(2007) 05 DEL CK 0003

In the Delhi High Court

Case No : Criminal M.C. 529 of 2005 and Criminal M.A. 1765 of 2005

Shyam Sunder Bhartia and Another APPELLANT

Vs

Nct of Delhi and Another RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

BIS Act, 1986 — Section 11, 30
Constitution of India, 1950 — Article 19, 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 156, 173, 173(2), 173(8)
General Clauses Act, 1897 — Section 26

Citation : (2007) 96 DRJ 78

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : D.C. Mathur, Sidharth Luthra and Sandeep Mittal, for the Appellant; R.K. Tripathi, for R-2, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—In these petitions, inherent jurisdiction of this Court for quashing of criminal proceedings initiated through a complaint before the Metropolitan Magistrate has been invoked.

2. The respondent Bureau of Indian Standard (hereafter referred to as "BIS") was set up pursuant to a Parliamentary enactment in 1986. A complaint dated 5.9.2000 was received by it from one Deepak Gupta of M/s. Newtech International. The informant was an approved contractor specializing in water proofing treatment and handling various public projects. He alleged that for approval of materials i.e. "integral water proofing compound" carrying the trade mark "VAMIPLAS 302" (of the standard mark bureau manufactured by M/s. Vam Organic Chemicals Limited, the company which is now known as Jubilant Organosys Ltd., arrayed as accused in the proceedings), manufactured in February 2000 bearing batch No. 760001, was sought for. It was alleged that the NDMC had forwarded a sample of the product to a Research Institution for testing which led to a negative result and that the manufacturer accused was

using a license on products manufactured for the month of February 2002 despite expiry of the certificate.

3. The bids also alleged that the product was sold with its brand name VAMIPLAS mark with a standard mark through one of its authorised dealers, to the complainant Newtech International by different invoices. The bids further alleged that the articles or products in relation to which the company/manufacturer used the standard mark were supplied without a valid license. On the basis of these averments, it was alleged that the accused company and several of its functionaries including Chairman and the Managing Director and other Directors were guilty of having committed offences under Sections 11 and 30 of the bids Act 1986.

4. Learned senior counsel Mr. D.C. Mathur urged that in this case the Court ought to invoke the inherent jurisdiction and quash the proceedings for more than one reason. He submitted that according to the allegations in the complaint the offence took place some time in July-August 2000. The user Deepak Gupta, proprietor of Newtech International informed the bids by a letter dated 5.9.2000. However, the complaint was only filed on 12.9.2001. Learned Counsel relied on Section 468(2)(b) of the Criminal Procedure Code to say that the limitation for taking cognizance was one year from date of the offence. In this case, Therefore, the court could not have taken cognizance.

5. Learned Counsel next urged that the complaint was, in any case, not maintainable because the informant/aggrieved person Deepak Gupta had parallel informed the police about the alleged offence. This led to recording of an FIR being 148/2001 dated 6.7.2001. Learned Counsel submitted that the charge sheet u/s 173 Cr.P.C. was filed by the Delhi Police after due investigation. In the course of investigation, the same allegations were examined and materials which are sought to be relied by the bids in the complaint proceedings were considered. Learned Counsel submitted that the charge sheet further alleged that the petitioners were guilty of the offences under Sections 11/33 of the Bureau of Indian Standards Act; the very same provisions mentioned in the complaint.

6. Learned Counsel submitted that having regard to Sections 210 and 300 of the Code and 300, interests of justice require that accused petitioners should be made to face only one proceeding in respect of the same incident or allegation and that the complaint proceedings having been initiated at a later point in time ought not to be allowed to proceed further and should be quashed. Learned Counsel relied upon the judgment of the Supreme Court in T.T. Antony Vs. State of Kerala and Others, and submitted if the involvement of the accused in more than one incident discovered, the correct procedure is that agency/police ought to add the offence in the charge sheet/FIR, and not start an independent proceeding.

