

(2010) 12 MAD CK 0064

In the Madras High Court

Case No : Criminal R.C. No's. 811 to 813 of 2005

The Assistant Director Enforcement Directorate Government
of India

APPELLANT

Vs

T.T.V. Dinakaran

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2)
Foreign Exchange Regulation Act, 1973 — Section 51, 8(1), 9(1)
Income Tax Act, 1961 — Section 56

Citation : (2010) 12 MAD CK 0064

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : M. Dhandapani, Special Public Prosecutor for Enforcement, for the Appellant; B. Kumar for A. Jenasenar, for the Respondent

Final Decision : Dismissed

Judgement

T. Sudanthiram, J.—The Petitioner and the Respondent are one and the same in all these three criminal revision petitions. The Respondent

herein is an accused in E.O.C.C. Nos. 81, 82 and 83 of 2001. The complaints were filed against the accused in all the three cases for alleged

offences under Sections 8(1) and 9(1)(a) of "The Foreign Exchange Regulation Act, 1973" (hereinafter referred to as "FERA, 1973"), punishable

u/s 56(1)(i) of the said Act r/w Sub-sections (3) and (4) of Section 49 of the Foreign Exchange Management Act, 1999. An application in each of

the three cases was filed seeking discharge on the ground that in the adjudication proceeding, on the basis of show cause notice issued against the

accused, the adjudicating authority, the Special Director , the Enforcement Directorate, had come to the conclusion that there was no case to

impose a penalty upon the accused and as such the criminal prosecution on the same set of facts could not be continued. The trial Court also

allowed the applications filed by the accused and discharged the accused u/s 245(2) Code of Criminal Procedure Challenging the said order

passed by the learned Magistrate in all the three cases, the complainant -the Assistant Director of Enforcement Directorate had preferred these

three criminal revision petitions before this Court.

2. The allegations in all the three cases in brief is that:

(i) the accused is a person resident in India, otherwise acquired Foreign Exchange US \$ 4,77,760 from persons not being authorised dealers in

Foreign Exchange and paid the same to one S. Rajoo of Malaysia which was used for purchase of shares in M/s. Micam Leather Exports Ltd.,

Chennai, remitted to the company through Bank of India, Overseas Branch, Chennai, without the previous general or special permission from the

Reserve Bank of India. (ii)The accused otherwise acquired Singapore \$.90,000 from persons not being authorised dealer in foreign exchange in

India and paid the same to one N.C. Rangesh, an Advocate and resident in Singapore through one K. Ramachandran of Singapore without the

previous general or special permission from the Reserve Bank of India. (iii)The accused a person resident in India, otherwise acquired Singapore

\$.10,00,000 from persons who were not authorised dealers in foreign exchange in India; paid the same to one S. Rajoo of Malaysia and which

was paid and used for obtaining permanent resident status for the accused without the previous permission from the Reserve Bank of India.

3. Though the learned Magistrate passed separate orders in all the three cases, the reasons for the discharge of the accused were common: I.(a)

No statement has been recorded from the accused to the effect that the accused acquired foreign exchanges from a person other than an

authorised dealer and he has invested the same in the name of S. Rajoo in M/s. Micam Leathers Exports Ltd., or in M/s. Adventure Holdings

Account.

(b). No statement has been recorded from the accused to the effect that the accused acquired 90,000 Singapore Dollars during 1994-95 from a

person other than an authorised dealer and made payments of Singapore Dollars 90,000/-during 1994-95 to Sri.N.C. Rangesh, a person resident

outside India.

(c). No statement has been recorded from the accused to the effect that the accused acquired those foreign exchanges from a person other than an authorised dealer and he has invested the same in M/s. Adventure Holdings" Account.

II. No Statement also seized in proof acquisition and payments during 1994/95 to the credit of a person resident outside India.

III. As per the allegation in the complaint, the entire case depends on the oral statements of third parties viz., N.C. Rangesh, S. Rajoo and K.

Ramachandran.

IV. It is not the case of the complainant that they are in possession of any document or other evidence implicating the accused with the commission

of alleged offence in the complaint except the oral statement of third parties. No other materials also stated to be in the possession of the

complainant in order to corroborate the alleged version of Sri.N.C. Rangesh, Sri.S. Rajoo and Sri.K. Ramachandran.

V. If in the adjudication proceedings, the authorities themselves found no basis for the charges, it cannot be said that on the same set of facts there

are grounds for prosecution without the existence of any possibility of producing any further materials to prove the charges.

