

Sunil Kumar and Others Vs. Central Bureau of Investigation and Others

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Court : Punjab and Haryana

Decided On : Feb-11-2016

Judge : Ajay Tewari

Appeal No. : C.R.R. Nos. 250, 677, 649, 1228, 1556, 4040 of 2015 (O&M) & C.R.M-M No.10284 of 2011 (O&M)

Appellant : Sunil Kumar and Others

Respondent : Central Bureau of Investigation and Others

Advocate for Pet/Ap. : Mr. Kuldip Singh

Judgement :

Oral:

The above Criminal Revisions have been filed for setting aside the orders whereby applications moved under Section 155(2) of the Customs Act, 1962 and the application under Section 227 Cr.P.C. filed by the petitioners have been dismissed and charges under Sections 120-B, 420, 467, 468, 471, 201 IPC and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 have been ordered to be framed.

Criminal miscellaneous petition bearing CRM-M-10284-2011 has been filed for quashing of FIR No.RCCHG2009A0019 dated 10.06.2009 qua petitioner, registered at Police Station CBI, ACB, Chandigarh under Sections 120-B and 420

IPC, 13(1)(d) read with Section 13 (2) of the Prevention of Corruption Act, 1988 and Section 66 of the Information and Technology Act, 2000.

As per the prosecution, during the year 2008-09, at Ludhiana, accused Parminder Kumar and Amandeep Singh by entering into a criminal conspiracy with accused KK Sharma and other customs officers, floated non-existent firms namely M/s SM International, M/s Aastha Trading and M/s A.S. International on the basis of forged and fictitious documents viz. forged Import Code (IEC) number, forged identity proof to open bank accounts and forged 213 shipping bills and claimed duty drawbacks to the tune of crores of rupees. Accused Parminder Kumar also forged identity papers of one Sushil Mishra by forging his signatures. Accused customs officers had dishonestly and fraudulently transferred passwords and login ID to the private persons illegally engaged by them to work in the office in order to facilitate dishonest and illegal duty drawbacks by Amandeep Singh and Parminder Kumar. The custom officers had also not physically verified the exporting of goods and their stuffing into the containers for extraneous reasons, committed criminal misconduct as public servants. The FIR No.19 dated 10.06.2009 has been lodged. The accused namely Jagdeep Singh, who is petitioner No.3 herein was working as Inspector and other accused persons/petitioners herein were working in their respective posts as Inspectors, whereas Maninder Pal Singh-petitioner No.6 was working as Examiner, Customs and they remained posted at ICD CONCOR/KCM CFS, Ludhiana for certain period. After completion of investigation, charge-sheet under Section 173 Cr.P.C. has been presented against the accused under Sections 120-B, 420, 467, 468, 201 IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. Undisputedly, no notice as required under Section 155(1) of the Customs Act, 1962 has been issued by the Central Government to the accused/customs officers before launching prosecution against them.

Learned Senior Counsel as well as other learned counsel for the petitioners have argued that under Section 155(2) of the Customs Act there is a mandatory requirement of issuance of prior notice and, that having not been done the present action has to be quashed. Section 155 of the Customs Act is as under:-

"SECTION 155. Protection of action taken under the Act.-

(1) No suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local authority for anything which is done, or intended to be done in good faith, in pursuance of this Act or the rules or regulations.

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause."

Learned Standing Counsel for the respondent No.1-CBI has argued that in the present case the petitioners have been charged with serious offences under the Prevention of Corruption Act and sanction was duly taken before proceeding against them and in these circumstances the insistence of compliance of the provision of Section 155(2) of the Customs Act can not be accepted. As per him, the actions of the petitioners were completely outside the purview of their official duties and the protection of Section 155 cannot be insisted upon by them.

In this connection, learned Senior Counsel as well as other learned counsel for the petitioners have relied upon the judgment of this Court in the matter of J.L. Batra vs. Dharam Dev and others, reported as 1981 C.L.R. 126, wherein it was held as follows:-

"2. Mr. Kuldip Singh, learned counsel for the petitioners, canvassed that the proceedings cannot be continued on the basis of a complaint against the petitioners as the same are barred by limitation. He says that for such applications, the limitation is provided under Section 155(2) of the Customs Act, 1962. I have perused this provision, which is in the following terms:

"155(1).....

