

(2003) 10 CAL CK 0012

Calcutta High Court

Case No: C.R.R. No. 1265 of 1997

Jagmohan Jindal and Another

APPELLANT

Vs

State of West Bengal and
Another

RESPONDENT

Date of Decision: Oct. 29, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Customs Act, 1962 - Section 111, 112, 132, 135

Citation: (2004) 2 CHN 106

Hon'ble Judges: Pradip Kumar Biswas, J

Bench: Single Bench

Advocate: Sekhar Basu, Joymalya Bagchi and Kaushik Gupta, for the Appellant; Ashim Roy, for the Respondent

Final Decision: Allowed

Judgement

Pradip Kumar Biswas, J.

This is an application u/s 482 of the Code of Criminal Procedure filed at the instance of one Jagmohan Jindal, petitioner herein, seeking for quashing of the proceeding in compliant case C/833/1997 under Sections 132/135(a)(b)(i) of the Customs Act, 1962 pending before the Court of the Id. Chief Judicial Magistrate. Alipore.

2. The short facts leading to the filing of this application are as under:

In or about 1984, the present petitioner was introduced to one Mr. Shah who claimed that he had a manufacturing unit for manufacturing Video Cassettes at Jamnagar under the name and style of M/s. Chinar Electronics. In course of discussion, the aforesaid Mr. Shah told that he was facing financial difficulties and requested the present petitioner to arrange for some finance in return he also assured that petitioner would receive good returns. The petitioner made enquiries with regard to the promise made by Mr. Shah and he considered it to be profitable.

The petitioner, thereafter, agreed to advance the aforesaid loan to Mr. Shah as per the terms and conditions agreed upon by them.

3. On 8th August, 1985 the Customs Authorities carried out a search at the petitioner's place at premises No. 504, Poonam Apartments, Worli, Bombay and in course of said search two envelopes containing photocopies of invoices and bill of lading as regards shipment of 469 cartons containing 1875 dozens of video cassettes without spools and 352 cartons containing 1403 boxes of video tapes were found.

4. It has been alleged by the petitioner that photostat copies of the said documents were sent to the petitioner by Mr. Shah since he had to arrange for the finance with regard to the aforesaid importation pursuant to the agreement entered into between him and Mr. Shah. The Customs Authorities, however, seized those photostat copies. Subsequently, the aforesaid goods being covered by the said documents Port of Calcutta and were seized by the Customs Authorities on 23.09.1985 and on or about 20-02-1986, the Assistant Collector of Customs for Preventive Adjudication issued a purported notice to show cause alleging inter alia that the said seized goods were liable to be confiscated. It was also alleged in the notice that the said goods were shipped by the foreign suppliers in the name of M/s. Chinar Electronics as per the instructions of the petitioner and the petitioner was also asked to show cause as to why penalty should not be imposed upon him u/s 112 of the Customs Act. The petitioner submitted a reply to the said notice by a letter dated 30-07-1986 wherein it was stated by him that he was merely a financier and had agreed only to finance Mr. Shah for the purpose of manufacturing of video cassettes which he proposed to buy and sale it in the local market for profits and in no way he was concerned in the importation of the aforesaid goods.

5. The Collector of Customs, however by an order dated 19-08-1986 rejected the aforesaid contention of the petitioner and levied penalty of Rs. 25,000/-upon him u/s 112 of the Customs Act and by the self-same order, the Collector also confiscated the aforesaid goods u/s 111(d) of the Customs Act.

6. The petitioner being aggrieved by the said order filed an appeal before the Statutory Appellate Authority namely, the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT"). The aforesaid CEGAT, however, after hearing the parties, allowed the appeal extending benefit of doubt to the appellant and eventually, the imposition of penalty was set aside.

7. The said order became final and binding between the parties inasmuch as the Collector of Customs (Preventive) West Bengal, Calcutta who was the respondent in the said adjudication proceedings has filed no reference application against the same before the Tribunal. Subsequently, in respect of the self-same allegations relating to the importation of 469 cartons containing 1875 dozens of video cassettes without spools and 352 cartons containing 1403 boxes of video tapes etc., the

opposite party No. 2 filed a petition of complaint before the Court of the Chief Judicial Magistrate, Alipore alleging commission of offence punishable under Sections 132/135(a)(b)(i) of the Customs Act, 1962. The petitioner entered appearance and was granted bail and the petitioner has been regularly attending the Court through his learned lawyers for the last 10 years.

8. It has further been contended that even after lapse of 10 years or more, no charge has been framed against the petitioner as yet and no delay whatsoever has been caused in the present proceeding at the behest of the petitioner in any way and in view of the amended provisions of Section 245(3) of the Cr.P.C. prosecution was required to conclude the evidence at the pre-charge stage, within four years from the date of appearance of the accused and failure on the part of the prosecution to complete this evidence, as aforesaid, within the aforesaid required period, the accused petitioner is entitled to be discharged from the concerned case and the criminal prosecution is also liable to be quashed on that ground alone. Hence, this petition.