4. Mr. M. Dhandapani, learned Special Public Prosecutor for Enforcement, challenging the order passed by the learned Magistrate, vehemently

and strenuously contended that the outcome of adjudication proceedings is not a bar for the criminal proceedings in view of the clear provisions

enumerated u/s 56(i) of FERA, 1973, which reads thus:

without prejudice to any award passed

The provision u/s 56 is very specific and it is different from the provision under Income Tax Act. The decision relied on by the learned Magistrate

under Income Tax Act, Customs and Exercise Act are not the decision on pari materia provision and arose out of different factual situation.

The learned Special Public Prosecutor also submitted that the position also had been made very much clear and unambiguous in view of the

decision of the Honourable Supreme Court reported in Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others, wherein

it has been observed as follows:

24. Counsel submitted that the devising of a special machinery for adjudication, the limiting of the "without prejudice" clause in Section 56 to any award of penalty and not the initiation of proceedings u/s 51 of the Act, the making of a contravention of any of the provisions of this Act as the key to both proceedings, would all indicate that an adjudication should precede a prosecution u/s 56 of the Act. There is nothing in the Act to indicate that a finding in an adjudication is binding on the court in a prosecution u/s 56 of the Act. There is no indication that the prosecution depends upon the result of the adjudication. We have already held that on the scheme of the Act, the two proceedings are independent. The finding in one is not conclusive in the other.

5. The learned Special Public Prosecutor also relied on the decision of the Honourable Andhra Pradesh High Court reported in K. Neelakanta Rao and another Vs. State of Andhra Pradesh, , wherein it has been observed as follows:

11. The Supreme Court also considered the question whether the findings of the Collector of Customs in such circumstances operate as the issue estoppel in the prosecution and answered and held that in the facts of the case that doctrine was not applicable. In that view of the matter, the Supreme Court rejected the contention that in view of the adjudication proceedings having been dropped against the concerned accused therein, the criminal prosecution of those accused must be quashed.

12. In view of this authoritative pronouncement of the Supreme Court, there is no manner of doubt that adjudication proceedings under the Customs Act irrespective of the result would not bar the criminal prosecution of the persons said to have committed the offence u/s 135 of the Customs Act.

13.....14.....

Further, with great respect, there is a logical fallacy in this contention. This contention proceeds on an assumption that a finding in adjudication proceedings is perfect and does not suffer from any infirmities and that every conceivable evidence available or which could be pressed into service has been placed before the adjudicating authority and has been properly appreciated by the authority so much so that there is no possibility of any improvement either in the presentation of the case in the criminal Court or the

appreciation of the material by the criminal Court. This apparently would be unwarranted presumption. It is not inconceivable that there may be occasions where the presentation officer before the adjudication authority might have acted negligently, might have omitted to bring on record some crucial piece of evidence which was available. The adjudication authority might have committed a serious blunder in appreciating the material. If it were so in a particular case, then it is not possible to contend that there is no chance of any improvement in the presentation of the case before the criminal Court and that there is absolutely no chance that the criminal Court may take a different view even on the basis more stringent standards of evidence.

6. The learned Special Public Prosecutor relied on yet another decision of the Honourable Bombay High Court reported in ANZ Grindlays Bank

and Others Vs. The Directorate of Enforcement and Others, , wherein it has been observed as follows: ""34. The scheme under the Act of 1973 is

without any alternative. Preventive measures are mere stringent, regard having to growing menace of foreign exchange violation. Section 56 deals

with offences and prosecutions. This section opens with the phraseology ""without prejudice to any award of penalty by the adjudicating officer

under this Act, if any person contravenes any of the provisions he shall be, upon conviction by a Court, be punishable"".

Under the present scheme of the Act, 1973, prosecutions for offences are totally independent from the penalty proceedings. The prosecutions are

not made subject to the result of those proceedings. Further Sections 53 and 55 independently provide for procedure and power of the

Adjudicating Authority. Moreover, in case of penalty, independent remedy of appeal is provided by Sections 52 and 54 of the Act of 1973.

However, in case of punishment on conviction remedy can be availed under Code of Criminal Procedure. In view of this, the submission of the

learned Counsel that the Directorate could not invoke Section 61 for launching prosecution till the completion of adjudication of penalty is totally

untenable.

