

Charanjit Singh Vs. Assistant Collector of Central Excise

Charanjit Singh Vs. Assistant Collector of Central Excise

SooperKanoon Citation : sooperkanoon.com/344622

Court : Mumbai

Decided On : Sep-20-1989

Reported in : 1990(47)ELT352(Bom)

Judge : M.S. Deshpande, J.

Acts : [Central Excise Act, 1944](#) - Sections 2, 9, 9(1), 9A, 9C, 9AA, 9AA(1), 18, 19, 20 and 21; Central Excise Rules, 1944 - Rule 173G

Appeal No. : Criminal Application No. 2556 of 1988

Appellant : Charanjit Singh

Respondent : Assistant Collector of Central Excise

Judgement :

1. By this Petition under Section 452 of the Code of Criminal Procedure, the original accused Nos. 4 and 5 in case No. 433/S of 1987 of the Court of the Additional Chief Metropolitan Magistrate Bombay, seek a direction quashing the process issued against them along with the accused Nos. 1 to 3 and 6 to 12 upon a complaint lodged by the Assistant Collector of Central Excise, Bombay, for offences punishable under Sections 120B of the Indian Penal Code r/w. Sections 9(1)(b), 9(1)(bb), 9(1)(bbb), 9(1)(c) read with Section 9(1)(d) and 9(1)(i) and 9-AA of the Central Excise and Salt Act, 1944 as well as offences punishable under Sections 193 r/w. 192 I.P.C.

2. Respondent No. 1 - Assistant Collector of Central Excises filed a complaint alleging that he was authorised to file a complaint for offences under the Central Excises and Salt Act and that he was a public servant. The accused No. 1 - M/s. Pure Drinks Pvt. Ltd. was a company manufacturing aerated water falling under Chapter No. 22 of the Central Excises Tariff holding a Central Excises licence in form L-4 with effect from 22nd January, 1986. Under an agreement, accused No. 1 took on lease of M/s. Pure Drinks Pvt. Ltd. New Delhi. The Central Excise duty on excisable goods manufactured is to be paid by the manufacturer and for that purpose he is required to maintain a stock book in form paying RG - 1, a personal ledger Account and maintain sufficient deposit for the purpose of paying excise duty on the goods intended to be removed. The manufacturer is also required to make payments of excise duty by making a debit entry in the personal ledger account and then remove the goods by issuing gate pass in form GP-I. The goods can be removed only by issuing gate pass which is to accompany excisable goods to their first destination. It is alleged that on 4-9-1986 the officers of the Central Excises intercepted two motor vehicles at Mahalaxmi Railway Station while they were carrying glass bottles containing aerated water of the brand names allotted under, Chapter No. 22 of the Central Excise Tariff. Two drivers gave their names and they were informed by the Excise Officers that those were excisable goods whereupon they produced two gate passes. The four gate passes showed payment of duty on the bottom valued at Rs. 7500/- and the debit entry No. 134 dated 4-9-1986 having been made in the personal ledger account. On verification, it was found that there were no such debit entries in the account from 1-5-1986 onwards evidencing payment of excise duty. Security of the gate pass books showed that accused No. 1 had removed large quantity of aerated water between 1-5-1986 to 4-9-1986 showing the payment of Central Excise duty by indicating also the debit entry on each gate pass, but no debit entries had been made in the personal ledger account during this period. It was discovered that the accused No. 1 had manufactured and removed large quantity of excisable goods without payment of duty fraudulently and dishonestly, and with an intention to evade payment of excise duty made false endorsements in R.G. - 1 and in the gate passed. The scrutiny of the record further revealed that goods collectively valued at Rs. 29,65,178.70 ps. had been removed without payment of the excise duty

