

**(2000) 11 CAL CK 0042**  
**In the Calcutta High Court**

**Case No :** Criminal Revisional Jurisdiction C.R.R. No. 1446 of 2000

Rajesh Kothari and Another

APPELLANT

Vs

A.S. Bandopadhyay, Superintendent of Customs (Preventive)

RESPONDENT

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**Date of Decision :** 24-11-2000

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 245(2), 401, 482  
Customs Act, 1962 — Section 108, 129, 135(1)  
Income Tax Act, 1961 — Section 276C, 277

**Citation :** (2001) 1 CALLT 485

**Hon'ble Judges :** Debiprasad Sengupta, J

**Bench :** Single Bench

**Advocate :** Mr. Ashim Roy and Mr. Somnath Banerjee, for the Appellant; Mr. Himangshu De and Mr. Saibal Mondal, for the Respondent

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**Judgement**

D.P. Sengupta, J.—The present revisional application is for quashing of a proceeding being case No. 772/96 u/s 135(1)(a)(b) of the Customs Act pending in the Court of Chief Judicial Magistrate, Barasat, North 24 Parganas.

2. On the basis of a complaint lodged by the present opposite party the aforesaid proceeding was initiated, it was alleged in the complaint that acting on an information on 7th August, 1996 a strict surveillance was kept on the baggage originated from Hongkong/Singapore and in course of such surveillance one mishandled baggage carried from Dhaka was identified and its movement was monitored. Subsequently on 8th August, 1996 one Anup Ghosh, holder of Indian Passport, claimed the said baggage which resulted in recovery of 21,000 pieces of wrist watch worth Rs. 8,40,000/-. Since the passenger failed to produce any licit document in support of such importation, those goods were seized. Accused Anup Ghosh was thus served with a summons u/s 108 of the Customs Act. Accused Anup Ghosh made a voluntary statement, wherein he stated that the baggage was handed over to him by one MonoJ Kolhari of Hongkong with a direction to hand over the same to one Rajesh Kothari @ Pappu.

3. Thereafter in course of follow up action the house of Monoj Kothari was searched in presence of Rajesh Kothari, but nothing incriminating was recovered. The statements of both Monoj Kothari and Rajesh Kothari were recorded and both of them denied any knowledge or any movement of the seized goods. Thereafter in connection with the aforesaid seizure a show cause notice was Issued for confiscation of the seized goods to Anup Ghosh and the present petitioners.

4. In the meantime one S. Chowdhury @ Subrata Chowdhury filed a reply claiming himself as the owner of the seized goods.

5. The confiscation proceeding was adjudicated by the Deputy Commissioner of Customs (Preventive), W.B., Calcutta, who by his order dated 1.6.98 directed confiscation of the seized goods and imposed a personal penalty of Rs. 2 lakhs against Anup Ghosh and Rs. 2.25 lakhs against S. Chowdhury. However, in view of the changed circumstances a lenient view was taken in respect of Monoj Kothari and Rajesh Kothari (the petitioners) and they were simply warned for their connections with the smugglers, i.e.. Anup Ghosh and Subrata Chowdhury.

6. After the aforesaid order was passed in the Adjudication Proceeding the present opposite party filed a petition of complaint u/s 135(1)(a)(b) of the Customs Act. 1962 in the Court of learned Chief Judicial Magistrate, Barasat. The learned Magistrate by His Order dated 24.7.98 took cognizance of the offence.

7. The present petitioners thereafter moved an application u/s 245(2) of the Code of Criminal Procedure praying for discharge. The said application was rejected by the learned Magistrate by his order dated 1.3.99 Against the said order of rejection the petitioners preferred a revisional application before the learned Sessions Judge, Barasat. By an order dated 18.2.2000 the learned Additional Sessions Judge, 4th Court, Barasat dismissed the said revisional application.

8. Mr. Ashim Roy, learned Advocate appearing for the petitioners submits that during pendency of the aforesaid revisional application before the learned Additional Sessions Judge there were subsequent developments in the departmental proceeding. The learned Advocate points out that against the order passed in the adjudication proceeding accused S. Chowdhury and Anup Ghosh preferred two separate appeals and the Commissioner of Customs (Appeal), Calcutta by his order dated 9.6.99 passed the following order:

(a) The seized goods are allowed to be released to S. Chowdhury for export on payment of redemption fine of Rs. 1 lakh.

