
(2012) 11 SC CK 0076

In the Supreme Court Of India

Case No : Criminal M.P. No. 10934 of 2012 in Writ Petition (Criminal) No. 57 of 2011 and W.P. (Criminal) No. 95 of 2011

Sayyed M. Masud

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Customs Act, 1962 — Section 135, 135(1)

Citation : (2012) 286 ELT 339

Hon'ble Judges : Altamas Kabir, C.J.; Surinder Singh Nijjar, J; J. Chelameswar, J

Bench : Full Bench

Advocate : Mukul Rohatgi and Indu Malhotra, Saurabh Kirpal, G.K. Sarkar, Malabika Sarkar and D. Mahesh Babu, for the Appellant; Harin Raval, ASG, Rajeev Awasthi, A.C. Singh, Arvind Kumar Sharma and B. Krishna Prasad, for the Respondent

Final Decision : Partly Allowed

Judgement

1. Criminal Miscellaneous Petition No. 10934/2012 in Writ Petition (Crl.) No. 57 of 2011: Criminal Miscellaneous Petition No. 10934 of 2012 has been filed on behalf of the Union of India in the instant writ petition for modification/vacation of the interim Order passed by this Court in the writ petition on 11th March, 2011. The writ petition had been filed, inter alia, on the question as to whether an offence u/s 135 of the Customs Act, 1962, would be bailable. The same will be evident from Paragraph (1) of the writ petition. However, in the writ petition itself reference has also been made to investigation undertaken under the provisions of the Foreign Exchange Management Act, 1999, and the Prevention of Money Laundering Act, 2002, as far as the Petitioner and his Company, M/s. City Limouzines (India) Limited, were concerned. of course, the main prayer in the writ petition was for the issuance of a writ of mandamus to declare the offence u/s 135(1) of the Customs Act, 1962 as a bailable offence, which question was, at that point of time, pending determination in Writ Petition (Crl.) No. 74 of 2010, titled as Choith Nanikram Harchandani v. Union of India and Ors. It may be

indicated that, subsequently, in the case of Om Prakash and Another Vs. Union of India (UOI) and Another, , this Court held that offences under the Customs Act were bailable.

2. It is on the basis of such averments and submissions made that we were given the impression that the alleged offences in respect of which the writ petition had been filed were confined to the provisions of the Customs Act alone. However, in the petition for stay of arrest, the Petitioner prayed for stay of arrest in connection with the subject-matter of File No. T-119-B/2009/AD (MDB) RKP//ECIR/65/MZO/2010. Having regard to the context in which the writ petition was alleged to have been moved, we had, by our Order of 11th March, 2011, stayed the arrest of the Petitioner in connection with the subject-matter of the said file, presuming that the same would be relating to the offences under the Customs Act, 1962.

4. However, in the petition for vacating the said interim order, it has now been brought to our notice that the subject-matter of the said file has nothing to do with the offences under the Customs Act but under the provisions of the Foreign Exchange Management Act, 1999, and Prevention of Money Laundering Act, 2002, referred to hereinabove, in respect of which we have not expressed any opinion regarding the bailability of offences thereunder. The subject-matter of the writ petition, as has also been submitted today, being confined to the question of bailability in respect of offences under the Customs Act, we allow the petition for vacating the interim order and dispose of Writ Petition (Crl.) No. 57 of 2011 by indicating that, as far as the Petitioner's submission with regard to the provisions of the Customs Act is concerned, the same stands covered by the decision of this Court in Om Prakash & Anr, [supra]. We also indicate that the interim order regarding stay of arrest in connection with the file, referred to hereinabove, is vacated and the Respondents would be permitted to proceed in accordance with law as far as the offences under the said file are concerned.

Writ Petition (Crl.) No. 95 of 2011:

5. On behalf of the Petitioner, Mr. Mukul Rohatgi, learned senior Counsel, prays for some time to file rejoinder affidavit. Let the matter be adjourned for a period of four weeks to enable such rejoinder to be filed. A copy of such rejoinder affidavit is to be made available to the learned advocate for the Respondents, at least, a week before the next date.