7. The learned Special Public Prosecutor further brought to the notice of this Court that an appeal also had been preferred before the appellate

Tribunal in R.P. No. 1053 of 2004, challenging the order passed by the adjudicating authority, but the proceedings also has been stayed by an order of this Court in a writ petition preferred by the accused and as such the order passed by the adjudicating authority which is the subject matter of appeal has not come to a finality. The learned Special Public Prosecutor further submitted that it was not proper for the trial Court to conclude that there was no material to proceed against the accused even before the prosecution could place the material documents during trial and the learned Magistrate had erred in weighing the materials much less which was not exhibited after marking before it.

8. Per contra, Mr. B. Kumar, learned Senior Counsel appearing for the Respondent/accused submitted that the investigation by the department is common for both the (i) Adjudication proceedings, and (ii) Criminal proceedings. It is for the official to establish the case before the adjudication proceedings on preponderance of probabilities, wherein before the criminal court is to prove the case beyond reasonable doubt. The officials having failed to prove their case even in the quasi-judicial proceedings, not possible to prove their case before the criminal court wherein standard of proof is required high. The adjudicating authority on merits with an elaborate discussion held that the charges are not substantiated by material evidence. The charges levelled against the accused being one and the same and identical in both the proceedings, the adjudicating authority having exonerated the accused from the charges allowing the criminal proceedings to continue without any further materials on the side of the prosecution would amount to abuse of process of the court and it would cause a great hardship to the accused unnecessarily. The learned Senior Counsel further submitted that the decision of the Honourable Supreme Court reported in Standard Chartered Bank and Others Vs. Directorate of Enforcement and Others, should be understood in a proper perspective way. If a person is exonerated in an adjudication proceedings, the position is entirely different. In such case, in view of Section 56 of FERA, 1973, it cannot be automatically said that on any account, the criminal prosecution should proceed.

9. The learned Senior Counsel further submitted that the position had been clearly discussed and decided by the Honourable Delhi High Court in

the decision reported in 2007(1) JCC 220 (Sunil Gulati v. R.K. Vohra) and the said decision was followed by the same High Court in the decision

reported in Medisphere Marketing Ltd. Vs. Inspector Customs Preventive, in which it is observed in paragraph-11 as follows:

11. This Court views the observations Standard Chartered Bank to the effect that the finding in adjudication proceedings are not to be viewed as

binding and conclusive on the criminal proceedings, while not overruling the earlier judgments P.S. Rajya Vs. State of Bihar, , as meaning this: if the

Department is able to show the court that irrespective of the departmental/adjudication proceedings which have resulted in adjudication

proceedings, on the basis of which the conviction could be obtained in the criminal court, then and only then can it be said that the findings of the

departmental/adjudication proceedings will not bind the criminal court. If there is no other independent evidence and on the very same material

which forms the basis of the prosecution there has been an exoneration in the departmental proceedings, which has attained finality, then it will be

futile to keep the criminal proceedings on the same material pending in the criminal courts.

10. The learned Senior Counsel also submitted that as on date, the order of the adjudicating authority stands as a final order and in case, even if it

is reversed in appeal, it is open to the prosecution to proceed against the accused afresh, since as per Section 300 Cr.P.C, there is no bar for the

prosecution.

11. This Court considered the strenuous and vehement rival contentions of both parties and perused the records carefully. It is an admitted fact that

the charges levelled against the Respondent/accused in both the adjudication proceedings and in the criminal proceedings are one and the same. In

the adjudication proceedings, the accused had been exonerated. The question now that arises for consideration is "whether the exoneration of the

accused in the adjudication proceedings could be taken into consideration for discharging the accused from the criminal proceedings.

12. Section 56(1)(i) of FERA, 1973 reads as follows:

56. Offences and prosecutions:

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes any of the provisions of this Act

[other than Section 13, Cl.(a) of Sub-section (1), [Section 18, Section 18A] Cl. (a) of Sub-section (1) of Section 19, Sub-section (2) of Section

44 and Sections 57 and 58] or of any rule, direction or order made thereunder, he shall, upon conviction by a court, be punishable.

(i) in the case of an offence the amount or value involved in which exceeds one lakh of rupees, with imprisonment for a term which shall not be less

than six months, but which may extend to seven years and with fine:

13. The Honourable Supreme Court has held in the decision reported in Standard Chartered Bank and Others Vs. Directorate of Enforcement

and Others, has held that ""There is nothing in the Act to indicate that a finding in an adjudication is binding on the court in a prosecution u/s 56 of

the Act. There is no indication that the prosecution depends upon the result of the adjudication. We have already held that on the scheme of the

Act, the two proceedings are independent. The finding in one is not conclusive in the other.