7. Mr. Tripathi, Learned Counsel for the bids opposed the petition and submitted that after receiving the complaint, the bids had the product tested and on the

basis of the report, a decision to file the complaint was taken. It was submitted that the bids is entrusted with ensuring that the standards prescribed by a law are followed and for this purpose it has independent powers to prosecute offenders for breach of provisions of the Act. Learned Counsel also contended that there was no delay in the filing of the complaint as it was filed within the period of limitation of one year. He submitted that since the bids received the complaint on 25.9.2000, it had to necessarily process the same and carry out its investigation before it could decide whether or not to initiate proceedings.

8. The above factual narrative would show that two issues arise for consideration; whether the trial in the circumstances of this case (where undeniably the same incident with the attendants facts is the subject matter of the FIR and is also the subject matter of the complaint can be allowed to proceed and whether the complaint) in this case was filed within the period of limitation prescribed.

9. To decide the first issue, it would be relevant to the concerned provisions, namely, Section 210 and 300 which read as follows:

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.--(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer u/s 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

xxxx xxxx xxxx 300. Person once convicted or acquitted not to be tried for same offence-- (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2) thereof.

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government for any distinct offence for which a separate charge might have been made against him at the former trial under Sub-section (1) of Section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged u/s 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code.

Explanation-The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.

10. In the judgment reported as T.T. Antony''s case (supra) the court was called upon to decide whether two proceedings in relation to the same incident should be permitted to continue. The first incident was recorded in an FIR - it related to a particular incident of riot. On the very same set of facts and allegations another FIR was sought to be recorded a year later by the local police. The court ruled that the subsequent FIR was not maintainable, having regard to the provisions of law and that if during course of investigation into the incident, the police formed the opinion that offences were made out in relation to the other incident made out and/or new facts arise or to add them in supplementary charge sheet.

11. The court was held as follows:

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the Court. There cannot be any controversy that Sub-section (8) of Section 173 Cr.P.C. empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narangs'' case (supra) it was, however, observed that it would be appropriate to conduct further investigation with the permission of the Court. However, the seeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rist to one

or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report u/s 173(2) Cr.P.C. it would clearly be beyond the purview of Sections 154 and 156 Cr.P.C. nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of a fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power u/s 482 Cr.P.C. or under Article 226/227 of the Constitution.

12. The ratio of this judgment has been followed in certain other cases.

13. The factual narrative would show that the information supplied by Mr. Deepak Gupta, user of the concerned product, resulted in the recording of an FIR in July 2000. Apparently, he had also complained simultaneously to the BIS. The latter took note of his complaint and proceeded independently in the matter. The materials collected by the bids were undisputedly used by the Delhi Police; Learned Counsel in fact pointed out that the test report annexed to the charge sheet formed the basis of the complaint by the BIS. Further there is no dispute that no other incident relating to any other product has been mentioned in the complaint - it was also not brought to the notice of the Court during the proceedings nor has it been adverted in the reply/counter affidavit filed by the BIS. In these circumstances, I am of the considered opinion that the rule enunciated in T.T. Antony''s case should squarely apply here. There is one more reason for this Court to follow the said decision because in this case the police filed a charge sheet on the basis of the same material after due investigation. Though, there can be no dispute with the proposition that the bids has its independent power to prosecute offenders and indeed is under a duty to do so such powers are to sub-serve the ends of justice and not subvert them. I am of the opinion that if the complaint is allowed to proceed there is a distinct possibility of such a thing happening; in any event it would lead to multiplicity of proceedings and expose petitioners to the rigor of a second trial as it were, on the same facts. On this point, I am satisfied that the petition has to succeed.

14. As far as the other question with regard to limitation is concerned, the facts show that the complaint was made in September 2000. Without going too deep into the matter it can be safely assumed that the incident occurred in June-July 2000; the informant lodged the FIR then. Such being a position mere lodging of a complaint on a later date and the time taken for its investigation, in the circumstances would not enlarge the period of limitation or stall its operation. Therefore, the complaint filed on 12th September, 2001was time barred in view of the provisions of Section 468(2)(b) of the Code.

15. In view of the above conclusions, the petitions have to succeed. They are accordingly allowed. Complaint Case 364/1/2001 is hereby quashed.