers to the Kar Vivad Samadhan Scheme, 1998. The appellant before this Court in that case is the widow of the original assessee under the Income Tax Act, 1961 for the Assessment Year 1988-89, the appeal was pending before the Commissioner of Income Tax (Appeals) while for Assessment Years 1989-90 and 1991-92, appeals were pending before the Income Tax Appellate Tribunal. The appellant requested the Department to indicate or compute the tax arrears as per the Kar Vivad Samadhan Scheme, 1998 so that all disputes in relation to these three assessment years can be resolved. As there was no response from the Department, the appellant submitted three separate declarations under Sections 88 and 89 of the Kar Vivad Samadhan Scheme, 1998 and also pointed out the mandatory nature of Section 245 of the Act. Respondent 1, on receipt of the declarations for the three assessment years evaluated and verified the same in accordance with the provisions of the Kar Vivad Samadhan Scheme, 1998 and on being satisfied with the correctness of the declaration in every respect, issued on 26.2.1999 a statutory certificate prescribed in Form 2-A and Rule 4(a) under the provisions of Section 90(1) of the Kar Vivad Samadhan Scheme, 1998. On receipt of the said certificate u/s 90(1) of the Kar Vivad Samadhan Scheme, 1998, the appellant deposited the sum determined and demanded the issue of certificate u/s 90(2) of the Scheme for the deemed withdrawal of the appeal filed by the appellant for these years which were pending adjudication. Respondent No. 1 issued a certificate in Form 3 as required in favour of the appellant certifying the receipt of payments from the appellant towards full and final settlement of the tax arrears determined in the order dated 26.2.1999 and granting immunity from instituting any proceeding for prosecution of any offence under the Act or from imposing any penalty under the said Act. Thereafter on 11.8.1999 certificate was issued by the Department to the effect that no arrears or demand of any kind is outstanding against the appellant as per the records of the respondents. On 26.10.1999, the appellant submitted a representation requesting the respondents to refund all the amounts along with interest as per the provisions of the Act upon the finalisation of the declarations made by the appellant under the provisions of the Kar Vivad Samadhan Scheme. This claim resulted in the issue of a notice on 23.6.2000 u/s 90(1) of the Kar Vivad Samadhan Scheme calling upon the appellant to explain as to why, the certificate issued u/s 90(1) of the Scheme earlier be not amended, on the ground that the determination made by the Department for the three assessment years in question was on the Department's wrong understanding of the judgment of the

Allahabad High Court. The appellant, thereupon, filed a writ petition challenging the issuance of the notice on the ground that the same is without jurisdiction. The High Court took the view that what is under challenge in the writ petition is only a show cause notice and it would be open to the appellant to highlight the question relating to lack of jurisdiction before the Commissioner when the matter is taken up for further consideration. The High Court did not express any opinion on the facts of the case and disposed of the writ petition. Hence, the appeal by special leave. In paragraphs 6 and 8 of the judgment, this Court held (SCC pp. 701-03) (Pp. 825-826 of AIR):

6. An examination of the scheme of Sections 89, 90 and 91, KVSS would reveal that every person entitled to make a declaration under the said Scheme was obliged to submit the declaration on or before 31-1-1999; that a period of 60 days has been stipulated u/s 90(1) for the designated authority under the Scheme to determine the amount payable by the declarant and the certificate to this effect u/s 90(1) has to be granted by the designated authority after determination towards full and final settlement of the tax arrears within a period of sixty days. Thereafter, except on ground of false declaration made by the declarant, every order passed under sub-section (1) of Section 90 determining the sum payable under the scheme, is absolutely conclusive as to the matters stated thereunder and no matter covered by such order can be reopened in any other proceeding under any law for the time being in force. After this determination u/s 90(1), KVSS, another certificate is issued u/s 91, KVSS on the basis of which immunity is granted to the declarant from instituting any proceeding for prosecution for any offence under any direct tax enactment or indirect tax enactment.

