(1990) 07 MAD CK 0004

In the Madras High Court

Case No : Criminal M.P. No. 7749 of 1986

R.K. Swamy, Managing Director, etc. — APPELLANT

Vs

The Assistant Director, Enforcement Directorate, Southern Zone, Madras-600 006 — RESPONDENT

Date of Decision : 27-07-1990

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Foreign Exchange Regulation Act, 1973 — Section 57

Citation : (1993) LW(Cri) 407

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : R. Venkataraman, for the Appellant; P. Rajamanickam, Public Prosecutor for Central Government on behalf of the Respondent, for the Respondent

Judgement

Arunachalam, J.—In this petition filed u/s 482 Code of Criminal Procedure the prayer is to call for the records and quash the proceedings

pending against the Petitioner in C.C. No. 907 of 1986 on the file of the Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Madras, as

not maintainable and an abuse of process of court.

2. The only ground on which the proceedings are sought to be quashed is, that the Petitioner had filed an appeal before the Foreign Exchange

Regulation Board, New Delhi, against the penalty imposed in adjudication by the Enforcement Directorate, Madras, and till a decision was

rendered by the appellate Board, the continuance of prosecution would not only be unjust, but would be against equity and good conscience.

3. Mr. R. Venkatraman, learned Counsel appearing for the Petitioner, contented that in respect of three violations, adjudication orders were

passed on 29-7-1985 by the Enforcement Directorate, Madras for two of such violations, the Petitioner had paid the penalty but in respect of third

penalty of Rs. 11.000/- the Petitioner preferred an appeal on 11-9-1985 with an application for stay of the impugned order imposing penalty. The

papers were received by the appellate Board on 17-9-1985. Meanwhile, the Respondent had issued a show cause notice to the Petitioner as to

why prosecution should not be instituted for non-payment of penalty, punishable u/s 57 of the Foreign Exchange Regulation Act the Petitioner

replied by a letter dated 18-10-1985. bringing to the notice of the Respondent, about the pendency of his appeal against the order of adjudication

and the stay petition, which was part thereof by communication dated 6-1-1986 the appellate Board informed the Petitioner that his appeal had

been numbered as 484 of 1985. There was no communication with regard to the petition for stay. On 30-1-1986 the Respondent filed the

complaint before the trial magistrate. It appears that at a later point of time, the appellate Board directed the Petitioner to pay half of the amount of

penalty imposed by the original authority and that was also deposited. There is no dispute that on 30-5-1988 the Appellate Board dismissed the

appeal of the Petitioner, while halving the penalty imposed by the Enforcement Directorate, Madras. The learned Counsel for the Petitioner

strenuously contended that when a statutory right of appeal has been provided under the Act, if the authorities were to act in dire lethargy, the

prosecution should not be allowed to be instituted, for in the event of the success in the appeal, there can be no reversal of the verdict in the

prosecution, which by then would have terminated. He referred to the decision on the Supreme Court in Collector of Customs, Calcutta Vs. East

India Commercial Co. Ltd., or the proposition, that on principle the appellate order was the operative order after the appeal was disposed of on

the basis of the rule that the decree of the lower court merged in the decree of the appellate court, on the same principle it would not be incorrect

to say that the order of the original authority got merged in the order of the appellate authority, whatsoever its decision was. The argument certainly

appears attractive, but S. 57 of the Act punishes persons, who fail to pay the penalty within 45 days prescribed for payment of the penalty

imposed, by the adjudicating authority. The offence is complete on non-payment within that period of 45 days. It may be that in certain cases hardship may be caused to the accused. But the law laid down by the Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer,

Tuticorin, is that a mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution

of the criminal proceedings. The learned Counsel sought to distinguish the said decision, since it related to re-assessment proceedings under the

income tax Act wherein certain offences under the Indian Penal code were also involved. On a question of principle, I am unable to hold

differently. Further S. Natarajan J. as he then was, in Crl.M.P. No. 2288 of 1980 (A.S.G. Jothimani Nadar v. Deputy Director, Enforcement

Directorate, Madras) had held, that under the F.E.R. Act, it was obvious that a criminal prosecution was an independent proceeding; not

dependent upon the validity of the order of adjudication, nor was it a continuation of that adjudication proceeding. The Courts cannot legislate and

have to interpret only the Law as found in the statute. This Court in the exercise of its discretion, had stayed the prosecution for quite length of time

within which time the statutory appeal had been disposed of. The remedy, if any, for the Petitioner, to have the prosecutions not initiated, till the

disposal of the statutory appeals will be at the doors of the Legislature and not before this Court. On facts, it is seen that the appeal has also been

dismissed. It will be open to the Petitioner to take all the pleas available to him before the trial Magistrate. With these observations, this petition is

dismissed.

