

(2021) 05 DEL CK 0180

Delhi High Court

Case No: Civil Miscellaneous (Main) No. 544 Of 2019, Civil Miscellaneous Application No. 16106, 16108, 38648 Of 2019

Directorate Of Revenue
Intelligence & Ors.

APPELLANT

Vs

Puspha L. Tolani

RESPONDENT

Date of Decision: May 27, 2021

Acts Referred:

- Customs Act, 1962 - Section 132, 135, 155, 155(1), 155(2)
- Limitation Act, 1963 - Section 3, 12, 12(1)
- Sea Customs Act, 1878 - Section 198
- Central Excise Act, 1944 - Section 40, 40(2)

Hon'ble Judges: Prathiba M. Singh, J

Bench: Single Bench

Advocate: Satish Aggarwala, U.K. Mishra, Anisha Banerjee

Final Decision: Dismissed

Judgement

„

Prathiba M. Singh, J",,,

1. This judgment has been pronounced through video conferencing.,,

2. The short question that arises in this petition is as to, what is the limitation period for filing a suit for malicious prosecution, against the customs",,,

authorities/officials, under the Customs Act, 1962.",,,

Facts,,

3. The Respondent/Plaintiff was intercepted on 19th November, 2002 by the customs authorities on her arrival from London. She was at the exit gate",,,

of the green channel at the IGI Airport, Delhi, when she was intercepted by Defendant No.1 i.e., the Petitioner No.2 in the present case. Upon being",,,

intercepted, the officer concerned seized gold/ diamond jewellery worth approximately Rs.1.27 crores from her possession. She was arrested on the",,,

same day, produced before the Additional Civil Judicial Magistrate and remanded to judicial custody.",,,

4. The adjudicating authority, vide order dated 14th August 2003, confiscated the gold/diamond jewellery worth Rs.85.52 lakhs. With respect to the",,,

remaining jewellery, she was allowed to redeem the same at Rs. 3 lakhs, upon paying a penalty of a sum of Rs.15 lakhs.",,,

5. After the lodging of the FIR, and the charges having been framed, in the trial, the Respondent was initially convicted by the Id. ACMM for offences",,,

under the Customs Act, 1962. However, thereafter, she was acquitted on 11th",,,

6. Parallely to the said adjudication, a show-cause notice which was issued to the Plaintiff by the then Assistant Director, Directorate of Revenue",,,

Intelligence, on 12th December 2002, was also challenged by the Plaintiff. This challenge was allowed by this court on 13th September 2006, and the",,,

said show cause notice was quashed. This decision of the Delhi High Court, was challenged before the Supreme Court in Civil Appeal No. 4403 of",,,

2010.,,,

7. Thus, there were two parallel proceedings which were going on - one for alleged offences under Section 132 and 135 of the Customs Act, and the",,,

second being the adjudicatory proceedings arising out of the show-cause notice.,,,

8. Post her acquittal by the Id. Sessions Judge on 11th April 2007, the Plaintiff/ Respondent, on 4th December 2007 is stated to have issued notice",,,

under Section 155(2) of the Customs Act to Defendant Nos.1 to 3, in order to claim damages and other reliefs for malicious prosecution, in a suit,",,

which was to be filed by her. There is some dispute as to whether, at this stage, notice was actually issued to the Union of India or not. The Trial",,,

court has held that the notice was issued and on this aspect no submissions have been made by Id. Counsels for the parties. This Court proceeds on,,

the basis that the notice was issued under Section 155(2) of the Act.,,,

9. The said suit for malicious prosecution was filed by her on 11th April 2008. The registry raised certain objections to the said filing, and hence the",,,

same was refiled on 18th July 2008, with some delay. After completion of pleadings, on 1st April 2013, the following issues were framed in the suit:",,