amounting to Rs. 15,10,854.30 ps. by fraudulently showing in the RG-1 and the gate passes that the entire duty on the goods removed had been paid. The goods seized were handed over to accused No. 6 who was a Deputy General Manager of the M/s. Pure Drinks Pvt. Ltd. at Bombay under a bond. The investigation also showed that the accused No. 2 M/s. Pure Drinks Pvt. Ltd., New Delhi had taken on lease a factory of accused No. 1 under an agreement dated 22-1-1986 and that they were sister concerns managed by the same parties. It also alleged that the accused No. 1 indulged in evasion of Central Excise duty in the past also and had prepared false records to indicate that goods removed by accused a No. 1 had also failed and neglected to file the monthly returns in from RT-12 from May 1986 to avoid detection of non-payments of excise duty on the goods manufactured from May, 1986 to 4-9-1986 and they had entered into continuing criminal conspiracy for avoiding the excise duty had to facilitate the evasion with fabricated false evidence by making false entries in the registers and gate passes in pursuance of the conspiracy. Adjudication proceedings were initiated for the evasion. It was contended that the accused Nos. 3 to 12 were responsible for and were connected with the affairs and business of the accused No. 1 and they were working on responsible positions at Bombay and New Delhi and that at the relevant time the accused Nos. 2 to 12 were in-charge of and responsible to accused No. 1 for the affairs and business of accused No. 1. It is not necessary to set out the other details, stated in the complaint. Suffice it to say that excisable goods were removed in contravention of the provisions of Rules 99(1), 173 and 52, 52-A, 54 read with Rules 173-G, 47 and 49 and Rule 173-G r/w. Rules 53 and 556 of the Central Excise Rules, 1944 and that accused knew that the goods were liable for confiscation under Rule 173-G of the Central Excise Rules. Action was therefore sought under the aforesaid sections of the Central Excise and Salt Act, 1944 and the Indian Penal Code.

3. The learned Magistrate passed an Order in the following term on 10-8-1977 :

'The complainant exempted Mr. A. R. Gupte for the prosecution. Issue summons against each of Accused. Adjourned 24-9-1987'.

4. The first submission of Shri Bhagat for the Petitioners was that the complaint filed by the Respondent No. 1 though he was a public servant, was not by a public servant acting or purporting to act in the discharge of his official duties as required by the proviso to Section 200 of the Code of Criminal Procedure and so the exemption which would apply to such a complaint from examining the complainant and the witnesses could not be invoked and the Magistrate was therefore under an obligation to examine the complainant and the witnesses and since this was not done the Order issuing process was bad and was required to be quashed. It is apparent from the complaint that apart from stating that the complainant was public servant, it was also mentioned that he was authorised under the provisions of the Central Excise and Salt Act to file a Complaint. There are several provisions which bear upon the duties of the Central Excise officers and the Central Excise officer has been defined under Section 2(b) of the Central Excises and Salt Act meaning any officers of the Central Excise Department, or any person (including an officer of the state Govt.) invested by the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 with any of the powers of a Central Excise Officer under this Act. The definition is wide enough to take in the complainant who is an Assistant Collector of Central Excises. Section 9A of the Act makes the offences under Section 9 to be non-cognisable within the meaning of the Code of Criminal Procedure, but under Chapter III powers and duties of Officers have been laid down and they include power to arrest, power to summon persons to give evidence and procedure documents Enquiries under to Act and to obtain the assistance of Police and Customs and of officers of Government engaged in collection of land revenue in execution of the provisions of the Act. Section 18 empowers the officers to make searches and arrests in accordance with the provisions of the Code of Criminal Procedure and Sections 19, 20 and 21 lay down the manner of disposal of persons arrested. Under Section 21, the Central Excise Officer has been invested with the same powers as that of an Officer-in-charge of Police Station under Code of Criminal Procedure when investigating a cognizable case. It is well settled that instead of filling a chargesheet which an Officer-in-charge of Police Station is authorised to file, for the offences under the Act, a complaint has to be filed. The hierarchy of the Officers is that at the bottom is the Sub-Inspector and above him the Inspector of

Central Excises and then Superintendent of Central Excises who is under the Assistant Collector, and above him the Deputy Collector and the Collector for Central Excise. The Complaint evidently was an officer under whom the investigation had been done by the officers working under him. To be within clause (a) of the proviso to Section 200, it is necessary that the complaint should be by a public servant acting or purporting to act in the discharge of his official duties. Considering the hierarchy it is apparent that in respect of offences which were investigated by the officials working under him, the complaint could be made by the Assistant Collector of Customs and while doing so, he would be acting or purporting to act in the discharge of his official duties and, therefore, the Magistrate need not examine the complaint and the witnesses, if the complaint were to be filed by such an officer. The next submission was that it was imperative that the complainant should have attended the Magistrate's Court for filing the complaint and since, in this case, the complaint was lodged admittedly by the Advocate for the Complainant, the concession available to a public servant would not be available in respect of the present complaint. Now, it is obvious that there is no provision in the Code of Criminal Procedure which requires that the complainant should attend in person for filing the complaint, because the proviso refers to making of the complaint in writing and it is obvious that the complaint need not be presented by the complainant in person. Reliance was placed on the observations in *Kalu Munchi & Others v. State of Assam*, *K. Krishna Warriar v. T. R. Velunni* : AIR1960 Ker350 and in *Norode Baran Mukherjee v. State of West Bengal*. The first was evidently a case which was not covered by the provisions of Section 195 of the Criminal Procedure Code as it could not be said to be a complaint filed in Court by a public servant acting or purporting to act as a public servant in the discharge of his official duties and thus proviso to Section 200 was not attracted. In *Krishna Warriar's* case, the District Magistrate who was appointed Commissioner of Inquiries under the Commissions of Inquiry Act, 1952 had filed the complaint and was held not to purport to act in discharge of his official duty as he had no official duty to prefer a complaint as District Magistrate or as Commissioner of Inquiry. In *N. B. Mukherjee's* case, the Division Bench of Calcutta High Court found that neither the Public Prosecutor nor an Investigating Officer filing a Petition of complaint in Special Court acts or purports to act in discharge of

