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Court : Orissa

Decided On : Jul-08-1998

Reported in : 1998CriLJ4401

Judge : A.N. Phukan, ;C.J. And C.R. Pal, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 13(1), 13(2) and 19; [Central Excise Act, 1944](#) - Sections 11A; Central Excise Rules, 1944 - Rules 9(2), 57A, 57F(1), 173F, 173G, 173O, 173Q, 209 and 226; [Constitution of India](#) - Articles 21, 226 and 227; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 155(2), 156(1), 173, 300 and 482; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 561A; Indian Penal Code (IPC) - Sections 120B and 420

Appeal No. : O.J.C. No. 1837 and Cri. M.C. No. 493 of 1998

Appellant : Birla Tyres and ors.

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Sanjit Mohanty, Adv.

Advocate for Pet/Ap. : R.K. Rath, Adv.

Disposition : Petition dismissed

Judgement :

C.R. Pal, J.

1. The petitioners have filed these petitions one under Articles 226 and 227 of the [Constitution of India](#) and the other under Section 482 of the Criminal Procedure Code, 1973 with the identical prayer in both the petitions to quash the F.I.R. dated 12-1-1996, Annexure-2 of R.C.No. 7-4 of 1998 and the investigation undertaken by the opposite parties 2 to 4 in pursuance of Annexure-2.

Since the petitioners are same and prayer in both the petitions are identical, the petitions are taken up together for disposal.

2. The facts giving rise to these petitions are as follows :-

The petitioner No. 1 is a company engaged in production of tyres in its factory established in the district of Balasore with its Head Office at Chanpur in the district of Balasore and is represented by Shri Deepak Tandon, Joint President, the petitioner No. 2. Petitioner No. 3 is the Senior Manager(Commercial) of the aforesaid company.

On the allegation that the petitioners named above entered into criminal conspiracy during 1992-95 with active participation of Shri G. B. Panda, Superintendent of Central Excise and Customs, Range-1, Balssore and in furtherance of the said conspiracy Shri G. B. Panda allowed the petitioner Nos. 2 and 3 who are employees of the petitioner No. 1 to suppress the natural production figure of tyres, tubes and flaps manufactured in the factory of M/s. Birla Tyres and ultimately abated the evasion of Central Excise duty to the tune of more than rupees ten crores which the petitioner No. 1 is liable to pay to the Central Excise Department. In order to evade the Central Excise duty, the petitioner Nos. 2 and 3 maintained the basic record such as Daily Production Register and statutory record like R.G.; I in an irregular manner in violation, of provisions of Central Excise Manual, It is alleged that Shri G. B. Panda was in-charge of the range under the Central Excise Department in which the petitioner No. 1 is an assessee. It is further alleged that Shri Panda failed to scrutinise the records of M/s. Birla Tyre's and supervise¹ the actual production pursuant to the said conspiracy and thereby abused his official position and showed undue favour to

the petitioner No. 1 and caused wrongful loss to the State Exchequer and consequential gains to self and other petitioners On the basis of the report of the D.S.P., C.B.I., Bhubaneswar dated 12-1-1996 containing the above allegations the aforesaid case has been registered for the offences under Sections 120B, 420, I.P.C. and under Section 13(2) read with Section 13(1)(d) of the [Prevention of Corruption Act, 1988](#).

3. The case of the petitioners is that much prior to the lodging of the aforesaid F.I.R., officers of the Central Excise Department inspected the factory and scrutinised the registers maintained in the factory and found certain discrepancies. On the basis of the discrepancies the Commissioner, Central Excise served a notice to show cause (Annexure-1) on the petitioners alleging that after thorough examination and comparison of the production in report reflected in the Daily Production Register of Division-C of M/s. Birla Tyres with the production reflected in R.G.-I, it is found that M/s. Birla Tyres appears to have suppressed production of 91,663 tyres and removed the same without payment of duty from their factory premises. The total liability to pay the duty on the said quantity of tyres is Rs. 10,32,64,386/-. It is also alleged that 55 numbers of tyres which were seized from the premises maintained by M/s. Birla Tyres 'at Moti Tower near Rlemuna Golai, Balasore appears to have been removed clandestinely from the factory premised of M/s. Birla Tyres without payment of excise duty thereon. It is further alleged that 36 RT of Carbon Black a declared input under Rule. 57-A was found to be stored in another unapproved godbwn at Sambalpur. On verification of the stock of Carbon Black in the Raw material store of the factory it was found to be short by 36 MT as against the quantity shown in R.G. 23A.I It is also alleged that Modvat, credit on the input amounting to Rs. 1,52,208 had already been availed by M/s. Birla Tyres. For removing the 'said Carbon Black neither any intimation was given nor any permission was obtained from the competent authority under Rule 57-F (1)(ii). It is also alleged that M/s. Birla Tyres, Balasore have been removing tyres for destructive testing without payment of duty in contravention of Rule 9(1) read with Rule 173-F of Central Excise Rules, 1944. On the basis of the discrepancies found the petitioners were noticed by the Commissioner, Central Excise & Customs, Bhubaneswar under Annexure-1 dated 29-6-1995 to show cause as to why :-

(i) Central Excise duty amounting to Rs. 10,32,64,385/- as detailed in Annexure-D should not be recovered from them under Section 11A of Central Excises & Sale Act, 1944 and proviso thereto read with Rule 9(2) of the Central Excise Rules, 1944 on the ground as aforementioned.