14. This Court is of the view that the above observation of the Honourable Supreme Court does not preclude the jurisdiction of the criminal court

taking into consideration the reasons given by the adjudicating authority while exonerating the accused person from the charges. As far as Section

56 of the FERA, 1973, is concerned, it commences with the words ""Without prejudice to any award of penalty by the adjudicating officer....

From the words "award of penalty" it must be understood that the object is to prevent any contention that if a person is penalised by imposing

penalty by an adjudicating officer, he should not be penalised once again by criminal court amounting to "double jeopardy". Therefore, even while

no penalty is awarded the Section 56 did not mean that the prosecution must proceed on any account. This Court is of the firm view that the

Honourable Supreme Court would not have meant while rendering the judgment in the Standard Chartered Bank cited supra, that even if the

accused person is exonerated by the adjudicating authority, under any circumstance the criminal prosecution should not be quashed.

15. The Honourable Delhi High Court in its decision reported in 2007(1) JCC 220 (Sunil Gulati v. R.K. Vohra) had observed as follows:

24. Thus on the one hand we have judgments of the Supreme court in the case of Standard Chartered Bank and Ors. v. DRI (supra), Assistant

Collector of Customs Vs.L.R. Malwani (supra) and Santram Paper Mills v. Collector of Central Excise(supra) holding that departmental

proceedings and criminal cases are two independent proceedings and both can go on simultaneously. On the other hand, we have judgments of the

Apex Court in the case of G.L. Didwania and Anr. v. Income Tax Officer and Anr. (supra) and Uttam Chand v. Income Tax Officer, Central

Circle, Amritsar(supra) taking a view that when there is categorical finding exonerating the person by the Tribunal/departmental proceedings which

are conclusive, prosecution cannot sustain. There may appear to be some conflict between the two views expressed in the two sets of judgments.

However, a closer scrutiny would reveal that there is no such conflict and in fact these judgments deal with different aspects.

25. The conclusion arrived at by the Andhra Pradesh High Court, in my respectful submission, after relying upon Assistant Collector of Customs

Vs.L.R. Malwani (supra), ratio whereof was misread and ignoring other judgments of the apex court would not be correct. What is needed is me

harmonious reading of all these judgments as I do not even see any contradiction. In fact, various cases of Supreme Court, note whereof is taken

above, deal with different situations. The principles which can be culled out from the aforesaid judgments, when all these judgments are read out

harmoniously, would be the following:

1. On the same violation alleged against a person, if adjudication proceedings as well as criminal proceedings are permissible, both can be initiated

simultaneously. For initiating criminal proceedings one does not have to wait for the outcome of the adjudication proceedings as the two

proceedings are independent in nature.

2. The findings in the departmental proceedings would not amount to res judicata and initiation of criminal proceedings in these circumstances can

be treated as double jeopardy as they are not in the nature of ""prosecution.

3. In case adjudication proceedings are decided against a person who is facing prosecution as well and the Tribunal has also upheld the findings of

the adjudicators/assessing authority, that would have no bearing on the criminal proceedings and the criminal proceedings are to be determined on

its own merits in accordance with law, uninhibited by the findings of the Tribunal. It is because of the reason that in so far as criminal action is

concerned, it has to be proved as per the strict standards fixed for criminal cases before the criminal court by producing necessary evidence.

4. In case of converse situation namely where the accused persons are exonerated by the competent authorities/Tribunal in adjudication

proceedings, one will have to see the reasons for such exoneration to determine whether these criminal proceedings could still continue. If the

exoneration in departmental adjudication is on technical ground or by giving benefit of doubt and not on merits or the adjudication proceedings

were on different facts, it would have no bearing on criminal proceedings. If, on the other hand, the exoneration in the adjudication proceedings is

on the merits and it is found that allegations are not substantiated at all and the concerned person(s) is/are innocent, and the criminal prosecution is

also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue. The reason is obvious criminal complaint

is filed by the departmental authorities alleging violation/contravention of the provisions of the Act on the part of the accused persons. However, if

the departmental authorities themselves in adjudication proceedings, record a categorical and unambiguous finding that there is no such

contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint and say that

there is sufficient evidence to foist the accused persons with criminal liability when it is stated in the departmental proceedings that ex-facie there is

no such violation. The yardstick would, therefore, be to see as to whether charges in the departmental proceedings as well as criminal complaint

are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the

provisions of any Act.

