

(2005) 07 CAL CK 0050

Calcutta High Court

Case No: C.R.R. No. 139 of 1993

Kripal Mohon Virmani

APPELLANT

Vs

The Assistant Collector
of Customs and
Another

RESPONDENT

Date of Decision: July 14, 2005

Acts Referred:

- Constitution of India, 1950 - Article 20(2), 20(3)
- Criminal Procedure Code, 1973 (CrPC) - Section 300, 300(4), 482
- Customs Act, 1962 - Section 11, 135A
- General Clauses Act, 1897 - Section 26
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 20, 20(11), 21, 22, 23

Citation: (2005) 3 CALLT 395 : (2006) 1 CHN 74

Hon'ble Judges: Asit Kumar Bisi, J

Bench: Single Bench

Advocate: Kamasesh Bhattacharyya, Sambuddha Chakraborty, B. Biswas and R.M. Chatterjee, for the Appellant; Asim Kr. Roy and Sreyashee Biswas, for the Respondent

Final Decision: Dismissed

Judgement

Asit Kumar Bisi, J.

By the instant application u/s 482 of the Code of Criminal Procedure the petitioner Kripal Mohan Virmani has sought quashing of the proceeding of Case No. C/173 of 1987 pending in the Court of the learned Chief Metropolitan Magistrate, Calcutta. It has been alleged inter alia in the application that a petition of complaint under Sections 21 23 29 and 30 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as the said Act) and u/s 135A of the Customs Act was filed by Mr. B.D. Mishra, Intelligence Officer, Directorate of Revenue Intelligence, New Delhi against the petitioner and one

Subhas Chandra, Narang both of New Delhi in the Court of the learned Additional Chief Metropolitan Magistrate, New Delhi whereupon the said complaint was registered as case No. 267/ 1. As per the allegations made in the complaint against the petitioner, the Officers of Preventive Collectorate, West Bengal intercepted one truck bearing No. DEL 3124 carrying machinery items, from Delhi to Calcutta meant for export to Saudi Arabia and U.K. and there was recovery of 743 Kgs. of Hashish from the said truck and in the follow-up action a farm house in New Delhi was searched on 13th July, 1986 wherefrom certain incriminating documents were seized apart from some gunny bags and 11 tins containing Hashish wherefrom 976 Kgs. of Hashish had been recovered. On examination of quantity of 365 Kgs. of Hashish had been recovered. The total quantum of Hashish recovered was 2084 Kgs. valued at Rs. 84 lakhs in Indian markets and at Rs. 84 crores in international markets. The profit out of the smuggling business is alleged to have been distributed amongst one S.P. Rao, S. Malhotra, and Harnam Singh. As alleged, invoice of the consignment was signed by one Narendra Kumar and the petitioner was involved in the transaction and one Subhas Chander Narang was involved by the petitioner in the smuggling and all the accused are alleged to have committed the offence under the provisions of the said Act and the Customs Act. The petitioner was arrested and subsequently released on bail by Delhi High Court on 20th December, 1990 in CrI.M(M) case No. 2989/90. The case was committed by the learned Magistrate to the Court of Session whereupon the charges under sections 29 20(11) 23 and 30 of the said Act and u/s 135A of the Customs Act were framed by the learned Additional Sessions Judge, New Delhi against the petitioner and the co-accused Subhas Chander Narang.

2. It is the grievance of the petitioner that on the identical facts and transactions a separate complaint under sections 28 20 22 and 23 of the said Act and u/s 135A of the Customs Act was lodged by the Assistant Collector of Customs (Preventative), West Bengal and Calcutta before the learned Chief Metropolitan Magistrate, Calcutta and the said complaint was based on the same facts which formed the subject matter of the complaint in the case No. 267/1 pending before the learned Additional Sessions Judge, New Delhi. It has been alleged by the petitioner that the allegations contained in the petition of complaint which has been registered as C/173 of 1987 in the Court of the learned Chief Metropolitan Magistrate, Calcutta are identical with the allegations made in the complaint in case No. 267/1 pending before the learned Additional Sessions Judge, New Delhi and continuance of the said proceeding in the Court of the learned Chief Metropolitan Magistrate, Calcutta amounts to abuse of process of the Court since on identical set of facts two parallel proceedings are not maintainable in law and as such proceeding of case No. C/173/87 pending against the petitioner in the Court of the learned Chief Metropolitan Magistrate, Calcutta is liable to be quashed. The present petitioner was accused No. 6 in the said case.

