(1976) 04 MAD CK 0025

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 177 of 1976

S.G. Sohanraj APPELLANT

Vs

Assistant Collector of Central Excise RESPONDENT

Date of Decision : 14-04-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 246
Gold (Control) Act, 1968 — Section 97

Citation : (1976) 46 CompCas 661

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : K.A. Panchapakesan, for the Appellant; K.M. Srirangan, for Central Gvernment Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Natarajan, J.—This criminal miscellaneous petition raises an interesting question regarding the inhibition, contained in Section 97 of the Gold

(Control) Act, 1968, to a court taking cognisance of offences under that Act.

2. The petitioner was a licensed pawn-broker and also a dealer under the Gold (Control) Act. On October 30, 1972, certain Inspectors of the

Central Excise checked the pawn-broker''s shop of the petitioner at No. 138/B, Chengalneerodai Street, Big Conjeevaram, and seized gold

ornaments weighing 866.800 grams including primary gold of 10.100 grams. Thereafter, the residential premises of the petitioner at No. 138/C,

Chengalneerodai Street, was also searched and gold ornaments weighing 721.900 grams were seized. Lastly, the officers visited the licensed shop

of the petitioner at 14, Big Kamala Street, Big Conjeevaram, and seized certain accounts. As per accounts, the stock of gold ornaments in the shop should have been 1,870 grams, but when the iron safe in the shop was opened, it did not contain any ornaments.

3. The petitioner made representation to the Assistant Collector of Central Excise stating that since repairs and white washing, etc., were being

carried on in his shop, he had to remove the gold ornaments, etc., to his house and pawn-broker''s shop and that he had not committed any

contravention of the provisions of the Gold (Control) Act. Notwithstanding this explanation, a show-cause notice was issued to the petitioner and,

eventually, the adjudication by the Collector of Central Excise was that the petitioner had contravened Section 6(2) and Section 55 of the Gold

(Control) Act. A penalty of Rs. 1,500 was imposed for the contraventions and the petitioner was given an option to pay a redemption fine of Rs.

4,000 and redeem the gold ornaments.

4. Independent of the adjudication proceedings, a criminal complaint was filed in the court of the Chief Judicial Magistrate, Chingleput, against the

petitioner after obtaining the authorisation of the Collector of Central Excise in this behalf. The complaint referred to the commission of offences by

the petitioner u/s 6(2) and Section 55 of the Gold (Control) Act. However, after examining four witnesses, the learned Magistrate framed seven

charges against the petitioner, among which charges 2 to 6 are under sections not mentioned in the complaint. It is to quash those charges, the

petitioner has now come forward with this petition.

5. Mr. K.A. Panchapakesan, learned counsel for the petitioner, contends that Section 97 of the Gold (Control) Act prescribes the power of a

court to take cognisance of offences under the Gold (Control) Act and, as such, the learned Chief Judicial Magistrate was not entitled to frame

charges under other sections of the Act than those mentioned in the complaint. Section 97 of the Gold (Control) Act reads as follows :

Section 97. (1) Save as otherwise provided in Sub-section (2), no court shall take cognisance of any offence against this Act except on a

complaint in writing made by a Gold Control Officer, not below the rank of a Collector of Central Excise or of Customs, having jurisdiction over

the area in which the offence is committed or any person authorised by him in writing in this behalf.

(2) No court shall take cognisance of any offence against this Act committed by a

Gold Control Officer, except on a complaint in writing made

with the previous sanction of the Central Government.

6. Placing reliance on this section, the learned counsel contends that in the absence of a complaint pertaining to a specific offence under the Act,

the court is not entitled to frame a charge in respect of that offence. The argument, therefore, is that the learned Magistrate should have framed

charges only under Sections 6(2) and 55 of the Act and not under Sections 8(1)(i), 8(2)(i), 8(3), 27(7)(b) and 36 of the said Act, mentioned in

charge Nos. 2 to 6. In support of this argument, Mr. Panchapakesan places reliance on two cases, viz., Queen Empress v. Samavier, ILR[1893]

Mad 468 and In Re: Umayyathantagath Puthen Veetil Kunhi Kadir, . Both of them were cases where the validity of a sanction for prosecution of a

public servant granted u/s 197 of the Criminal Procedure Code, 1882, came up for consideration. In the former case, there was a general order of

the Board of Revenue "" sanctioning the prosecution of a Deputy Tahsildar by the Collector of the District for bribery or such of the charges as set

forth in the Deputy Collector''s report as he thought likely to stand investigation by a criminal court."" The Division Bench which decided the case

held that the sanction required u/s 197 of the Criminal Procedure Code, 1898, must be granted with reference to some specific offence with which

the accused was charged in his capacity as a public servant, and the intention of the legislature clearly was that the authority empowered to grant

the sanction should be satisfied that there were reasonable grounds for prosecuting such public servant for such offence. It was further held that the

Board had no legal power to delegate its discretion. In the latter case, the ratio that "" it would be opposed to the true intendment of Section 196 of

the Criminal Procedure Code (1898), for the local Government, by its order to give its legal or other advisers a roving power to determine under

what sections proceedings should be taken "", was confirmed. On the basis of these decisions, the argument advanced is that the court should

confine the framing of charges only to the offences mentioned in the complaint and not frame charges in respect of other offences not raised in the

complaint.