8. We may notice that a certificate issued u/s 90(1), KVSS making a determination as to the sum payable under KVSS, is conclusive as to the matter stated therein and cannot be reopened in any proceedings under any law for the time being in force, except on the ground of false declaration by any declarant. Therefore, before issue of a notice, there should be satisfaction that the declarant has made a false declaration. There is no such allegation in the course of the notice issued. All that is stated is that "adjustments already made should have been taken into account when calculating the tax arrears. As such there is a mistake in calculation, which needs rectification". The whole basis of the notice is only that adjustments already made had not been taken note of. If this is the basis of the issuance of the notice and not the false declaration and that information was available with the Department even at the time of the finalisation of the proceedings u/s 90, KVSS, we fail to understand as to how the matter could be reopened at this stage. That information was already available with them and there is no false declaration in that regard. In that view of the matter, the notice issued is without jurisdiction.

26. In that view of the matter, this Court allowed the appeal, set aside the order made by the High Court by allowing the writ petition filed by the appellant and

quash the notice issued by the Department calling upon the appellant to explain as to why the order issued earlier u/s 90(1), KVSS be not amended.

27. On a reading of the judgment in the case of Sushila Rani (supra), it is clear to us that if an assessee takes the option under this Scheme, he obtains immediate immunity under any proceeding under any and all laws in force. As such the present proceedings initiated u/s 120B read with Section 420 of the Indian Penal Code are bad and ought to have been quashed with immediate effect.

19. While quashing the impugned prosecution, the Apex Court however also observed that the ingredients of the offence u/s 420 of the Indian Penal Code were not disclosed in the facts of the said case. The Apex Court held as follows:

34. Section 415 of the Indian Penal Code deals with cheating.--To hold a person guilty of cheating as defined u/s 415 of the Indian Penal Code, it is necessary to show that he has fraudulent or dishonest intention at the time of making the promise with an intention to retain the property. In other words, Section 415 of the Indian Penal Code which defines cheating, requires deception of any person (a) inducing that person to: (i) to deliver any property to any person, or (ii) to consent that any person shall retain any property OR (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person, anybody's mind, reputation or property. In view of the aforesaid provisions, the appellants state that person may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the Section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

35. In view of the aforesaid provisions of law, as the Customs Duty has been paid by the GCS, there is no fraudulent or dishonest intention on the part of the GCS or its office bearers to retain the property. Moreover, there is no inducing on the part of the GCS or its office bearers intentionally to retain the property in view of the fact that the Customs Duty has been paid by the GCS and, therefore the ingredients of the offence of cheating are missing for issuing the process against the appellants and, therefore, the same, in our view, is liable to be quashed and set aside.

20. Subsequently, in State, CBI Vs. Sashi Balasubramanian and Another, , the self same provisions of KVSS again fell for consideration. In the said report the Apex Court considered and distinguished the ratio laid down in Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, in the following manner:

42. In Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, this Court indisputably proceeded to hold that the immunity was qua offence but Appellants therein

before this Court were the assesseees. The prosecution was also launched therein after a declaration was made.

(Emphasis supplied)

21. Analyzing the exception clause in section 95(iii) of the Act, the Apex Court held that the expression "institution of prosecution" in the aforesaid section has to be given its ordinary meaning and would relate to the date of commencement of investigation on registration of F.I.R. and not from the date of filing of the charge-sheet and taking cognizance of the offence. The Apex Court held as follows:

28. The First Information Report in regard to the offences committed, as indicated hereinbefore, was lodged on 02.03.1995. The investigation started immediately thereafter. The investigation was being carried on by the Central Bureau of Investigation (Economic Offences Wing). Only at a much later stage, namely, more than three years thereafter, i.e. on 31.12.1998, declarations were filed. Charge-sheet in the criminal case was filed on 12.04.1999.

