
(1978) 02 BOM CK 0013

Bombay High Court

Case No: None

State of Maharashtra

APPELLANT

Vs

Rasiklal K. Mehta and
Others

RESPONDENT

Date of Decision: Feb. 15, 1978

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: (1978) CriLJ 809

Hon'ble Judges: Sapre, J; Apte, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Apte, J.

This petition has been filed by the State of Maharashtra under Article 227 of the Constitution of India against the order passed by the Metropolitan Magistrate, 25th Court, Mazgaon on Nov. 5, 1976, staying the prosecution until the assessment proceedings were finally decided.

2. One firm styled as Kirtilal Kalidas & Co. was doing business in import and export of diamonds. The firm was registered with the Sales Tax Department.

3. Respondent No. 6 (Original Accused No. 6) was the proprietor of a concern known as M/s. India Gems. It was also registered with the Sales Tax Department.

4. During the period between Oct. 14, 1970 and March 1972 the firm of Kirtilal Kalidas & Co., effected certain transactions of sale of diamonds to the tune of Rs. 17,41,426 and they submitted their returns in respect of these sales along with Form No. 16 issued by M/s. India Gems of accused No. 6, On the basis of this Form they claimed exemption from sales tax on the above transactions. That claim was at first allowed.

5. Subsequently it appears that accused No. 6, the proprietor of M/s. India Gems, filed an affidavit before the sales tax authorities saying that though he had issued Form No. 16 produced by the other firm, he had never purchased any diamonds from that firm and that the bills which were issued were false and the transactions were bogus.

6. Then it appears that the assessment proceedings against Kirtilal Kalidas & Co. were reopened and the Sales Tax Officer held that the Form No. 16 earlier produced by them was bogus and not a genuine one with the result that he withdrew exemption from sales tax granted on those transactions. Against that order the said firm appealed to the Sales Tax Appellate Commissioner.

7. While that appeal was still pending, the Enforcement Wing of the Sales Tax Department, on the basis of the order passed by the Sales Tax Officer filed prosecution against the partners of the firm Kirtilal Kalidas & Co. as well as against accused No. 6, the proprietor of M/s. India Gems, for entering into a conspiracy to cheat the Sales Tax Department and for that purpose forging Form No. 16 and using the same as genuine which amount to offences Under Sections 120-B, 420, 467 and 471 of the I.P.C.

8. While this prosecution was pending in Criminal Case No. 47/W of 1975 before the said Magistrate, on January 28, 1976 an application was made before the Magistrate by accused No. 6 for tender of pardon u/s 306 of the Cr.PC 1973.

9. This application was supported on behalf of the prosecution but was opposed on behalf of the other accused. It is on this application that the learned Magistrate, without passing any order either as to grant of pardon or rejecting it, has passed the order to stay the proceedings of the prosecution as in his view, the prosecution was premature as it was filed before the proceedings of assessment were finally terminated. It is against this order that the State has filed this application.

10. It is contended for the State that the order passed by the learned Magistrate is grossly unjust and that the learned Magistrate has committed gross error in staying the proceedings indefinitely,

11. On the other hand, Mr. Mehta for the contesting opponents submitted that this was an interlocutory order and when u/s 397 (2) of the Cr.PC 1973, no revision was even maintainable against the interlocutory order, the petition under Article 227 of the Constitution should not be entertained. He further submitted that there was no flagrant violation of law and, therefore, the extraordinary powers under Article 227 of the Constitution which have to be sparingly used should not be used in this case. He also submitted that no ground was made out to show that there was any miscarriage of justice and that the learned Magistrate having merely stayed the proceedings till the assessment proceedings are finally disposed of, the prosecution would lose nothing by waiting till then.

12. Having given our careful consideration to the arguments on both sides and to the facts of the case and the points urged on both sides, we are of the view that the learned Magistrate has committed gross error in passing the order staying the proceedings for an indefinite period without any sufficient reason and, in particular, when there was even no motion from either party for that purpose. It is the cardinal principle of criminal jurisprudence that criminal prosecution should be disposed of without any avoidable delay and as expeditiously as possible. The object is to avoid loss of evidence by passage of time and unnecessary harassment to the accused. It is well known that if the prosecution is kept pending for an indefinite or for a very long time, important evidence may be obliterated by mere lapse of time with the result that the evidence would not be available at the time of the trial,

13. In the present case, accused No. 6 who has asked for tender of pardon is an important witness and if the prosecution is stayed indefinitely, the possibility that his evidence would either be obliterated or would not be, available to the prosecution cannot be absolutely ruled out. There are also many other possibilities as well.

14. Besides, the reasons given by the learned Magistrate for staying the proceedings of the criminal case are also not very sound. He has stated that if in the assessment proceedings ultimately it is held that document such as Form No. 16 was a genuine one, perhaps no prosecution would be launched by the enforcement wing if the prosecution has not already been launched, and if it has been launched it would be infructuous. But there is also the other possibility of the Department holding that the document is not a genuine one and in that case the prosecution would not be infructuous. Moreover, the finding given by the Department authorities in the assessment proceedings would not be binding on the Criminal Court. The Criminal Court will have to come to its own conclusion on the basis of the evidence led before it.

15. In this case as soon as the Sales Tax Officer held that the certificate was not genuine, the Enforcement Wing was justified in filing the prosecution. The view taken by the learned Magistrate that the prosecution is premature is, therefore, not correct.

16. Incidentally it is also necessary to point out that the learned Magistrate has made observations against the credibility of accused No. 6 which were at that stage unwarranted. He was yet to be granted pardon and if pardon was granted, he was to be examined as a witness for the prosecution. But even before that, the learned Magistrate has made certain remarks as to his credibility merely in view of certain statements made by the other accused in their reply to the application given by accused No. 6 for granting pardon.

17. For these reasons, in our view, the learned Magistrate ought not to have stayed the prosecution. The prosecution is not premature in the sense that any conditions

precedent to the institution of the prosecution have not been fulfilled.

18. In our view, the learned Magistrate has certainly committed manifest error which has resulted in injustice in staying the prosecution for an indefinite period, because as we have already pointed out, it is likely to result in injustice to the prosecution as well as to the defence,

19. We, therefore, make the rule absolute, set aside the order dated Nov. 5, 1976 passed by the learned Magistrate and direct the learned Magistrate to proceed with the case according to law.