16. The Honourable Delhi High Court in yet another decision reported in 2010 (256) E.L.T 25(Del.) (Medisphere Marketing Ltd., v. Inspector

Customs Preventive), has observed as follows:

10. In the first place it requires to be noticed that this Court in Sunil Gulati noted that the central issue in Standard Chartered Bank was whether

criminal proceedings could be launched simultaneous with departmental proceedings and that question was answered in the affirmative. The

question whether, after the criminal proceedings were launched simultaneously,

the exoneration in the adjudication proceedings would impact the pending criminal proceedings was not answered directly in Standard Chartered Bank but in the earlier judgments of the Supreme Court including Uttam Chand.

11. This Court views the observations Standard Chartered Bank to the effect that the finding in adjudication proceedings are not to be viewed as binding and conclusive on the criminal proceedings, while not overruling the earlier judgments P.S. Rajya Vs. State of Bihar, , as meaning this: if the Department is able to show the total exoneration, there is some other independent evidence, not considered in the adjudication proceedings, on the basis of which the conviction could be obtained in the criminal court, then and only then can it be said that the findings of the departmental/adjudication proceedings will not bind the criminal court. If there is no other independent evidence and on the very same material which forms the basis of the prosecution there has been an exoneration in the departmental proceedings, which has attained finality, then it will be futile to keep the criminal proceedings on the same material pending in the criminal courts.

This Court is fully agreeing with the view taken by the Honourable Delhi High Court in the decisions cited supra.

17. In view of the above ratio, though it cannot be said that if the accused person is exonerated from the adjudication proceedings by the authority, automatically the accused person should be discharged from the criminal proceedings, it must be seen whether such exoneration by the adjudicating authority was on merits and how far it is relevant in the criminal proceedings and whether any additional materials could be placed by the prosecution in the criminal proceedings.

18. In the instant cases, the adjudicating authority had observed as follows:

97. In regard to SCN-XXV, the point stressed by the department was that Shri Rajoo who had remitted US \$.4,77,760 for investment in M/s.

Micam Leather Exports Ltd., had no means for investing such amount. One of the documents, viz., Sl. No. 4 of the relied upon documents, was

the share application form duly signed by Shri Rajoo and Shri Rajoo had admitted in his statement that he had only signed the form. At the time of

making the statement before the officer of the Enforcement, he stated that the

required amount in foreign exchange was provided by the noticee.

However, in his letter addressed to Shri A.D. Narayanan, Assistant Director, copy of which was furnished by the noticee during the course of the

proceedings, he clearly indicated that the amount invested by Shri Rajoo in M/s. Micam Leather belonged to him only. This fact when read with

the share application form clearly demonstrates that the noticee was not involved in the transaction. Further, except for the statements of Shri

Rajoo and Rangesh, there exist no other documents evidencing that the noticee had paid the foreign exchange of US \$ 4,77,760 to Shri S. Rajoo

of Malaysia. It is also a proven record that Shri Rajoo had suffered financial background to make such investments. In the circumstances, the

charges in SCN-XXV are not proved for want of evidences to substantiate the same.

98. In regard to SCN-XXVI relating to making of payment of Singapore \$ 90,000, the noticee was alleged to have otherwise acquired and paid

the same to Shri N.C. Rangesh through Shri Ramachandran of Singapore. Shri Ramachandran, in his statements, deposed that he received the

amount from the noticee and, thereafter, paid the same to Shri Rangesh by cheque of P.O.S.B. Bank, Singapore. However, despite his

undertaking, Shri Ramachandran could not furnish details of the amount deposited into the bank account after receiving the same from the noticee

and further the details of the cheque issued favouring Shri Rangesh. Further, Rangesh, in his statements, stated that he had received the payments

totalling Singapore \$.90,000 to Singapore \$. One lakh in several instalments. While he did not specify the exact amount received by him as legal

fees, according to Shri Ramachandran, he had issued cheque for the said amount. The above discrepancies weaken the whole case and render it

unsustainable for want of specific documentary evidences. In this case also, there is no evidence to prove either the otherwise acquisition or

payment of Singapore \$ 90,000 by the noticee. Considering the evidences on record, the charges in the SCN can not stand the test of legality and

scrutiny and, as such, do not survive.