29. It is in the aforementioned context, interpretation of the word "prosecution" assumes significance. The term "prosecution" would include institution or commencement of a criminal proceeding. It may include also an inquiry or investigation. The terms "prosecution" and "cognizance" are not interchangeable. They carry different meanings. Different statutes provide for grant of sanction at different stages.

30. "In initio" means in the beginning. The dictionary meaning of "initiation" is cause to begin. Whereas some statutes provide for grant of sanction before a prosecution is initiated, some others postulate grant of sanction before a cognizance is taken by Court. However, meaning of the word may vary from case to case. In its wider sense, the prosecution means a proceeding by way of indictment or information, and is not necessarily confined to prosecution for an offence.

31. The term "prosecution has been instituted" would not mean when charge-sheet has been filed and cognizance has been taken. It must be given its ordinary meaning.

The Apex Court further held:

36. Institution of a prosecution and institution of a complaint case in a criminal court stand on different footings. Whereas summons to an accused in a complaint case can be issued only upon taking cognizance of the offence, the same would not mean in a case where first information report has been lodged resulting in initiation of investigation or where it has been referred to police or other authorities for enquiry; even then a prosecution may not be held to have been initiated at that stage.

22. That apart, the Apex Court in the said report restricted the operation of

immunity u/s 91 of KVSS to offences relating to "direct tax enactment" or "indirect tax enactment" only and not to serious offences including offences under Prevention of Corruption Act, 1988 and held as follows:

32. The Legislature with a definite purpose thought of granting an exemption from the operation of the Act, if no prosecution is initiated under the provisions of the statute specified thereunder. Chapter DC of the Penal Code deals with public servants. Chapter XVII thereof deals with offences relating to property. Offences under other enactments are of serious nature. Thus, presumably commission of offences under the other Acts enumerated therein were considered to be serious enough by the Parliament, so as to exclude the application of the Scheme, which includes Prevention of Corruption Act.

33. In any view of the matter, an immunity is granted only in respect of offences purported to have been committed under direct tax enactment or indirect tax enactment, but by no stretch of imagination, the same would be granted in respect of offences under the Prevention of Corruption Act. A person may commit several offences under different Acts; immunity granted in relation to one Act would not mean that immunity granted would automatically extend to others. By way of example, we may notice that a person may be prosecuted for commission of an offence in relation to property under the Indian Penal Code as also under another Act, say for example, the Prevention of Corruption Act. Whereas charges under the Prevention of Corruption Act may fail, no sanction having been accorded therefore, the charges under the Penal Code would not.

The Apex Court concluded:

44. An accused may be discharged from a criminal case u/s 245 of the Code, if his civil liability has been determined in his favour; but the same must have a direct nexus with his criminal liability. He would not acquire any immunity only because civil and criminal liabilities have some connection, however, remote the same may be. The connection between the two types of liabilities must be direct and proximate. If in incurring the civil liability, he has committed offences wherewith determination thereof has no nexus, the immunity would not extend thereto.

45. We will give a simple example. A person while obtaining undue favour from an authority under the indirect tax enactment, offers a bribe. Obtaining of an undue favour resulting in prosecution under the indirect tax enactment may be a separate offence, but involvement of the public servant qua offences under the Prevention of Corruption Act would be a separate and distinct one.

23. Subsequently, in *M. Natarajan Vs. State by Inspector of Police, SPE, CBI, ACB Chennai*, the Apex Court again distinguished *Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi*, by holding that observations in *Sushila Rani Vs. Commissioner of Income Tax and Another*, which is the foundation of the ratio in *Hira Lal* (supra) must be read down to the facts of that case, wherein question of prosecution of offences in other enactments did not arise and that in *Hira Lal*'s

case the prosecution was quashed as the ingredients of cheating were not disclosed therein.