â€œ6. On the pleadings of the parties, the following issues are framed:",,

i) Whether the prosecution of the Plaintiff was not in good faith within the meaning of Section 155 of the Customs Act, 1962",,

ii) If the above issue is decided in favour of the plaintiff to what damages is the plaintiff entitled to from the defendants?,,

iii) Whether the claim in suit is within time,,

iv) Whether the plaintiff has served the requisite notice under section 155 sura and if not, to what effect?",,

v) Whether the suit is bad for misjoinder of causes of action, and if so, to what effect?",,

vi) Relief,,

7. No other issue arises or is pressed,,

8. Both the counsels state that issue No. (iii) be treated as a preliminary issue. The same has been framed on the plea that Section 155(2) of,,

the Customs Act, 1962 which provides a limitation of three months from the accrual of the cause of action and the suit has not been filed",,

within three months.â€,,

10. Thus, issue no. (iii), as to whether the claim was itself time bound, and as to whether the suit was within limitation, was directed to be treated as a",,

preliminary issue. The basis of the said issue, as recorded in the order, was the limitation period provided under section 155(2) of the Customs Act,",,

which was raised by the Defendants/Petitioners.,,

11. In the meantime, vide judgment dated 18th August 2017, the Supreme Court upheld the High Court order quashing the show-cause notice against",,

the Plaintiff, however, the Supreme Court expunged the strictures issued against the Department and its officials.",,

12. In the suit, the issue of limitation has now been adjudicated by the Trial Court and vide the impugned judgment dated 10th September 2018, the",,

issue of limitation has been decided against the Defendants and in favour of the Plaintiff in the suit. The observations of the Trial Court, in the",,

impugned judgment, are as under:",,

Now in the give facts and circumstances obviously a notice u/s 155(2) of the Act has been given before filing of the suit. Suit has been,,

filed thereafter. The construction agitated/being given that the suit has not been filed within a period of three months from the date of the,,

accrual of cause of action is only to be adopted in my humble opinion when no notice is given. Otherwise, the word "or" would be read",,,

as/ become "and" which was never the intention of the legislature. That being the scenario, the arguments advanced by DRI are not",,,

tenable.,,

!,,

Now the word the "prosecution is otherwise terminated" as per the case of the plaintiff was when she was acquitted by Id. ASJ, however",,,

it can also be said that the final date when the matter was put to rest " the order dated 18th August 2017 passed by the Hon^{ble} Apex,,

Court. That being the situation, in my opinion, I do not find any justifiable reason for dismissing the suit on the said score.",,,

The trial court has on the basis of the aforesaid reasons, upheld the maintainability of the suit. It is this order that has been challenged before this court",,,

in the present petition.,,

Submissions on behalf of the Petitioners,,

13. Mr. Mishra, Id. counsel appearing for the Petitioner Nos. 2 and 3 and Mr. Agarwala, Id. counsel appearing for Petitioner No.1, have submitted that",,,

the suit for malicious prosecution that was filed by the Petitioner is barred irrespective of whether the limitation period under Section 155(2) of the,,

Customs Act, 1962 is concerned, or limitation under the general law of the Limitation Act, 1963 is concerned.",,,

14. According to Mr. Mishra, Id. counsel, under Section 155(2), the limitation period would be three months, for filing of the said suit. In any event, he",,,

submits that one month notice has to be given. Since the suit was filed more than three months after the grant of the acquittal dated 11th April 2007",,,

the suit is clearly barred by limitation as prescribed under Section 155(2) of the Customs Act, 1962, being a special law.",,,

15. In arguendo, he also submits that under Section 3 of The Limitation Act, 1963, read with Entry 74 of the Schedule to the said Act, i.e., the",,,

limitation for filing a suit for malicious prosecution, the period of limitation is one year starting from the day when the Plaintiff was acquitted, or the",,,

prosecution is terminated. He submits that, in the present case, the acquittal took place on 11th April 2007, and the filing of the suit on 11th April 2008",,,

that is one day after the completion of one year. Thus, in his submission, the suit is barred by one day as the one-year period came to be end on 10th",,,