3. Being aggrieved by and dissatisfied with pendency of case No. C/ 173/87 in the Court of the learned Chief Metropolitan Magistrate, Calcutta the petitioner has filed the instant application averring inter alia that the said proceeding being violative of Section 300 of

the Code of Criminal Procedure and Article 20(3) of the Constitution of India is liable to be quashed and continuance of such proceeding is abuse of process of the Court.

4. Mr. Kamalesh Bhattacharyya the learned Advocate appearing for the petitioner has drawn my attention to the contents of the complaint filed in Delhi Court and sought to contend that on the self-same facts the complaint was filed in the Court in Calcutta and as such continuance of the impugned proceeding against the present petitioner pending in the Court of the learned Chief Metropolitan Magistrate, Calcutta is an abuse of process of law. It has been urged by him that a person once convicted or acquitted cannot be tried for the same offence. He has referred to Section 300 of the Code of Criminal Procedure in this regard. He has further contended that Sessions Case No. 2/96 which was pending in the Court of the learned Additional Sessions Judge, New Delhi against the present petitioner along with some others ultimately ended in acquittal and since the petitioner was acquitted of the identical offence by the learned Additional Sessions Judge, New Delhi in the aforementioned case, he cannot be tried again for the same offence in the aforesaid case pending before the learned Chief Metropolitan Magistrate, Calcutta. He has drawn my attention to copy of the Judgment passed by the learned Additional Sessions Judge, New Delhi in Sessions Case No. 2/96 which was filed by the petitioner along with the supplementary affidavit. He has contended that where the identical issue of fact has been decided by a competent Court on a former occasion and finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution launched subsequently against the accused for the same offence. He has further argued that Article 20(2) of the Constitution of India and Section 26 of the General Clauses Act operate as bar to the second prosecution for the same offence. He has cited [Manipur Administration Vs. Thokchom, Bira Singh](#), and [Lalta and Others Vs. State of Uttar Pradesh](#), in this regard.

5. The above noted contentions raised by Mr. Bhattacharyya learned Advocate for the petitioner have been opposed by Mr. Asim Kumar Roy, learned Advocate appearing for the O.P. No. 1, the Assistant Collector of Customs. Mr. Roy has contended that the offence of which the petitioner is acquitted by the learned Additional Sessions Judge, New Delhi in the above noted case is not at all identical with the offence complained of in Complaint Case No. C/173/87 which is pending in the Court of the learned Chief Metropolitan Magistrate, Calcutta and the respective places of occurrence in both the cases are different, one being in New Delhi and another being in Calcutta and as such the learned Additional Sessions Judge, New Delhi had no jurisdiction to decide the case relating to the occurrence which took place in Calcutta. It has been further urged by him that the respective complaints in Delhi case and Calcutta case were filed by two different officers and all the accused persons implicated in the complaint case pending before the learned Chief Metropolitan Magistrate, Calcutta were not the accused who faced trial before the learned Additional Sessions Judge, New Delhi in the case referred to above.

