

Rohit Agarwal Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: July 30, 1991

Acts Referred: Constitution of India, 1950 " Article 20(3)

Criminal Procedure Code, 1973 (CrPC) " Section 482

Customs Act, 1962 " Section 107, 108, 135

Evidence Act, 1872 " Section 25

Citation: (1991) 15 ACR 606

Hon'ble Judges: N.L. Ganguly, J

Bench: Single Bench

Advocate: G.S. Chaturvedi, for the Appellant;

Final Decision: Disposed Of

Judgement

N.L. Ganguly, J.

This application u/s 482 Code of Criminal Procedure has been filed for quashing the proceedings in Criminal Case No.

1126 of 1991, Union of India v. Rajbir Singh and Ors., u/s 135, Customs Act (hereinafter referred to as the Act), sending in the court of Special

Judicial Magistrate (Economic Offences), Allahabad. A complaint u/s 135 of the Act has been filed against the applicant in which notices have

been issued to the applicant by the Court of Special CJM (Economic Offence), Allahabad. A copy of the complaint, summoning order dated 6-5-

1991 and recovery-cum-seizure memo has been filed by the applicant. A perusal of the complaint shows that a tanker bearing registration No.

UTS 751 was intercepted on 21-12-1990 by the custom authorities and on the checking foreign goods of value of Rs. 2,40,222/- was recovered

from the said tanker. The driver and another person of the said tanker escaped and could not be arrested. One person, Rajbir Singh, was arrested

by the Custom Officer. The statement of Rajbir Singh was recorded under Sections 107 and 108 of the Act by the Customs Officer. The

applicant, Rohit Agarwal, is owner of the tanker and Rajbir Singh stated that the foreign goods seized from the tanker in question belonged to the

applicant, Rohit Agarwal.

2. The present application u/s 482 Code of Criminal Procedure has been filed on the ground that the prosecution of the applicant u/s 135 of the

Act proceeding before the court of Special Judicial Magistrate (Economic Offences). Allahabad cannot legally proceed for want of any admissible

evidence against the applicant. It is stated that mere statement of Rajbir Singh who is co-accused arrayed in the case is not admissible in evidence.

As such, the proceedings in the complaint is nothing but an abuse of the process of the court and the complaint also makes out no case u/s 135 of

the Act against the applicant. The applicant has also filed copies of the statement of Vijay Kumar, Manager of Sanjay Transport Company,

recorded by the Custom Officer to show that the transport company had sent tanker for transportation of molaises from Bisalpur to Majhola. The

tanker was being driven by one, Nayeem.

3. The sole question for consideration in this case is whether the prosecution of the applicant u/s 135 of the Act can proceed on the basis of the

statement recorded under Sections 107 and 108 of the Custom Act of a person who is a co-accused in the case. The question of admissibility of

statement recorded under Sections 107 and 108 of the Custom Act was considered in Harbansingh Sardar Lenasingh and Another Vs. The State

of Maharashtra and Others, , Romesh Chandra Mehta Vs. State of West Bengal, , Balkrishna Chhaganlal Soni Vs. State of West Bengal, . All

these cases considered the admissibility of the statement of proceedings in the trial of the accused. It was held by the Supreme Court that Officer

of the Custom Department is not a Police Officer and the statement recorded by a Custom Officer acting under the aforesaid Act shall not be hit

by provision of Section 25 of the Evidence Act. The Custom Officer while enquiring into a matter about suspected smuggling was simply making

enquiries. As such, the enquiries would not affect the statement of the person under Article 20(3) of the Constitution of India. It was categorically

held that the statement recorded u/s 107/108 of the Act was not that of a person accused in any offence. In view of the settled law, I do not

accept the submission of the learned Counsel for the applicant that the statement of the co-accused, Rajbir Singh u/s 107/108 of the Act was

inadmissible in evidence and the same cannot be made basis for the proceedings u/s 135 of the Act. The learned Counsel placed the entire

complaint which he has filed as annexure to the affidavit. A bare perusal of the complaint shows that prima facie allegations contained therein make

out a case for prosecution u/s 135 of the Custom Act.

4. I have heard learned Counsel for the applicant, and Shri S.P. Malviya for the complainant at length. I do not find any ground for interference in

this petition u/s 482 Code of Criminal Procedure for quashing the proceedings in the complaint. The other submission lastly made is that in case the

court comes to the conclusion that the present application u/s 482 Code of Criminal Procedure cannot be allowed, a direction be given to the court

below for considering and disposing of the bail application the same day the applicant surrenders before the court. No specific direction is called

for in this regard as the law on the point is reported in 1991 ACC 178. It is for the Counsel for the applicant to show the relevant law before the

court concerned. The petition is dismissed summarily.