

(2006) 02 CAL CK 0010
In the Calcutta High Court
Case No : C.R.R. No. 1902 of 2003

Shakti Halder

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Customs Act, 1962 — Section 135(1)(a)(b)(i), 135(1)(a)(i), 135(1)(b), 135(1)(b)(ii)
Foreign Exchange Regulation Act, 1973 — Section 51, 56

Citation : (2006) 02 CAL CK 0010

Hon'ble Judges : Arun Kumar Bhattacharya, J

Bench : Single Bench

Advocate : Abhra Mukherjee, Mr. Timir Baran Saha and Mr. Pradip Mukherjee, for the Appellant; Himangshu De and Mr. Suman De, for the Respondent

Final Decision : Allowed

Judgement

A.K. Bhattacharya, J.—In this application u/s 401 read with section 482 Cr PC the petitioner has sought for setting aside the order dated 15.07.2003 passed by the learned Metropolitan Magistrate, 10th Court, Calcutta in case No. C-863/98 under sections 135(1)(a)(i) and 135(1)(b)(ii) of the Customs Act, 1962 and for quashing the said criminal proceeding.

2. The circumstances leading to the above application are that on 10.01.95 on search of the person of one Sukumar Sue in front of Burdwan Railway Station by the Customs Officers six pieces of gold biscuits of foreign origin, worth of Rs. 3,36,275/-, could be recovered from a cloth-bag in his hand. The said Sue was brought to Customs House, Calcutta where after thorough search the said gold biscuits were seized as he failed to produce any valid document for licit possession of the same and on a reasonable belief that those were illegally imported. During enquiry, as the name of the present petitioner transpired he was impleaded as an accused. In the adjudication proceeding the said gold biscuits were confiscated and penalty was imposed upon both the accused viz.

Sue and the present petitioner to the tune of Rs. 20,000/- and Rs. 25,000/- respectively. The appeal preferred by the present petitioner before the Commissioner of Customs (Appeals) was allowed on 05.10.99 while that of Sue was dismissed. In the said Complaint case being C-863/98 filed by the Superintendent of Customs, Preventive & Intelligence Branch, Head-quarters, West Bengal on 20.03.98 before the Court of learned Chief Metropolitan Magistrate, Calcutta, both the accused filed an application which was rejected by the learned Metropolitan Magistrate, 10th Court, Calcutta on 03.07.2002, and the revision before this Court being CRR 2126/2002 was dismissed holding that the Court of learned Metropolitan Magistrate has territorial jurisdiction to try the case. During hearing of the said CRR 2126/2002, learned advocate for the Customs Authorities, on instruction, expressed intention not to proceed against the present petitioner whereupon this Court observed that the authority will be at liberty to make such prayer before the learned trial Magistrate. On 15.07.2003 the petitioner filed an application praying for discharge as he was exonerated from all the charges in the departmental proceeding and on the self-same fact and materials the criminal proceeding cannot continue and that the learned advocate for the Customs Authorities, on instruction, submitted before this Court that they will not proceed against the petitioner which was rejected by the learned Magistrate by the impugned order dated 15.07.2003.

3. Being aggrieved by and dissatisfied with the said order, the petitioner has come up before this Court.

4. All that now requires to be considered is whether the learned Court below was justified in passing the above order.

5. Mr. Mukherjee, learned counsel for the petitioner, relying upon the cases of *Rajesh Kothari v. A.S. Bandopadhyay*, reported in 200 Cri LR (Cal) 143, *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, *Jagmohan Jindal v. State of West Bengal*, reported in *Jagmohan Jindal and Another Vs. State of West Bengal and Another*, and *P.S. Rajya Vs. State of Bihar*, advanced argument contending that when his client was exonerated of the charges in the departmental proceeding, the criminal prosecution on the self same fact and materials should not be allowed to continue and as such not only the impugned order dated 15.07.2003 should be set aside but also the entire proceeding against his client should be quashed. Mr. De, learned counsel for the O.P., on the other hand, on referring the Special Bench decision of this Court in *M/s. Ganapati Exports Ltd. v. S. Pervez*, reported in 2004 Cri LR (Cal) 1149 and single Bench decision of this Court in *G.R. Jalan v. Bholanath Pal*, reported in 2001 Cri LR (Cal) 409 submitted that as the nature of both the proceedings is completely different and disposal of one will not amount to disposal of another the question of setting aside the impugned order and quashing the criminal proceeding does not arise.

6. To start with, the petitioner filed the application before the learned Court below on 15.07.2003 for discharge only on the ground that learned counsel for the Customs authorities during hearing of the revisional application being CRR

2126/2002 submitted that they do not want to proceed against the present petitioner and not on the other ground so agitated by the learned counsel for the petitioner before this Court.