his official duty and that as such he is required to be examined under Section 200 of the Code, while considering the provisions of West Bengal Criminal Law Amendment (Special Courts) Act, 1949. The position in the present case is different. In the last cases, it was held that process could not be issued in complaint field by the public prosecutor unless he was examined if he were to make a complaint, which is not the position here.

5. As I have already indicated, since the offences were non-cognizable and powers of investigation are conferred on the Central Excise Officers with view to bringing the offenders to trial in respect of the offences created under the provisions of the Central Excises and Salt Act, the power to file a complaint was implicit and if the offences were committed within the area for which the complainant was appointed, he would have the power to file a complaint and in these circumstances it cannot be said that he was not acting or purporting to act as a public servant in the discharge of his official duties. The benefit of the proviso (a) to Section 200 would evidently be available to him. With regard to the proposition that the complainant - a public servant need not attend in person, I am supported in my view by a decision of the Allahabad High Court in - State v. S. D. Gupta, where it was observed that since there is no provision in the Criminal Procedure Code stating either expressly or impliedly that the complaint must be presented to the Magistrate by the complainant personally it cannot be held that a complaint sent by post is not valid and cannot be taken cognizance of. Clearly, if the Magistrate were to be of the view that the complainant's examination is necessary, the complainant could be called for his verification.

6. The learned Counsel for the Petitioners contended that in the present case it was obligatory to examine the complainant because the complaint nowhere showed that the allegations made in the complaint were within the personal knowledge of the complainant and the persons who had taken part in the investigation ought to have been examined before issuing process. It must be noted that 'complaint' has been defined under Section 2(b) of the Code of Criminal Procedure and it means any allegations made orally or in writing to a Magistrate with a view to his taking action under this Code. That some person, whether known or unknown, has committed an offence, but does not include a police

report. There is nothing in this definition which requires the complainant to state in the complaint only those allegations which are within his personal knowledge or in Section 200, in the event of the complainant not having personal knowledge requiring the Magistrate to examine the complainant or the witnesses if the case is covered by proviso (a) when the complaint is by a public servant acting or purporting to act in discharge of his official duties. The exemption is not only to the examination of the complainant but also to the witnesses, and this would apply to the witnesses who would have personal knowledge in a case where the complainant does not have personal knowledge about all the allegations made in the complaint. The argument of the learned Counsel for the Petitioners overlooked this important aspect.

7. A good deal argument was addressed on what is evidence and how sufficient ground for proceedings as contemplated by Sections 202, 203 and 204 of the Code of Criminal Procedure has to be made out. It is difficult to accept the contention that in respect of every allegation of fact made in the complaint filed by the public servant covered by provision (a) to Section 200, it would be necessary to examine the witnesses who have personal knowledge and who can give direct evidence. The provision has been advisedly made that the Magistrate need not examine the complainant and witnesses if the cases fall within clauses (a) & (b) to Section 200. In such an event, it would be for the Magistrate to ascertain clauses (a) & (b) to section 200. In such an event, it would be for the Magistrate to ascertain from the allegations in the complaint whether there is a ground for procedure by issue of process as required under Section 204 of the Code of Criminal Procedure or whether no sufficient ground for proceeding has been made out so the complaint should be dismissed under Section 203 of the Code of Criminal Procedure.