Relevant portions in the said report are set out as follows:

31. In Hira Lal's case heavy reliance seems to have been placed on the judgment of Sushila Rani v. CIT and of CBI v. Duncans Agro Industries Ltd. The learned Judges in their separate but concurrent judgments upheld the challenge and had quashed the proceedings relying on the KVSS, 1998. The learned Judges noted the various provisions of the Scheme from Sections 86 to 98. It was also noted that F.I.R. in that case was filed on 6.1.1999, while the certificate under KVSS, 1998 was issued on 19.7.1999. Hon'ble Lakshmanan, J. in paragraph 23 observed: ( Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, )

23. It is thus crystal clear that the Commissioner of Customs (Adjudication) and Designated Authority (KVSS-98) granted immunity from instituting any proceeding for prosecution for any offence under the Customs Act, 1962, or from the imposition of penalty under the said enactment, in respect of matters covered in the aforesaid declaration made by the declarant. After hearing the case of the GCS, as already noticed, the Collector of Customs, Bombay held that the GCS was liable to pay the customs duty but in view of the activities of the Society and the bona fides of the Society, and considering the charitable and philanthropic activities of the Society, no prosecution was recommended. Moreover, only a token redemption fine of Re. 1 was imposed.

(Emphasis supplied).

In paragraph 25, the learned Judge analyzed the judgment in Sushila Rani Vs. Commissioner of Income Tax and Another, , which was also under the KVSS, 1998. Paragraphs 6 and 8 of Sushila Rani's case were quoted by the learned Judge which suggested that once a certificate was granted u/s 90(1), it was absolutely conclusive as to the matter stated and no matter covered could be reopened in any other proceeding under any law for the time being in force. It is probably on the basis of observations in paragraph 6 of Sushila Rani's case, that the learned Judge made the observation in paragraph 27 of Hira Lal's case which we have already quoted in para. 20 of this judgment. We may at this stage itself point out that the observations in paragraphs 6 and 8 in Sushila Rani's case seem to have been made only in the pursuance of tax laws. The question of prosecution under some other offences (not under the Indirect Tax Act or the Direct Tax Act) was not there.

.....

34. It may be noted further that in Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, the learned Judge had specifically found that there was no prima facie material as regards the offences under Sections 120B and 420 of the Indian Penal Code and that was also the reason why the prosecution was quashed. Such is not the case here. It cannot again be forgotten that in Hiralal's case the

immunity was granted to the tax-payer whereas the appellant in the present case was neither an applicant u/s 90(1) nor was any immunity granted to him specifically. This aspect whether the immunity could be granted and could be enjoyed by any other person than the one who had made a declaration u/s 88 and was granted the immunity was considered in the subsequent judgment of this Court.

24. Hence, it cannot be said that in the aforesaid decisions the ratio in Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, was not followed only on the premise that the accused in the said cases were public servants and not a declarant under the Scheme.

25. Coming to the instant case, I find that the allegations in the impugned prosecution disclose that the petitioner had intentionally and dishonestly used forged and fabricated documents and thereby committed offences of forgery punishable under Sections 468 and 471 of the Indian Penal Code. The allegations also disclose that the petitioner in conspiracy with public servants obtained undue benefits in the process of exportation punishable u/s 120B, I.P.C. read with section 13(2)/13(1)(d) of Prevention of Corruption Act, 1988. Hence, it cannot be said that the allegations in the instant case do not disclose ingredients of serious offences of forgery and Prevention of Corruption Act, 1988. In State, CBI Vs. Sashi Balasubramanian and Another, , the Apex Court explained the ratio in Hira Lal Hari Lal Bhagwati Vs. C.B.I., New Delhi, and held that the immunity u/s 91 of the Act would not extend to serious offences under other enactments, particularly, Prevention of Corruption Act, 1988. Same view is reiterated in M. Natarajan Vs. State by Inspector of Police, SPE, CBI, ACB Chennai, . On the other hand, in Hira Lal (supra) the Court held that the ingredients of the offence of cheating was not disclosed. As discussed earlier, such is not the case here. Ingredients of grave offences of forgery and Prevention of Corruption Act are disclosed in the facts of the case. Hira Lal's case is therefore clearly distinguishable on facts and, applying the ratio in Sashi Balasubramanian (supra), and M. Natarajan (supra) I am of the opinion that the immunity granted under KVSS would not extend to prosecution of grave offences of forgery or Prevention of Corruption Act so as to justify quashing of the impugned prosecution.