April 2008. Reliance is also placed on two judgments of this Court in Mohan Banerjee v. State of Delhi & Ors. [RFA 311/2011, decided on 7th",,,

December 2012] and on Akbar Ali v. State [CS(OS) 1306/2005, decided on 22nd April 2014] wherein the Id. Single Judges of this Court have",,,

computed the period of limitation as ending on the day when the one-year period expired, and starting from day of the acquittal order being rendered.",,,

He says that even a one-day delay in the filing of the suit would render the suit time barred under the provisions of The Limitation Act, 1963.",,,

Submissions on behalf of the Respondent,,

16. On the other hand, Ms. Banerjee, Id. counsel appearing for the Plaintiff/ Respondent supports the view taken by the Trial Court. It is her",,,

submission that the manner in which Section 155(2) of the Customs Act, 1962, is being read by the Defendants/ Petitioners is incorrect.",,,

17. She submits that for the purpose of the filing of a suit, the period prescribed under Section 155(2) of the Act, has no application. In her submission",,,

the said period of one month for a notice, and three months for the filing of a suit, only applies in the case of "other proceedings" and not in the",,,

case of a civil suit. In support of this submission, she relies upon the Madras High Court Judgment in Crl. R.C. (MD) Nos. 494, 495 of 2018 titled",,,

Assistant Commissioner of Customs (Prosecution) v. Job Jacob.,,,

18. She further submits that in order for 155(2) of the Act to be satisfied, the Department has to prove that the Act was done in good faith, which",,,

would require evidence. She relies upon first issue framed in the suit- in respect of whether the prosecution was in good faith or not,,

19. She also submits that the limitation, in the present case, cannot be calculated with effect from 2007, when she was acquitted as the acquittal",,,

attained finality only when the Supreme Court dismissed the SLP on 18th August 2017. The Plaintiff could have waited till the decision of the Supreme,,

Court in order to file its suit for malicious prosecution. Thus, in her submission, the suit of the Plaintiff is not barred by limitation under the provisions of",,,

the Limitation Act, 1963 as well. Finally, in arguendo, she submits that the day when the order of acquittal is passed is always excluded from the",,,

calculation of the limitation period, under the Limitation Act, and thus, in the present case, the cause of action commences on 12th April 2007 and the",,,

suit would, therefore, be within limitation, as the suit was presented on the eve of completion of one year.",,

Analysis and findings,,

20. Heard Id. counsels for the parties and perused the record. The only legal issue that arises in the present petition is as to whether the suit was filed,,

within the limitation period, under the provision of Section 155(2) of the Customs Act, 1962, as also the provisions of The Limitation Act, 1963 or not.",,

21. It is admitted by the parties that the Respondent was acquitted of all her charges, by the Id. Session Judge, on 11th April 2007. The suit for",,,

malicious prosecution, against the Petitioners/Defendants, was, thereafter, admittedly, filed by her on 11th April 2008. No submissions have been",,,

raised in respect of the re-filing of the suit post institution. Thus the date of presentation of Plaint is taken as 11th April 2008.,,,

22. In the order dated 1st April 2013, passed in the suit, when issues were framed, the issue of limitation was directed to be treated as a preliminary",,,

issue. The Id. Trial Court, vide the impugned order dated 10th September 2018 came to the conclusion that the suit is within limitation and is hence",,,

maintainable. The relevant observations of the Id. Trial Court have already been extracted above.,,,

23. The relevant legal provisions that need to be considered in the present petition are Section 155(2) of the Customs Act, 1962, and Section 3 along",,,

with Section 12, r/w Entry 74 of the Schedule of the Limitation Act, 1963.",,

24. The issue of limitation in this suit has two dimensions â€",,,

i. The first-dimension concerns the interpretation and the applicability of Section 155(2) of the Customs Act to suits and,,

ii. Secondly, whether the suit is to be held to be within limitation under Section 3 along with Section 12, r/w Entry 74 of the Schedule of the Limitation",,,