6. I have given my anxious consideration to the respective contentions raised by the learned Advocates for the parties. It appears from the materials on record that the

complaint under sections 21 23 29 and 30 of the said Act and Section 135A of the Customs Act on the basis of which Sessions Case No. 2/96 was instituted in the Court of the learned Additional Sessions Judge, New Delhi was filed by the complainant Shri B.D. Misra, Intelligence Officer, Directorate of Revenue Intelligence, New Delhi, against the present petitioner Kripal Mohan Virmani and another person Subhash Chander Narang and the charges u/s 29/20(II)/23/30 of the said Act and u/s 135A of the Customs Act were firmed by the learned Additional Sessions Judge against the petitioner and the said Subhash Chander Narang. But it appears from the copy of the complaint filled in the Court of learned Chief Metropolitan Magistrate, Calcutta that the complaint in case No. C/173/87 pending in the Court of the learned Chief Metropolitan Magistrate, Calcutta was filed by Awadhesh Kumar Singh, Assistant Collector of Customs (Preventive) West Bengal, Calcutta against as many as 10 persons including the present petitioner named as accused No. 6 therein alleging commission of offences under sections 20 22 23 read with Section 28 of the said Act and u/s 135A of the Customs Act.

7. It appears from the materials on record that in the sessions trial held in the Court of the learned Additional Sessions Judge, New Delhi the prosecution alleged that the present petitioner along with the co-accused acquired possession of 743 Kgs. of Hashish and abetted the transportation thereof from Delhi to Calcutta and committed offences u/s 21/29 of the said Act and both the petitioner and the co-accused further made preparation for exportation of 743 Kgs. of Hashish to United Kingdom and Saudi Arabia contrary to the relevant provisions of the said Act read with Section 11 of the Customs Act and both of them determined to carry out their intentions of exportation of the said Hashish out of India and committed offence u/s 30 of the said Act and section 135A of the Customs Act.

8. The brief facts of the said case are that on 12th July, 1986 the officers of Preventive Collectorate, West Bengal intercepted the truck carrying machinery items from Delhi to Calcutta and the examination of the consignment resulted in the recovery of 743 kg. of Hashish concealed within individual items of machinery parts, engine mountings etc. and those items were despatched by M/s. Northern Exports, 116, Hari Nagar Ashram, New Delhi under invoice No. 1958 dated 27.6.86 for export to Jeddah and were also despatched by Modern Machinery and Instruments of G-2, Vishal Market, Paramanand Colony,

New Delhi under invoice No. 1238 dated 7.7.86 for export to U.K. in the said truck being No. DEL-3124. The aforesaid truck carrying machinery and machinery parts along with 743 kg. of Hashish was seized and in the follow-up action a farm house situated at Khasra No. 417, Gadaipur Village, New Delhi from where the consignments were loaded in the aforesaid truck pursuant to the disclosures made by the driver of the truck was searched by the officers of Directorate of Revenue Intelligence, New Delhi on 13th July, 1986 which resulted in recovery of seizure of certain incriminating documents. The search was continued on 14/15th July, 1986 and the officers of the DRI, New Delhi while digging the room of one of the outhouses recovered gunny bags and 11 tins containing 976 kg. of Hashish which were found buried. Recovery of the articles and seizure of the same were

made by the DRI officers. On examination of the machines further quantify of 365 kg. of Hashish had been recovered and seized.