(b) The personal penalty on S. Chowdhury and Anup Ghosh reduced to Rs. 25,000/-.

9. Against the aforesaid order passed by the Commissioner of Customs (Appeal) accused Subrata Chowdhury preferred a revision u/s 129-DD of the Customs Act before the Ministry of Finance (Department of Revenue). By an order dated 6th

August, 1999 by the Joint Secretary to the Government of India, Ministry of Finance (Dept, of Revenue) allowed the said revisional application, set aside the order of personal penalty and the redemption fine. It was further directed in the said order that in case the seized goods are disposed of the sale, the sale-proceeds be returned to Subrata Chowdhury and in case those are still lying their re-export should be allowed within 4 weeks. Fine and penalty, if paid, was also directed to be refunded.

10. Mr. Roy, the learned Advocate submits that during pendency of the revisional application before the learned Additional Sessions Judge, Barasat the aforesaid subsequent events took place and the same was brought to the notice of the learned Additional Sessions Judge by filing an application. But the learned Judge dismissed the revisional application without considering the facts and circumstances of the case and the subsequent development in the departmental proceeding as aforesaid. Mr. Roy submits that in view of the finding recorded in revision by the Joint Secretary, Ministry of Finance, Department of Revenue, Government of India, prosecution of the petitioners is wholly illegal and is an abuse of the process of Court. Mr. Roy further submits that when the petitioners have been exonerated from all the charges in the departmental proceedings, then on the same facts and material, criminal proceeding cannot continue and the same should be quashed.

11. Mr. Roy, learned Advocate in support of his contention relies on a judgment of Delhi High Court reported in XI-1992(3) Crimes 777 (Delhi). In the said judgment it was held as follows :

"It is now settled by pronouncement of this Court as well as of Supreme Court that once Administrative Tribunal or Adjudicating Authority has exonerated the petitioner, then on the same facts and material criminal proceedings cannot continue and have to be ordered to be dropped. Therefore, there is no question of his seeking discharge. He is asking for quashing of these proceedings which in the eye of law are not maintainable, this to my mind, the High Court is the appropriate forum to do. The same facts and circumstances which have been gone into by the adjudicating authority and pursuance to which petitioner is exonerated I see no reason why criminal proceedings instituted against him and pending before the learned A.C.M.M. be not quashed."

12. The next judgment relied upon by Mr. Roy is reported in XI-1992 Crimes 692 (Delhi), wherein it was held by the Hon"ble single Judge of Delhi High Court as follows :--

"Admittedly the petitioner is being prosecuted on the same set of facts and circumstances, which were before the Collector of Customs at the time of his verdict he found the appellant to be innocent and exonerated him of the charge of smuggling. It thus does not appeal to the reason as to how the petitioner can be allowed to be prosecuted for the same set of facts and on the basis of the same evidence which were before the appellate authority at the time of the

adjudication."

"In the circumstances stated above, I am of the view that the petition is entitled to succeed. The petition is allowed. The complaint pending decision before the ACMM, New Delhi under sections 132 & 135(1)(a) of the Customs Act against the petitioner is hereby quashed. It is hereby ordered accordingly."

13. The next Judgment cited by G.L. Didwania and Another Vs. Income Tax Officer and Another, In the said judgment it was held by the Hon"ble Apex Court as follows :

"In the Instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the tribunal. As noted above, the assessing authority held that the appellant assessed made a false statement in respect of income of M/s. Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained,"

The whole question is whether the appellant assessed made a false statement regarding the income which according to the assessing authority has escaped assessment. So far as this issue is concerned, the finding of the Appellate Tribunal is conclusive. Therefore, as held in Uttam Chand case the prosecution cannot be sustained. Accordingly, the proceedings are quashed and the appeal is allowed."

14. Mr. Roy, learned Advocate relies on a judgment of the Hon"ble Supreme Court reported in 1996 SCC (Cri) 897 (P.S. Rajya v. State of Bihar). From a reading of the said judgment it appears that the appellant before the Apex Court was an Inspector of Income Tax. He was charged of acquisition of assets disproportionate to income. Appellant was exonerated of the charge in the departmental proceeding in the light of report of the Control Vigilance Commission. Appellant moved the High Court u/s 482 Cr.PC for quashing. High Court dismissed the application holding that issues raised before it have to be gone into in the final proceedings and those cannot be raised at the preliminary stage. Against such order of dismissal appeal was preferred in the Hon"ble Apex Court. While allowing the appeal it was held by the Hon"ble Apex Court as follows :

"Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately. the High Court took a view that the issues raised had to be gone into In the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for

our order dated 27.3.1996 for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs."