99. In the matter of SCN-XXVII, the noticee is alleged to have paid Singapore \$ 10,00,000 (One million Singapore dollars) to Shri Rajoo after

acquiring the same and, thereafter, making the payment to Shri S. Rajoo of

Malaysia. Shri Rajoo invested the said amount in M/s. Adventure Holdings Pte. Ltd., Singapore for enabling the noticee to obtain Permanent Residential Status in Singapore. In this connection, the contention of the department was that Shri Rajoo had no financial standing to invest the said amount in the Singapore company and, as such, presumably only the noticee had arranged the foreign exchange to Shri Rajoo which was transferred to Singapore. As already stated, it is proved by material evidences and, on the version of Shri Rajoo himself, that he was having sufficient funds for the investment. Similar to the other cases as discussed above, in this case as well, there is no material evidence to establish that the noticee had otherwise acquired Singapore.\$10,00,000 and paid the same to Shri Rajoo. In the absence of such evidences, the charges in the SCN cannot be treated as established and are liable to be dropped.

19. The trial Court in the order of discharge independently considered the materials and further observed that it was not the case of the complainant that they were in possession of any document or other evidence implicating the accused with the commission of alleged offence in the complaint except the oral statement of third parties. No other materials also stated to be in the possession of the complainant in order to corroborate the alleged version of Sri.N.C. Rangesh, S. Rajoo and K. Ramachandran as given in the complaint. This Court noticed that the above said three person were also not cited as witnesses in the list of witnesses in the complaints, and further in the adjudication proceedings for the purpose of cross examining those persons, though steps were taken to bring them, they could not be produced by the officials.

20. The adjudicating officer also observed in his order in paragraph95 as follows:

95. Considering the evidences on record submitted by the noticee/Advocate during the course of adjudication proceedings and examining the contents of the statements of S/Shri S. Rajoo, N.C. Rangesh and K. Ramachandran, it is observed that those statements with which Shri Dhinakaran had been implicated were, in fact, self-serving statements. The noticee and his Advocates could substantively prove that the said statements suffered from inherent infirmities and facts of contradictory nature. Most of the contents are incapable of belief and not rationally acceptable. The submissions of the Advocate regarding the defects in these

statements insofar as evidentiary value is concerned, have merits.

Therefore, I am not inclined to accept the said statements as evidence. In this context, I refer to the decision of the Honourable Supreme Court in

the case of Gopal Saran, Appellant v. Satyanarayan, Respondent (AIR 9 SC 1141 - Civil Appeal No. 2747 of 1988 D/-20.2.1989), where it

was observed that the Honourable High Court remanded the case back to the trial Court directing the Plaintiff to appear before the court to

subject himself to cross-examination by the Defendant and also to produce his evidence, if any, In spite of several opportunities, the Plaintiff did

not appear before the court and submit himself to cross-examination. As the Plaintiff neither submitted himself for further cross-examination nor

produced any other evidence or witness in support of the plaint, the Defendant led defence evidence and got himself examined. The Honourable

Court, therefore, observed that since the Plaintiff failed to subject himself for cross-examination despite the directions of the court after the remand,

it would not be safe to rely on the examination-in-chief recorded which was not subjected to cross-examination. In the case of Dwarka Dass and

Others Vs. State and Others, the Honourable Jammu & Kashmir High Court observed that the right of cross-examination not only is referable to

Section 138 of the Evidence Act itself but one of the principles of natural justice is that the evidence may not be read against a party if the same has

not been given for cross-examination. Section 138 of the Evidence Act implicitly lays down that the statement of a witness would be read as

evidence against a party only if it was tested on the anvil of cross-examination or opportunity was afforded for the purpose. All witnesses are

subject to cross-examination. The right of cross-examination could not be curtailed or circumscribed on one pretext or the other or in one way or

the other, as shutting up of cross-examination would necessarily result in injustice to the cause and to the party against whom the statement is

intended to be used. It is the right of every litigant unless he gives up the same to be afforded an opportunity of cross-examining the witness whose

testimony may be used against him at the trial.

21. The learned Special Public Prosecutor also did not specifically point out what fresh materials are available to be produced before the criminal

court. In the memorandum of grounds of criminal revision petitions, the grounds

were raised mainly based on Section 56 of FERA, 1973, but the findings of the adjudication proceedings and the findings of the learned Magistrate were not specifically challenged.

22. In the appeal, if the order of the adjudication proceedings is set aside, then it is open to the complainant to proceed against the accused and it would not amount to autrefois acquit as per Section 300 Cr.P.C which reads as follows:

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 afterwards tried with the consent of ore State Government for any distinct offence for which a

separate charges 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.

23. In view of the said reasons, this Court does not find any infirmity or illegality in the order passed by the learned Magistrate discharging the accused. The criminal revision petitions are dismissed accordingly.