Act, 1963 and whether the suit was filed within the one-year period, provided therein, or not.",,

25. The first dimension to be considered is the interpretation of Section 155(2) of the Customs Act, 1962. For ready reference, Section 155 is set out",,

below:,,

â€œ155. Protection of action taken under the Act â€",,

(1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local",,

authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations",,

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local",,

authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a monthâ€™s",,

previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of",,

such cause.â€",,

Insofar as Section 155(1) is concerned, there is sufficient case law laying down the legal position as to the bar against filing of suits against the",,

Government or any officer thereof, when any act is done in `good faithâ€™. The question whether the suit for malicious prosecution, filed by the",,

Respondent Plaintiff, would lie on merits and whether the actions complained of were in good faith or not is not being considered in this petition, as the",,

same would have to be adjudicated on merits, depending on the decision on the preliminary issue of limitation. In this petition, only the issue of",,

limitation is being considered.,,

26. Competing stands have been urged by the parties in respect of the interpretation of Section 155(2). Broadly, the contention of the Id. counsels for",,

the Petitioners- Directorate of Revenue Intelligence, Union of India and the concerned customs officials is that, under Section 155(2) of the Customs",,

Act, notice has to be given by the initiator of the suit, within one month and the suit has to be filed within three months, from the date of accrual of",,

cause of action. The Respondent-Plaintiff, however, contends that the limitation period under Section 155(2) of the Act does not apply to suits at all.",,

27. A reading of Section 155(2) of the Act shows that, in view of the unusual and curious wording of the provision and the absence of proper",,

punctuation, several views are possible. On a broad look, there are two views and possible interpretations. The first one being, that no proceedings",,

would lie against the Government or an officer of the Government, for actions taken under the provisions of the Customs Act, except a suit. The",,

second possible view is that it only lays down the limitation period in respect of all proceedings, other than suits. Within these two broad interpretations,",,

there are further permutations and combinations that are possible. The same are set out below for the sake of clarity;,,

i) The said provision applies only to suits and no other proceedings are maintainable.,,,

ii) Section 155(2) stipulates the period of limitation for filing of suits and the provisions of the Limitation Act would not apply.,,,

iii) That for filing of a suit, one month's notice from the date of cause of action is to be given and the suit is to be filed within three months from",,

the date of accrual of cause of action;,,

iv) That for filing of a suit, one month's notice from the date of cause of action is to be given and the suit is to be filed within the period of",,

limitation under the Limitation Act;,,

v) That in the absence of a notice of one month, the suit is to be filed within three months from date of accrual of cause of action;,,

vi) Section 155(2) does not apply to suits and is only applicable to other proceedings.,,,

vii) In respect of other proceedings, the procedure would be, to give one month's notice from the date of accrual of cause and file the proceedings",,

within three months from the date of accrual of cause;,,

viii) In respect of other proceedings, the procedure in the absence of one month's notice would be, to file within a period of three months from the",,

date of accrual of a cause;,,

Since, such varying interpretations of this provision are possible, in order to arrive at the correct conclusion, it is useful to consider a provision in the",,

Sea Customs Act of 1878, which had a similar provision.",,

28. Section 198 of the Sea Customs Act, 1878, reads as under:",,

“Notice of Proceedings . No proceeding other than a suit shall be commenced against any person for anything purporting to be done,,

in pursuance of this Act without giving to such person a month’s previous notice in writing of the intended proceeding, and of the cause",,

thereof; or,,

Limitation. after the expiration of three months from the accrual of such cause”,,