26. It is trite law that when prosecution relate to grave and serious offences involving mental depravity or moral turpitude including offences under Prevention of Corruption Act it would amount to grave miscarriage of justice and perversion of the majesty of rule of law if such prosecutions are quashed on the premise that the loss has been subsequently replenished pursuant to a subsequent compromise between parties (see Gian Singh Vs. State of Punjab and Another, . Such wholesome principle of criminal jurisprudence cannot be lost sight of while interpreting scope and ambit of immunity to criminal prosecution under statutory schemes like KVSS. A broad and all encompassing interpretation of immunity granted u/s 91 of the Act would be against public policy and militate

against the sovereign duty of the State to prosecute wrong doers of grave and serious crimes involving corruption and moral turpitude and must yield to the strict interpretation of granting immunity from prosecutions of offences directly related to direct or indirect tax enactments only and not relate to grave offences under other enactments including Prevention of Corruption Act, 1988 committed in course of such transaction as held in State, CBI Vs. Sashi Balasubramanian and Another, and M. Natarajan Vs. State by Inspector of Police, SPE, CBI, ACB Chennai, .

27. Moreover in the instant case impugned prosecution was instituted before the declaration was made. In State, CBI Vs. Sashi Balasubramanian and Another, , the Apex Court analyzed the exception clause in the Scheme contained in section 95(iii) of the Act and held that the term "prosecution" also includes an enquiry or investigation. Institution of a complaint and institution of a prosecution in a criminal court are on different footings. Although summons can be issued only on taking cognizance of the offence in a complaint case, the same may not mean in a case where F.I.R. has been registered resulting in an initiation of investigation, a prosecution has not been instituted at that stage. In other words, for the purposes of interpretation of the exception clause in Section 95(iii) of KVSS, initiation of prosecution of offences enumerated therein ought to relate to the commencement of investigation on registration of F.I.R. and not upon cognizance of an offence on a charge-sheet.

28. In the instant case, F.I.R. was registered and investigation commenced in 1996 much prior to the promulgation of KVSS in September, 1998. Applying the aforesaid interpretation as enunciated in State, CBI Vs. Sashi Balasubramanian and Another, , the impugned prosecution had already been instituted with registration of F.I.R. and commencement of investigation thereon in 1996 much prior to making of declaration u/s 88 of the Act in October, 1998 and the impugned prosecution would have been saved under the exception clause contained in Section 95(iii) of the Act.

29. The other argument advanced on behalf of the petitioner that the cognizance taken by the Special Court is illegal, is wholly without any substance. Impugned prosecution relates to offences punishable under the Prevention of Corruption Act. The learned Magistrate was not competent to try such offence and he rightly returned the charge-sheet to the prosecuting agency for filing the same before the appropriate court.

30. Initial order of cognizance by the learned Magistrate is void ab initio. Therefore, the cognizance of Special Court cannot amount to a second cognizance in law in respect of the self-same offences. Furthermore, delay in filing the charge-sheet afresh before the Special Court does not render the prosecution invalid inasmuch as the limitation engrafted u/s 468 Criminal Procedure Code, 1973 do not apply to the impugned prosecution which relates to grave offences of forgery and Prevention of Corruption Act, 1988.

31. For the aforesaid reasons, I do not find any merit in this petition and the same is accordingly dismissed.

32. There shall be no order as to costs. The trial Court is directed to proceed with the case as expeditiously as possible without granting unnecessary adjournments to the parties.