7. Nevertheless, quashing of proceeding to prevent abuse of the process of the Court or otherwise to secure the ends of justice may be done where: (1) it appears that there is a legal bar against the institution or continuance of criminal proceeding in respect of the offence alleged e.g. absence of requisite sanction, or (2) the allegations in the FIR or the complaint even if they are taken at their face value and accepted in their entirety do not constitute the offence alleged, or (3) the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. That apart, the power to quash a criminal proceeding by this Court can be exercised very sparingly and with circumspection and that too in the rarest of the rare cases. In this connection, reference may be made to the cases of R.P. Kapur v. State of Punjab, reported in R.P. Kapur Vs. The State of Punjab, State of Haryana v. Bhajan Lal, reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, & M. Narayandas v. State of Karnataka, reported in 2004 SCC (Cri) 118.

8. One of the guidelines for quashing a proceeding as enumerated in the case of State of Haryana v. Bhajan Lal, so referred to in the case of Rajya (supra) is whether the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. In the present case the petitioner who was implicated as an accused on the basis of statement of co-accused and on whom penalty to the tune of Rs. 25,000/- was imposed in the adjudication proceeding was exonerated of the charge by the appellate authority due to want of corroborative evidence showing his involvement in the matter. The standard of proof required to establish the guilt in a criminal case is far higher than that of a departmental proceeding where preponderance of evidence is required. The charge in the departmental proceeding and in the criminal proceeding is substantially the same. So, if the charge in the departmental proceeding which is identical with the charge in the criminal proceeding could not be established due to the nature of evidence as above and he was exonerated of the charge it will possibly be of no worth to proceed against the present petitioner in the criminal proceedings. In this connection, the case of P.S. Rajya (supra) may be referred to where the appellant was proceeded u/s 5(2) read with section 5(1)(e) of the Prevention of Corruption Act, 1947, and the appellant having been exonerated in the departmental proceedings in the light of report submitted by the Central Vigilance Commission and concurred by the Union Public Service Commission, it was held that if the charge which is identical could not be established in the departmental proceedings one wonders what is there further to proceed against the appellant in criminal proceeding and as such the criminal proceeding was quashed. The case of G.L. Didwania v. I.T.O., reported in 1995 suppl(2) SCC 724 may also be relied on where the Income Tax Appellate

Tribunal set aside the finding of the assessing authority that the appellant-assessee made a false statement in respect of income of Young India Company, it was held that when the prosecution proceeding are based on the same set of facts, in respect of which the tribunal had exonerated the appellants, there can be no justification for continuing to maintain the prosecution proceeding. Similar view was taken by this Court in the case of Rajesh Kothari (supra) and Jagmohan Jindal (supra) holding that when the principal accused was exonerated of the charges in the adjudication proceeding, the criminal proceeding u/s 135(1)(a)(b) (i) of the Customs Act initiated against the accused on the self-same charges is not maintainable. In the Division Bench decision of this Court in Gopal Das Mundar v. Assistant Collector of Customs, reported in 2002(1) CHN 612 it was held:

...we should not be taken to have ruled that we hold that such a prosecution cannot lie. But all that we say that, once it appears, and it has not been disputed by the learned counsel appearing for the Customs authority that the departmental proceedings initiated by that department itself on the same set of facts has terminated in favour of the accused, it would amount to a misuse of the process of law to prosecute the accused for the same thing under the criminal law.... That being so, we are inclined to hold that the prosecution, so far it relates to the charge u/s 135(1)(b) of the Customs Act, should be quashed.

9. The fact and circumstances of the Special Bench decision of this Court in Ganapati Exports Ltd. (supra) which involved contravention of the provisions of Foreign Exchange Regulation Act, 1973 are quite different from the case on hand, as the issue fell for decision there is whether complaint u/s 56 of the Act was premature as the award of penalty was still awaited which was answered in the negative holding that the criminal proceedings initiated against the offender being different from and in addition to the proceedings initiated before an adjudicating Officer u/s 51 of the Act is maintainable. Accordingly, the said ratio of decision is not attracted here. So far as the decision of the learned single Bench of this Court in Govind Ram Jalan (supra) is concerned which involved violation of the provisions of the Gold Control Act and dismissal of appeal by the adjudicating authority due to want of jurisdiction to hear the appeal, it was on a completely different proposition and cannot squarely be applicable here.

10. In the light of the above discussion, where the tribunal found in favour of the petitioner in a particular case and set aside the departmental proceeding against him and the department also accepted the order of the tribunal as final, prosecuting that person on the basis of same set of facts before a criminal Court is manifestly unjust and amounts to persecution, and such a prosecution is liable to be quashed.

11. In the light of the above discussion, the present application be allowed. The impugned order be set aside and the criminal proceeding pending in the Court of learned Metropolitan Magistrate, 10th Court, Calcutta be quashed.

Let a copy of this order be sent down at once to the learned Court below.

Application allowed.