29. A perusal of the above provision under the Sea Customs Act, 1878, which was the predecessor legislation to the Customs Act 1962, shows that it",,

clarifies certain aspects in the side heading itself. The first is that the provision intends to stipulate the issuance of a notice, as a compulsory pre-",,

condition under this section. The notice to be issued, herein, is of “proceedings.” The first part of Section 198 under the Sea Customs Act",,

therefore, deals with “Notice of proceedings” and the second part relates to the limitation qua such proceedings. Thus, the clear reading of",,

Section 198 of the Sea Customs Act, shows that the provision and the requirements thereto, were not meant to be applicable qua institution of suits",,

but rather to the “proceedings” that have been referred to in the provision. Suits have been specifically excluded from the broad category of,,

“proceedings” referred to in the provision, qua which a notice has to be given. No other proceedings would lie without giving one month’s”,,

notice. Once one month’s notice is issued, the proceedings would have to be initiated within a period of three months from the date of accrual of",,

the cause. However, neither the requirement of notice nor the period of limitation applies to suits. Thus, suits were maintainable independent of the",,

requirements under Section 198 of the Sea Customs Act, 1878.",,

30. A reading of Section 155(2) of the Customs Act, 1962, shows that the earlier Section (in the Sea Customs Act, 1878), has simply been merged and",,

set out in continuity. The side headings of the provision have also been omitted. A cause for confusion has thus arisen, leading to varying",,

interpretations of this provision by different Courts.,,

31. The judgment of the Madras High Court in Assistant Commissioner of Customs v. Job Jacob (supra) observes as under:,,

11. Section 155 reads that no suit, prosecution or other legal proceeding shall lie against the Government servants of either",,,

Government or local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the Rules or",,, regulations.,,,

12. Whereas the specific allegation against the respondents is that they have done certain act which is contrary to the Customs Act and the,,

Rules framed there under. It is also specifically alleged against them that the act done by these accused persons are not done with dishonest,,

intention. Thus, the scope of differing good faith gets excluded.",,,

13. In the said circumstances, the protection given under the Act which is available to Servants of either Government/local authority who",,,

have done any act in good faith and in pursuance to the provision of Customs, Act is not applicable to the respondents.",,,

14. The second limb of the provision is regarding proceeding other than the suit. The act bars commencement of action without affording,,

one month previous notice in writing or after expire of three months from the date of cause. This protection is not in respect of the suit, since",,,

the provision started with ""no proceeding other than a suit"".â€",,,

The Madras High Court in the judgment above has thus held that Section 155(2) of the Customs Act applies to proceedings other than suits.,,,

32. In Atul Dikshit v. CBI (Crl. M.C. 4143/2016, decided on 23rd January 2017), while considering the provisions of the Central Excise Act, 1973, a",,,

Id. Single Judge of this Court observed as under:,,

10. Section 40 of Central Excise Act was substituted w.e.f. 01.9.1973. The former Section reads as follows:,,

S. ""40. Bar of suits and limitation of suits and other legal proceedings- (1) No suit shall lie against the Central Government or against any",,,

officer of the Government in respect of any order, passed in good faith, or any act, in good faith, done, or ordered to be done, under this",,,

Act.,,,

(2) No suit, prosecution, or other legal proceeding shall be instituted for anything done or ordered to be done, under this Act, after the",,,

expiration of six months from the accrual of the cause of action or from the date of the act or order complained of."",,,

(Emphasis given),,

The amendment introduces important changes: - Sub-section (1) now bars not only a suit but also ""any other legal proceeding"". The",,,

protection is now in respect of things done ""in pursuance"" of this Act or Rules as against things 'under' the Act before the amendment;",,,

Sub-section (2) contains a major change. There is a bar against any proceedings, except a suit, against Central and State Government and",,,

their officers. The requirement of a notice has been introduced and the limitation period has been reduced to three months.,,,

