

**(1991) 07 AHC CK 0092**

**Allahabad High Court**

**Case No:** Criminal Misc. Application No. 8921 of 1991

Rohit Agarwal

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**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

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**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 molasses 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](#), [Ramesh 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.