(2) No proceeding other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officer a month's previous notice in writing of the intended proceeding and of the cause thereof, or after the expiration of three months from the accrual of such cause."

From reading this provision, it is inter alia plain that the limitation for filing such applications is three months. In the present case, the incident took place on October 21, 1969 and the complaint against the petitioners was instituted on August 28, 1974 i.e. after a lapse of about five years. This aspect of the matter was not brought to the notice of the learned Additional Sessions Judge. The allegations in the complaint are on the basis of the occurrence which took place on October 21, 1969. Since it is a legal objection and the learned Magistrate had no jurisdiction to take cognizance of this complaint, after the expiry of three months, this plea of the petitioners must succeed. Accordingly, the petition is allowed and the proceedings pending against the petitioners are quashed."

To support their arguments, they have further relied upon the decisions of the following cases wherein the issue of previous sanction has been discussed in detail:-

- i) D.T. Virupakshappa vs. C. Subash, passed in Criminal Appeal No.722 of 2015, decided on 27.04.2015;
- ii) Om Prakash and others vs. State of Jharkhand and another, (2012) 12 Supreme Court Cases 72;
- iii) Sankaran Moitra vs. Sadhna Das and another, (2006) 4 Supreme Court Cases 584.

He has further relied upon the decision of the Hon'ble Supreme Court in the matter of Public Prosecutor, Madras vs. R. Raju and another, etc., reported as (1972) 2 Supreme Court Cases 410 and urged that in the cited case the issue in question arose from a similar provision under the Central Excise and Salt Act, 1944 and the

Hon'ble Supreme Court quashed the proceedings. The relevant paragraphs of the said judgment are as under:-

"2. The question which falls for consideration in these appeals is the interpretation of section 40(2) of the Central Excises and Salt Act, 1944 hereinafter referred to for brevity as the Section and the Act. The section is as follows:

"No suit, prosecution or other legal proceedings shall be instituted for anything done or ordered to be done under the Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of".

3. The respondents in both the appeals were prosecuted for violation of rules 9, 53, 64, 67, 68, 70, 71, 66 and 226 of the Central Excise Rules punishable under section 9(b) and (d) of the Act and also under section. 420 read with section 511 of the Indian Penal Code and section 109 of the Indian Penal Code. The High Court found that the prosecution in both the cases was barred by the rule of limitation in section 40 of the Act.

The acts complained of in Criminal Appeal No. 194 of 1969 occurred on 25 July, 1964 and the complaint was filed on 18 May, 1965. In Criminal Appeal No. 195 of 1969 the acts complained of occurred on 20 June, 1964 and the complaint was filed on 15 January, 1965.

4. The appellant's contentions are three-fold. First, the section applies only to Government servants. Second, the words "anything done or ordered to be done under this Act" in the section do not mean any act in violation of the provisions of the Act. Third, the protection given to Government servants under the section is for actions done inadvertently or mistakenly but not for acts done deliberately and maliciously. It was therefore said that the prosecution of the respondents was no within the mischief of the section.

5. The respondents' contention on the other hand is that the section applies to prosecution of the respondents for violation of the provisions of the Rules and the Act. It is further said on behalf of the respondents that they were rightly acquitted

by the High Court because the prosecution were instituted subsequent to the expiry of six months from the date of the alleged offences.

10. Counsel on behalf of the appellant contended that the provisions of the section did not apply to prosecution for offences committed by individuals in contravention of the Act and the Rules made thereunder. It was said that the section was intended for prescribing limitation in respect of prosecution only against departmental officers or Government servants.

11. The section consists of two sub-sections. The first sub-section speaks of bar of suits against the Central Government or against any officer of the Government in respect of any order passed in good faith or any act in good faith done or ordered to be done under the Act. The second sub-section speaks of limitation of suits, prosecution or other legal proceeding for anything done or ordered to be done under the Act after the expiration of six months from the accrual of the cause of action or from the date of the act or order complained of. The two subsections operate in different fields. The first sub-section contemplates bar of suits against the Central Government or against the officers by protecting them in respect of orders passed in good faith or acts done in good faith. It is manifest that the second subsection does not have any words of restriction or limitation of class of persons unlike sub-section (1). Sub-section (2) does not have any words of qualification as to persons. Therefore, subsection(2) is applicable to any individual or person.