8. Reliance was placed on behalf of the Petitioners on the observations in *Nirmaljit Singh Hoon v. The State of West Bengal* : [1973]2SCR66 where it was said in para 22 that whether there was prima-facie evidence even though the person charged of an offence in the complaint might have a defence, the matter had no left to be decided by the appropriate stage and issue of process could not be refused and particularly to the portion which says that unless the Magistrate finds

that the evidence led before him itself is contradictory or intrinsically untrustworthy process cannot be refused if that evidence makes out a prima facie case. What was emphasized was that there should be evidence in the manner contemplated by the provisions of the Indian Evidence Act because, otherwise the sufficiency or otherwise of the grounds of the proceedings cannot be made out. This case, however, does not deal with the applicability of the proviso to Section 200 of the Criminal Procedure Code. Reference was also made to the observations in paragraph 6, 7 and 8 in Chandra Deo Singh v. Prakash Chandra Bose Chabi Bose & Anr. - : [1964]1SCR639 , wherein it is observed that sufficient ground for proceeding must be based on prima facie evidence. It was therefore alleged that it was incumbent to adduce evidence. This case also does not deal with the requirements of the proviso to Section 200, In D.N. Bhattacharjee & Other v. State of West Bengal & Anr. : 1972 CriLJ1037 , it was pointed out that the Magistrate is not debarred at the stage of Section 203, from going into the merits of the evidence produce by the complainant. But the object of such consideration of the merits of the case at this stage could only be to determine whether there are sufficient grounds for processing further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to procedure further, the complaint could be properly dismissed under Section 203, Criminal Procedure Code. This case also does not deal with the need to produce evidence in cases covered by the proviso (a) to Section 200. Balraj Khanna & Others v. Moti Ram : 1971 CriLJ1110 is also of no assistance because it deals with the case of a private complainant and the scope of the Enquiry under Section 202 and 203 Criminal Procedure Code in a case of defamation.

9. The view that I am taking is supported by the decision of the Allahabad High Court in J. S. Huja & Others v. The State reported in that the complainant need not

be examined when the case falls within the proviso to Section 200.

10. It was urged that the learned Magistrate while issuing processes passed a cryptic order exhibiting non-application of mind without giving any reasons for proceeding and such an order could not be allowed to remain. Reliance was placed in this respect in *Gopinath v. State of Himachal Pradesh* which was a case under the Prevention of Food Adulteration Act and it was said that the Magistrate must apply his judicial mind to the material before him and ascertain not only that there is sufficient ground for proceeding further in the complaint but also the nature of the offence for which the accused need be summoned. The Magistrate does not enjoy an unrestricted power to summon a person at this whim, fancy or caprice simply because a complaint has been filed against him. Unfortunately there is no discussion in this judgment on what are the statutory requirements of Section 204 particularly when Section 204 does not require a reasoned order to be given. On the other hand, I find much to commend, with respect in the Full Bench decision of Patna High Court in 1988 CRI. L.J. 129. of the Judgment, it has been said 'what next calls for pointed notice is the fact that Section 203 further mandates that in every case in which the Magistrate dismisses the complaint therein, he must briefly record his reasons for doing so. Thus, this provision in express terms mandates the materials for consideration and the reasons for acting thereon for the purposes of dismissal. On the other hand, Section 204 makes no statutory requirements of the recording of any detailed or brief reasons for the issue of process. This is not to say that the Magistrate is barred from doing so. What is sought to be highlighted is that his provision requires no more than the opinion or satisfaction of the Magistrate that there is sufficient ground for proceeding against the accused. Thus, herein neither the materials on which such judicial is to be arrived at are circumstances nor any detailed process of rationalisation is required either under Section 190 or under Section 204. This, yet again, is not a distinction without significance. For the issue of process under Section 204 the hands of the Magistrate are thus not fettered as to the materials he would look into for the formation of his opinion nor is the power to summon shackled with any elaboration of detailed reasons for doing so'.

11. It is manifest that there was nothing more for the learned Magistrate in the present case, to do the to carefully examine the complaint for finding out whether the allegations made in the complaint indicated the commission of offences and, if so, whether process ought to be issued. Only because the section under which the learned Magistrate was proceeding had not been mentioned in the order of issue of process, it would not follow that there was non-application of mind. Several offences were mentioned in the complaint and the order directing issue of summons only indicated that the learned Magistrate thought at that stage that there was prima-facie ground for initiating proceedings against the accused. What exact charge could be framed against the accused is a matter which would arise for decision only at a later stage after evidence is recorded, this being a warrant case. In view of this, I do not think that the absence of an elaborate order giving reasons for proceeding in any manner vitiated the process issued by the learned Magistrate. The next contention was that the complaint was ambiguous with regard to the various offences alleged against the 12 accused persons. I have, while referring to the allegations in the complaint, given sufficient details of what the allegations were. From the description of the accused given in the complaint, it is apparent that though there were important were two Companies, one Bombay based and the other Delhi based, the other accused were important functionaries much as, Directors or Accountants of both the Companies, and were concerned with the affairs of both the Companies.