15. In deciding the aforesaid case the Hon'ble Apex Court relied upon another judgment of the Apex Court reported in 992 SCC (Cri) 426 (State of Haryana v. Bhajanlal) and was of the view that the said case can be brought under more than one heads as laid down in the case of Bhajanlal (supra).

16. Relying on the judgments referred to above Mr. Roy submits that once adjudicating authority has exonerated the petitioner, then on the same facts and materials criminal proceeding cannot continue and the same is liable to be quashed on this score alone.

17. Mr. Himangshu Dey, learned Advocate appearing for the opposite party submits that any finding arrived at in any departmental proceeding cannot stand in the way of any criminal prosecution. The two proceedings are completely separate and independent from each other. In support of his contention Mr. Dey relies on a Judgment reported in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . 1 have carefully gone through the said judgment and in my considered opinion the said judgment does not have any manner of application in the present case. In the aforesaid case the only point for consideration before the Apex Court was whether prosecution for offences punishable u/s 276C and section 277 of the Income Tax Act and u/s 193 and 196 of the Indian Penal Code instituted by the department while the reassessment proceedings under the Act are pending, are liable to be quashed on the ground that such proceeding was not maintainable. In such circumstances it was held by the Hon'ble Apex Court that pendency of the reassessment proceeding cannot act as a bar to the institution of the criminal prosecution for offences punishable under the aforesaid section. There is no provision in law which provides that a prosecution for the offence in question cannot be launched until reassessment proceeding initiated against the assessee is completed. The facts and circumstances of the present case are completely different from that which was decided by the Hon'ble Apex Court. In the present case the confiscation proceeding was adjudicated by the Deputy Commissioner of Customs (Preventive), Calcutta, by His order dated 1.6.98 directed confiscation of the seized goods and imposed a personal penalty upon the two accused persons, namely, Anup Ghosh and Subrata Chowdhury. So far as the present petitioners are concerned they were exonerated of the charges and were simply warned for their connection with the aforesaid two persons. Against the order passed in the adjudication proceeding as aforesaid accused Subrata Chowdhury and Anup Ghosh preferred two separate appeals and the Commissioner of Customs (Appeal) Calcutta by his order dated 9.6.99 directed the seized goods to be released to S. Chowdhury for re-export on payment of redemption fine of Rs. 1 lakh. The personal penalty on the said two accused persons was reduced to Rs. 25,000/-. Against the aforesaid order accused Subrata Chowdhury preferred a revision before the Ministry of Finance (Department of Revenue) and by an order dated 6.8.99 by the Joint Secretary to

the Government of India. Ministry of Finance (Department of Revenue) allowed the said revisional application set aside the order of personal penalty and the redemption fine. It was further directed that in case the seized goods are disposed of by sale, the sale proceeds be returned to Subrata Chowdhury and in case those are still lying their re-export should be allowed within 4 weeks. Fine and penalty, if paid, was also directed to be refunded. I have carefully gone through the orders passed by the authorities in the departmental proceedings. In my considered opinion when the two principal accused, namely. Subrata Chowdhury and Anup Ghosh were exonerated of all the charges, there is no reason why the criminal proceeding against the present petitioners, who were earlier exonerated of the charges against them in the confiscation proceeding before, the Dy. Commissioner of Customs should be allowed to continue.

18. I have heard the learned Advocates of the respective parties. I have perused the judgments relied upon by the learned Advocates of the respective parties. I have also perused the papers which are annexed to this revisional application. In my considered opinion this is a fit case for interference by this Court. Relying on the judgments of the Hon''ble Apex Court as also all other High Courts, I am of the view that once the adjudicating authority has exonerated the petitioners, on the same facts and materials criminal proceedings should not be allowed to continue. The revisional application is accordingly allowed and the impugned proceeding, in so far as the present petitioners are concerned, is hereby quashed.

19. Application allowed