11. Material change brought after amendment is that the word 'prosecution' earlier appearing in the former Section 40(2) of the Act has,,

since been omitted. Hon'ble Apex Court in R.Raju's case (Supra) while dealing with Section 40(2) of Central Excise and Salt Act, 1944 had",,,

held that the limitation as provided under sub-section (2) of Section 40 would be applicable as no suit, prosecution or other legal",,,

proceedings can be instituted for anything done or ordered to be done under this Act after the expiration of six months from the accrual of,,

the cause of action. Apparently in the former Act, there was specific mention under Section 40 (2) that the limitation prescribed therein",,,

would be applicable not only to 'suits' and 'other legal proceedings' but to 'prosecution' also. Apparently, the said judgment was under the",,,

unamended provisions which existed prior to 1973.,,,

12. It is to be noted that the amended Section 40 as it exists at present is Pari Materia with Section 155(2) of the Customs Act. Section,,

155(2) of the Customs Act does not prescribe any limitation for initiation of any criminal prosecution. The word 'prosecution' is,,

conspicuously missing in Section 155(2) of the Customs Act. By no stretch of imagination, it can be inferred that limitation as prescribed",,,

under Section 155(2) CrPC. would be applicable to the criminal proceedings/prosecution.â€",,,

33. In the above-mentioned judgment of Atul Dikshit (supra), the Court has taken the view that criminal proceedings would not be barred, under",,,

section 155(2) of the Customs Act, as also the amended Section 40 of the Central Excise Act, as the word prosecution is conspicuously missing in the",,

said provisions. However, this Court is currently not considering the question as to whether any criminal prosecution is maintainable or not.",,

34. Even the Kerala High Court in C.C. Baby and Ors v. Central Bureau of Investigation, Anticorruption Bureau (ACB) and Ors. (2020 (3) KHC",,

499) has, while dealing with Section 155(2) of the Customs Act, 1962, held:",,

â€œ33. Sub section (1) of section 155 of the Customs Act provides a complete bar of any suit or other legal proceedings, if the act under",,

challenge was done or intended to be done in good faith. Hence, irrespective of whether the act done was unjustifiable or illegal, or",,

otherwise could not be justified, it would be still be not cognizable, if the authority or the officer is able to establish that it was done or",,

intended to be done in good faith. Consequently, an act which otherwise could not stand the scrutiny of law, may not give rise to an action,",,

if the authority or the concerned officer is able to prove that he was not actuated by mala fides and that the act was done in good faith. On,,

the other hand, sub section (2) speaks of compliance of statutory formalities preceding the institution of any proceeding other than a suit. It",,

contemplates service of one month notice and institution of proceedings within expiry of three months from the accrual of such cause. It is,,

more in the nature of compliance of a statutory formality of giving notice and fixing of a limitation period for launching of a proceeding,,

covered by sub section (2).â€,,

35. A conjoint reading of Section 198 of the Sea Customs Act, 1878, Section 155(2) of the Customs Act, 1962, as also the judgments extracted above",,

leads this Court to the following conclusions:,,

(i) The limitation provided under Section 155(2) does not apply to suits.,,

(ii) The limitation provided under Section 155(2) applies to other proceedings.,,

(iii) For the purpose of institution of other proceedings, one monthâ€™s previous notice in writing, from the date when the cause of action arises, is",,

required.,,

(iv) None of these other proceedings can be filed after the expiration of three months from the accrual of the cause.,,

36. Therefore, insofar as a suit for malicious prosecution, i.e., a civil suit, is concerned, the period of limitation of three months, as also the requirement",,

of a notice, under Section 155(2) of the Customs Act, 1962, would not be applicable. The period of limitation for filing such a civil suit would be",,

governed by the provisions of The Limitation Act, 1963.",,

37. Coming to the issue of limitation that has been raised in terms of the provision of The Limitation Act, 1963, the relevant provisions of the said Act",,

are:,,

â€œSection 3.Bar of limitation-,,

Description of suit,Period of Limitation,Time from which period begins to

,,run

7 4 . For compensation for a

malicious prosecution xxx""",One year,"When the plaintiff is acquitted or

the prosecution is otherwise

terminated