9. As mentioned hereinbefore, case No. C/173/87 of the Court of learned Chief Metropolitan Magistrate, Calcutta was started on the basis of the complaint filed by the Assistant Collector of Customs,. (Preventive) West Bengal, Calcutta against ten accused persons including the present petitioner and Subhash Chander Narang. From the facts narrated in the complaint it appears that on 12th July, 1986 the officers of Preventive Collectorate, West Bengal intercepted the truck bearing No. DEL-3124 near Mogra Entry Tax Check Post and accused Nos. 1 and 2 as drivers and accused No. 3 as Khalasi were found in the truck and from the road challan, invoices etc. recovered from the possession of the driver, it was ascertained that the description of the goods loaded in the truck was given in the machinery and machinery parts sand the said consignment was transported from Delhi to Calcutta for export to Saudi Arabia and London. The goods from the said truck were unloaded at Customs House for a thorough check-up and Hashish was found to have been kept concealed within the machine and mountings and accused Nos. 1, 2 and 3 were interrogated and their voluntary statements were recorded on different dates. Pursuant to the statement of accused No. 1 the house at Godaipur village near Mehrouli, New Delhi was located wherefrom the lorry was loaded with the machines and mountings. It is further case of the complainant that accused Nos. 4, 7, 8, 9 and 10 were engaged in illicit business of bringing Hashish from outside India and exporting them in names of different consignors. It has been further alleged in the said complaint that the receipts were shown to have been granted by M/s. Marshal Transport Co., Delhi for transporting the goods from M/s. Modern Machinery & Instruments, New Delhi to M/s. Shaikh & Pandit, Calcutta and M/s. Northern Export, Delhi to M/s. Lee & Muirhead, Calcutta but there is no existence of M/s. Marshall Transport Company, Delhi. It further transpires that M/s. Northern Export, New Delhi and M/s. Modern Machinery & Instruments, New Delhi were fictitious companies floated by accused Nos. 6 to 10. It has been specifically alleged in the complaint that all the accused persons have made preparation to export the contraband goods i.e. Hashish in contravention of the provisions of the Customs Act and all the accused persons are alleged to have committed the offence punishable u/s 23 read with Section 28 of the said Act for attempting to export narcotic drugs from India in contravention of the provisions of the said Act and accused No. 1, 2, 3 and 6 to 10 are alleged to have committed further offences punishable under sections 20 and 22 of the said Act for possession/transportation/import/export interstate narcotic drugs in contravention of the provisions of the said Act. Furthermore, all the accused persons are alleged to have committed the offence punishable u/s 135A of the Customs Act.

10. From the above materials on record it is quite evident that the accusations against the petitioner and the co-accused in the case which was tried by the learned Additional Sessions Judge, New Delhi are not identical with the accusations against the petitioner and other accused persons in the complaint case pending before the learned Chief

Metropolitan Magistrate, Calcutta and that is obviously more so when " the complainants are different in both the cases and some of the accused persons who were implicated in the complaint case pending before the learned Chief Metropolitan Magistrate, Calcutta were not the accused in the case tried by the learned Additional Sessions Judge, New Delhi. It is to be borne in mind in this context that the occurrence of seizure of the incriminating articles in Calcutta may form part of the subject matter of the case tried in New Delhi but that fact cannot make the offences as alleged in both the cases identical in nature. The Judgment and order of acquittal of the present petitioner passed by the learned Additional Sessions Judge, New Delhi in the aforementioned sessions case may be of evidentiary value in the case pending before the learned Chief Metropolitan Magistrate, Calcutta. It is for the petitioner to highlight this aspect of the matter before the learned Chief Metropolitan Magistrate, Calcutta at appropriate stage of trial, but it cannot be held that the offence with which the petitioner is charged in the case tried by the learned Additional Sessions Judge, New Delhi is the same offence alleged to have been committed by the petitioner in the case pending before the learned Chief Metropolitan Magistrate, Calcutta. The question of double jeopardy crops up when a person is tried for the same offence. Sub-section (4) of Section 300 of the Code of Criminal Procedure lays down that 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. So even if it is accepted for the sake of argument that the learned Additional Sessions Judge, New Delhi held trial for the offence alleged to have been committed by the petitioner along with the co-accused in Calcutta, that Court is not competent to try such offence which is alleged to have taken place in Calcutta.

11. Having regard to the, above facts, circumstances and materials on record I find that the instant application u/s 482 of the Code of Criminal Procedure filed by the petitioner is devoid of merit. There is no justifiable ground for quashing of the impugned proceeding pending before the learned Chief Metropolitan Magistrate, Calcutta against the petitioner. The instant application u/s 482 of the Code of Criminal Procedure is accordingly dismissed. Interim order, if any, stands vacated.

12. Be it noted that I have not gone into the merits of the case and the learned Trial Court will decide the case on merits without being influenced by any observation made by this Court.

Let a copy of this order be sent down to the learned Court below forthwith.

Urgent xerox certified copy of this order, if applied for, be given to the parties as expeditiously as possible.