7. On a consideration of the matter, I am clearly of the opinion that the contentions are not tenable. No doubt, Section 97 of the Gold (Control)

Act lays down that no court is entitled to take cognisance of any offence under the Act except on a complaint in writing made by a competent Gold

Control Officer. That restriction, however, cannot be taken to mean that the court is bound to take cognisance of only those offences which are

made mention of in the complaint. Once a valid complaint regarding contravention of the provisions of the Gold (Control) Act has been taken on

file by a Magistrate, he has to proceed in accordance with the provisions of Part B of Chapter XIX of the Code of Criminal Procedure, viz., cases

instituted otherwise than on police report. Section 246 of the Code lays down that when, after taking evidence or at any previous stage, the

Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under that Chapter, which the

Magistrate is competent to try and which could, in his opinion, be adequately punished by him, he should frame, in writing, a charge against the

accused. There is no restriction u/s 246 in the matter of framing charges against an accused. It, therefore, follows that on the taking on file of a

complaint, preferred by a qualified officer of the Central Excise against an accused of commission of one or more offences punishable under the

Gold (Control) Act, the Magistrate is entitled to consider the evidence and frame as many charges as necessary for contravention of the Act

notwithstanding the fact that the complaint makes mention of only one or more of the offences. To accept the argument of the learned counsel

would indeed lead to difficulties. If, for example, a complaint preferred under the Gold (Control) Act does not make reference to any particular

offence committed by the accused, what is to happen ? According to Mr. Panchapakesan''s argument, the learned Magistrate will not be entitled to

frame a charge, because the framing of such a charge would go beyond the scope of the complaint. Take, again, a case where a wrong section is

quoted in the complaint while the evidence discloses the contravention of another section of the Act. There too, according to the petitioner''s

counsel, the Magistrate will have no power to set right the mistake and frame the appropriate charge against the accused. Surely, this was not the

intention of the legislature when Section 97 of the Gold (Control) Act was enacted. All that Section 97 lays down is that, for initially taking

cognizance of an offence under the Act, there should be a complaint in writing by a competent Gold (Control) Officer. That section can never be construed to mean that the court is bound to take cognisance of only such offence or offences as are made mention of in the complaint, and it has

no power whatever to frame charges for offences not specifically referred to in the complaint, even though the evidence recorded by the

Magistrate necessitates the framing of such charges. With regard to the authorities cited by the learned counsel, they do not have any application to

the situation on hand. Section 197 of the Criminal Procedure Code is a special provision enacted for safeguarding judges, magistrates and public

servants from being prosecuted frivolously by aggrieved parties in respect of acts done by them in the discharge of their official duties. It is only in

appropriate cases where a prima facie case is made out of a misuse of official position, that sanction would be accorded for a public servant being

prosecuted. Of necessity, therefore, the Government has to apply its mind to the offence said to have been committed by the public servant before

according the sanction. It, therefore, follows that the Government cannot give an omnibus sanction, nor can the sanction given in respect of one

offence be converted into a sanction in respect of another kind of offence made out in the evidence. The requirements of Section 97 of the Gold

(Control) Act are entirely different. A complaint by a competent officer of the Central Excise Department is only to set the law in motion and invite

the court to exercise jurisdiction over the accused. The jurisdiction, when once invited, will be co-extensive with the powers of the court under the

Code of Criminal Procedure, and it cannot be a restricted or limited one.

8. It, therefore, follows that the learned Chief Judicial Magistrate is entitled to frame charges in respect of other offences also than those mentioned

in the complaint.

9. The last argument of Mr. Panchapakesan is that no offences have been committed under charge Nos. 2 to 6 since the petitioner was a licensed

pawn-broker and also a licensed dealer under the Act. This is a matter which has to be considered by the Magistrate in the trial of the case and the

matter cannot be gone into at this stage. If the petitioner is able to prove that he has not contravened any of the sections referred to in charges 2 to

6, the Magistrate will certainly acquit him. Therefore, this is not the appropriate stage for the petitioner to contend that the learned Magistrate ought

not to have framed charges Nos. 2 to 6.

10. The miscellaneous petition will accordingly stand dismissed.