20. The other contention on behalf of the appellant was that the words "anything done or ordered to be done" in the section would not mean anything done in violation of the provisions of the Act. It was also said that "anything done" would not include a malicious act or an act done in bad faith. Sub-section (2) of section 40 does not introduce the test of good faith in relation to act done. Good faith is one of the aspects in section 40(1). The present appeals do not turn on sub-section (1) of section

22. The word 'Act' is defined in the General Clauses Act, 1897. The definition is as follows:

"'Act' used with reference to an offence or a civil wrong, shall include a series of acts and words which refer to acts done extend also to illegal omissions."

The words "anything done or ordered to be done" under the Act in Section 40(2) of Act were therefore contended by counsel for the respondents to extend to illegal omissions and infraction of the requirements of the statute."

Ultimately the Hon'ble Supreme Court agreed with the contention of the respondents and dismissed the appeal of the Public Prosecutor.

Learned counsel for the respondent No.1-CBI has relied upon the judgment of the Hon'ble Supreme Court in the matter of P.P. Unnikrishnan vs. Puttiyottil Alikutty, reported as 2000(4) R.C.R. (Criminal) 25, wherein their Lordships held that beating of a person within police custody would not fall within official duties of the police officer and hence such officer would not get the benefit of Section 64(3) of the Kerala Police Act which fixed a period of six months from the date of commission of an offence for taking cognizance.

Learned Senior Counsel as well as other learned counsel for the petitioners have countered by arguing that this precise argument was also raised and noticed in the case of R. Raju's case (supra) but did not find favour with their Lordships and moreover the decision in P.P. Unnikrishnan's case (supra) was that of a two Judge Bench which did not consider the decision in R.Raju's case (supra) and that being a decision of Larger Bench cannot be ignored.

As regards the argument that sanction under the Prevention of Corruption Act was obtained, the learned Senior Counsel as well as other learned counsel for the petitioners have argued that the issue of sanction under the Prevention of Corruption Act and issue of notice under the Customs Act are two independent protections and therefore the mere fact that sanction was obtained under the Prevention of Corruption Act would not obviate the need of notice under Section 155 of the Customs Act. Moreover in R.Raju's case (supra) the offences complained of were not only under the Excise Act but also under the IPC. However, the Hon'ble Supreme Court upheld the decision of the High Court in holding the entire prosecution to be vitiated on account of the non-compliance of

the provision of Section 40(2) of the Excise Act.

In my opinion, this Court is bound by the decision of J.L. Batra's case (supra) and R.Raju's case (supra). Consequently, it has to be held that the prosecution in violation of Section 155(2) of the Customs Act is not valid.

Learned counsel for the respondent-CBI has also raised the argument that the petition under Section 482 Cr.P.C. is not maintainable at this stage. To support his argument he has relied upon the Single Bench judgments of Delhi High Court and of this Court in the matter of Dharambir Khattar and others vs. CBI, 2010(6) RCR (Criminal) 1733 and Kuldipak Ahuja vs. CBI, 2011 (2) RCR (Criminal) 710 respectively, where it has been held that in terms of provisions of Prevention of Corruption Act no revision petition would be maintainable in the High Court against the order on charge or an order passed by Special Court on framing of charge. He has further relied upon a Division Bench judgment of Delhi High Court in the matter of Anur Kumar Jain vs. Central Bureau of Investigation, 2012(7) R.C.R (Criminal) 2836. I have gone through all the judgments. Even the Division Bench judgment in Anur Kumar's case (supra) held that a petition under Section 482 Cr.P.C. can be entertained in exceptional circumstances viz. where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. However, in my opinion, the issue will turn on the fact that this Court has come to the conclusion that in the absence of notice the prosecution is illegal. Once that is held, it would not be in the interest of justice to subject the petitioners to a trial which will ultimately be still-born. For this purpose recourse can be taken to the provisions of Section 482 Cr.P.C., more so since the said section has been invoked in these petitions.

In the circumstances, all the Criminal Revisions are allowed. The Impugned orders are set aside.

As regards criminal miscellaneous petition for quashing of FIR, apart from the above grounds one ground taken was that the petitioner-Raj Kumar Patial had been transferred out before the scam. In my opinion, once on the legal grounds the petition is accepted the second ground needs no answer.

Consequently, the criminal miscellaneous petition is also allowed and the FIR is quashed qua petitioner-Raj Kumar Patial.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

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