9. Sri Sekhar Basu, learned advocate appearing for the petitioner in course of his submission has contended that by an order bearing No. 32/86(Prev.) dated 19-08-1986, a penalty of Rs. 25,000/- was levied upon the petitioner u/s 112 of the Customs Act, 1962. The petitioner appealed against the said order which was, however, allowed by the CEGAT by an order dated 03-08-1993 bearing No. A-458/Cal/93. By the aforesaid order, CEGAT was pleased to set aside the imposition of the aforesaid penalty of the present petitioner and allowed the appeal with other consequential reliefs. The said order was accepted by the Customs Department and thus, the same has become final and binding upon all the parties.

10. Sri Bose has further contended that subsequently, in respect of the selfsame matter for which the said penalty of Rs. 25,000/- was levied upon the present petitioner, the Department filed the instant complaint case before the Chief Judicial Magistrate, Alipore on 9.3.1987 and the said complaint case was filed immediately after the adjudication order dated 19.8.86 and the said adjudication order having been set aside by CEGAT by order dated 3.8.93 and the order of CEGAT having been accepted by the Customs Department, who did not file any reference application or appeal against the said order and the order of CEGAT has become final and binding and that being the position in the departmental action, on the similar charge, the petitioner being exonerated, no criminal proceeding can be maintained against the present petitioner on the self-same ground.

11. Sri Basu in support of his contention has placed his reliance on a decision reported in G.L. Didwania and Another Vs. Income Tax Officer and Another, . In the aforesaid judgment it was held by the Apex Court as follows :--

"In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As noted above, the

assessing authority held that the appellant-assessee made a false statement in respect of income of M/s. Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained".

12. The next judgment relied upon by Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, in the case of Uttam Chand and Ors. v. Income Tax Officer, Central Circle, Amritsar. In the said judgment it was held as follows :--

"In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire materials on the record that Shrimati Janak Rani was a partner of the assessee-firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution".

13. Next judgment relied upon by P.S. Rajya Vs. State of Bihar, in the case of P.S. Rajya v. State of Bihar. In the said judgment, it was held by the Apex Court:--

"At the outset we may point out that the learned counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings."

14. Next judgment relied upon by Shri Basu is reported in 2001 C.Cr.LR(Cal) 143 in the case of Rajesh Kothari and Anr. v. A.S. Bandhopadhyay, Superintendent of Customs (Preventive). In the said judgment it was held by the Single Bench of this Court that when the two principal accused namely Subrata Chowdhury and Arup Ghosh were exonerated of all the charges, there is no reason why the criminal proceeding against the present petitioners, who were earlier exonerated of the charge against them in the confiscation proceeding before the Deputy Commissioner of Customs should be allowed to be continued.

15. With reference to the aforesaid decisions, it has been submitted by Mr. Basu that since the criminal prosecution filed against the petitioner relates to the self-same facts as covered in the proceeding pending before the Preventive Authority of the Customs and for that matter before the CEGAT and since the CEGAT was pleased to set aside the order of imposition of the aforesaid penalty upon the petitioner and allowed the appeal with all other consequential relief and since the said order was

accepted by the Customs Department, without taking any other recourse to approach any other superior forum, the same has reached its finality and that being the position, upon the self-same allegation, the present criminal proceeding cannot be allowed to be proceeded with or in other words when in the departmental proceeding, on similar charges, the petitioner has been exonerated then, no criminal proceeding can be maintained on the self-same charge and as such he has submitted that this is a fit case where quashing of the aforesaid proceeding should be made.

16. Shri Ashim Roy, learned Advocate appearing for the opposite party has submitted that true it is that the finding arrived at in any departmental proceeding cannot stand in the way of a criminal prosecution and those two proceedings -- one Departmental and another Criminal Prosecution -- being completely separate and independent from each other, yet, in the fact situation of the present case with his usual frankness he has contended before this Court that in view of the findings of the CEGAT Tribunal covering the self-same charges against the present petitioner wherein he has been exonerated by the CEGAT there should not have been any other Criminal proceeding before any Criminal Court on the self-same allegation.

17. Now upon hearing the submissions made by the parties and in view of the ratio of the decisions of the Apex Court as also of this Court, I hold with certainty that this is a fit case where criminal prosecution should be quashed.

18. In consequence thereof, prayer for quashing of the criminal proceeding pending before the learned Chief Judicial Magistrate, Alipore in Complaint Case No. C/833/1997 under Sections 132/135(a)(b)(i) of the Customs Act, 1962 be allowed.

19. Urgent xerox certified copies of this order, if applied for, by the parties be made available with utmost expedition.