12. In *T. J. Stephen & Ors. v. M/s. Parle Bottling Co. (P) Ltd. & Ors.* : 1988 CriLJ1095 , it was pointed out that since proviso (a) to Section 200, Criminal Procedure Code, was applicable to the complaint, the Magistrate was competent to issue process on the basis of the complaint, particularly when the allegations in complaint prima-facie showed commission of offence and, secondly, the Managing Director could not be discharged on the ground that there were no allegations against him and that the offence was committed by the Company as the licensee, since the Company by itself could not act. While dealing with the question regarding discharge under Section 227, Criminal Procedure Code, it was observed in *Union of India v. Prafulla Kumar Samal & Anr.* : 1979 CriLJ154 that where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a

charge and proceeding with the trial.

13. The submission was that basic facts were not stated in the complaint and facts showing the conspiracy were not mentioned and there was an omission also to name the author of the false entries and in respect of the offence under Section 192 read with Section 193, the question of bar of Section 195(1)(b) Criminal Procedure Code was not considered. I would only say here that after considering the observations of the Supreme Court in *State of W.B. v. Haridas Mundra* : 1976 CriLJ1732 and the facts of the present case, the learned Magistrate would have to decide whether sanction for that particular offence was necessary under Section 195(1)(c) of the Criminal Procedure Code because the inhibition applies, on the lines stated in that case by the Supreme Court, to offences under Section 463 are punishable under Section 471 or 476 I.P.C. 418 and 477-A I.P.C. and it was pointed out that the Court had jurisdiction to proceed with trials of offences where Sections 195(1)(c) may not be applicable.

14. It was finally urged that since only the Bombay Company i.e. accused No. 1 was held liable under the Adjudication Order (Original) No. 13 of 1989 decided on June 30, 1989 by the Collector, Central Excises and the others were exonerated, the present proceeding should be dropped. In para 5 of the Adjudication Order passed by the Collector of Central Excises, it was mentioned that the investigations revealed that M/s. Pure Drinks Pvt. Ltd., Bombay was leased out to M/s. Pure Drinks (New Delhi) Ltd. in pursuance of the agreement dated 22-1-1986 and this position had been communicated to the Divisional Assistant Collector by the Deputy General Manager of M/s. Pure Drinks Pvt. Ltd. by letter dated 31-1-1986. A reference to paras 41 and 42 of that Order would show that relying on the case of *Factil Electronics P. Ltd. v. Collector* - 1987 (28) ELT 315 and *Santanu Ray* 1988 (38) ELT 264 and *Vidyawati v. State* 1988 (37) ELT 341, it was held that the licensee is liable for the actions, commissions and omissions, irrespective of whether these were committed by the staff members, the Deputy General Manager, the General Manager or the Managing Director. Para 44 shows that it was held that the unit at Bombay i.e. Pure Drinks Pvt. Ltd. in whose name the Central Excise Licence stood and who had since paid the dues were the licencees who had committed the offence with which they were charged in the show cause

notice dated 28th January, 1987 and they were therefore liable to pay the penalty. Ultimately while ordering confiscation of the goods a penalty of Rs. 5 lacs was imposed on M/s. Pure Drinks Pvt. Ltd. Bombay. It was not the contention of the learned Counsel for the petitioners that the Criminal case cannot proceed because of any of the provisions of the Code of Criminal Procedure which barred the second trial now because obviously the adjudication proceedings cannot be said to amount to a criminal trial. Under Section 9-AA(1) of the Central Excises and Salt Act, 1944, where an offence under this Act has been committed by a Company, every person who at the time the offence was committed was in charge of, and was responsible to, the Company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The proviso to that Section enables the person concerned to show that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence. It is, therefore, clear that though the adjudication proceedings could not have proceeded against the other accused persons, if Section 9-AA could properly apply to them, they would still be criminally liable. Under Section 9-C of the Act, there is presumption of culpable mental state though it shall be a defence for the accused to prove that he had no such mental state and the onus on the accused is to establish this beyond reasonable doubt and not merely by a preponderance of probability. It is in the context of these provisions that the order issuing process has to be examined.

15. Reliance was placed on 1982 Income Tax Reports 909-Uttam Chand & Ors v. Income-Tax Officer, Central Circle, Amritsar, where the Supreme Court observed that in view of the findings recorded by the Income-Tax Appellate Tribunal that it was clear on the appraisal of the entire material on record, Smt. Janak Rani was a partner of the assessee-firm and that the firm was a genuine firm, the assessee could not be prosecuted for filing false returns and so the prosecution came to be quashed. Relying on this decision, a learned Single Judge of this Court Puranik J. in Criminal Application No. 1114 of 1985 decided on 17-6-1987 - Indian Hume Pipe Co. Ltd. v. R.G. Sethi took the view that a prosecution after the adjudication order could not continue, because it would be a futile exercise to carry that prosecution which ultimately must fail since the order of the Appellate Tribunal in

that case had become an absolute between the Department and the petitioner and company since no appeal had been preferred against Department and the petitioner and company since no appeal had been preferred against Department against that order. However, in a later decision of the Supreme Court in : [1984]149ITR696(SC) -P. Jayappan v. S. R. Perumal, First Income-Tax Officer, Tuticorin, the Supreme Court pointed out while dealing with the provisions of the Income-tax Act as follows :

'.... A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings under Section 276-C and Section 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The Criminal Court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be blinding on the Criminal Court. The Criminal Court has to judge the case independently on the evidence placed before it. Otherwise there is a danger of a contention being advanced that whenever the assessee or any other person liable under the Act has failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal Court....'

16. It was urged on behalf of the Petitioners that observations in the above case came to be made on respect of the adjudication proceedings which were pending, while in the present case, the ratio in Uttamchand's case would apply because the adjudication proceedings have been concluded. I am however, clear that the circumstance whether the adjudication proceedings are pending or concluded would not make any difference to the proposition which has been laid down in P. Jayappan's case after considering the ratio of Uttamchand's case and the observations extracted above clearly show that the criminal Court has to judge the case independently on the evidence placed before it. In the present case, the liability could not be imposed by the Collector in the adjudication proceedings

because they had to be taken only against the licensee upon the findings reached by the Collector. In Indian Hume Pipe Company Limited, Jayappan's case does not seem to have brought to the notice of the learned judge who relied only on the observations in Uttamchand's case. In a later judgment by another Single Judge of this Court in B. S. Hebbar, Asstt. Collector of Customs v. Smt. Indubala Chaudhary (Bance) & Anr. - Criminal Revision Application No. 14/'86 decided on 29-4-1986 after noticing Jayappan's case, it was held that the result of the adjudication proceedings cannot conclude the matter so far as the criminal Court is concerned. Shri Bhagat for the Petitioners urged that since there is a difference in the approach of the two learned Single Judges or this Court, the matter must go to a larger Bench, but I do not think that this is necessary because in the case of Indian Hume Pipe Company Ltd., Puranik J. had not considered the effect of the ratio in Jayappan's case which has been considered in B. S. Hebbar's case. In any event, the law as laid down in Jayappan's case by the Supreme Court after considering Uttamchand's case would be binding on this Court and no reference to a Larger Bench is called for. It is not necessary to refer to the several decisions of the other High Courts on which reliance was placed by the learned Counsel, because, they were decided upon the view of the law taken either in Uttamchand or in Jayappan's case.

17. Considering that in the view of the Collector, adjudication proceedings could not be taken against the other accused persons but only against Bombay based company, it cannot be said so far as they were concerned that their responsibility had been concluded by whatever was decided in the adjudication proceedings. It is not therefore possible to accept the contention that in view of the decision in adjudication proceedings, the process issued by the learned magistrate would have to be quashed.

18. The scope of the jurisdiction of the High Court in quashing proceedings under Section 482 of the Criminal Procedure Code has been laid down by a series of decisions of the Supreme Court and I may refer only to the observations in Smt. Nagawwa v. Veeraman Shivalingappa Kenjalgi & Ors. : 1976 CriLJ1533 , where it has been observed that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in

support of the same and he is only to be prime facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case not can the High Court go into this matter in its revisional jurisdiction which is a very limited one. The present case does not fall in any of the four categories enumerated there, where the High Court may quash or set aside the order of the Magistrate issuing process against the accused.

19. In the result, I see no merit in the Criminal Application. The rule is discharged and the stay stands vacated.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com