(ii) 55 Nos. of tyres and 36 MT of Carbon Black seized under Panchanama dated 6-1-1995 should not be confiscated under Rules 1730 and 209 of Central: Excise Rules 1944 as the same appears to have been removed in contravention of provisions of Central Excise Rules as discussed above.

(iii) Central Excise duty on 55 Nos. of tyres amounting to Rs. 1,19,900/- should not be recovered from them under Section 11A and proviso thereto of Central Excises & Salt Act, 1944 read with Rule 9(2) of the Central Excise Rules, 1944.

(iv) Central Excise duty on 36 MT of Carbon Black amounting to Rs. 1,52,208/- should not be recovered from them under Section 11A and proviso thereto of Central Excises & Salt Act; 1944 read with Rule 9(2) of Central Excise Rules; 1944.

(v) Penalty (ies) should not be imposed on them under Rules 9(2), 173Q and 209, 226 ibid for violation of Rule 9(1) read with Rule-173F and Rule 57F(1)(ii) and Rule 173G and/or Rule 226 of Central Excise Rules, 1944.

The petitioners as per Annexure-1/A dated 19th March, 1996 furnished their reply to the aforesaid show cause notice explaining the alleged discrepancies/infraction of rules indicated in the notice to show cause. The petitioners, therefore, contend that since much prior to the registration of the case by C.B.I., the Central Excise Department took up the matter which is still under inquiry, the investigation by the C.B.T. pursuant to the F.I.R., Annexure-2 is improper and amounts to double jeopardy and is also against the constitutional provision of Article 21. The petitioners, further contend that for the same set of allegations two parallel proceedings are uncalled for. In the above context, it is also submitted that a subsequent verification by the Central Excise Department revealed that the quantum of suppression as alleged at the first instance is not correct and the same is much less than what was alleged initially. On the above basis, it is further

submitted that if ultimately the inquiry conducted by the Central Excise Department goes in favour of the petitioners, the allegations brought out by the C.B.I, will not stand. It is also submitted that the facts alleged in the F.I.R. do not make out a case under Section 420, I.P.C. and for all these reasons, the F.I.R. and the investigation, if any, undertaken by the C.B.I, are liable to be quashed.

4. The opposite parties have filed their counter in the D.J.C. supporting the allegations brought against the petitioners. Recording to the opposite parties, there is no bar for two parallel proceedings. It is also submitted that the offences alleged under Annexure-2 for which the C.B.I. is investigating into the matter do not come within: the scope of Central Excise Act and as such the inquiry which is in progress under Central Excises and Salt Act cannot be a bar or substitute to any investigation by the C.B.I. It is also submitted that there are materials to make out a case under Section 420, I.P.C. which is a cognizable offence and as such the submissions of the petitioners to the contrary are not tenable. It is also contended that the O.J.C. is barred under the principle of res judicata or for that matter under the principle of constructive res judicata as the issue now raised was directly on issue before the High Court of Calcutta in Criminal Revision No. 416 of 1996 filed by the present petitioners and the High Court after hearing the parties has dismissed the same not only on the ground of jurisdiction but also on merit.

5. Before advertng to recod our finding, we consider it expedient to state the laws as laid down by the Apex Court in exercise of extraordinary power under Article 226 of the Constitution and inherent power under Section 482, Cr. P.C. by the High Court.

(a) In *R. P. Kapur v. State of Punjab* AIR 1960 Supreme Court 865 : 1960 Cri LJ the appellant moved the High, Court of Punjab under Section 561A of the Code of Criminal Procedure, 1898 for quashing the proceeding initiated by the first, information report in question. During pendency of that petition before the High Court, police submitted report under Section 173 of the Code. Subsequently, after hearing the parties the petition was dismissed with the observation that no case had been made out for quashing the proceeding under Section 56A. Being aggrieved by the; said order, the appellant came to the Apex Court. The, Apex

Court considering the law laid down in the earlier cases held as follows (at page 1241; of Cri LJ):-It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure; the ends of justice. If the criminal proceeding in question is in respect of an, offence; alleged to have, been committed by, an accused, person and it manifestly appears th|at there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under the category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly

inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561A the High Court would not embark upon an enquiry as to whether the evidence in question is liable or not. That is the function of the trial magistrate and ordinarily it could not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under Section 561-A in the matter of quashing criminal proceedings and that is the effect of the judicial decisions on the point....

In *State of West Bengal v. Swapan Kumar Guha* AIR 1982 SC 949 : 1982 Cri LJ 819 the Apex Court held that (at page 841; of Cri LJ):

If an offence is disclosed, the High Court under Article 226 of the Constitution will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. Justice requires that, a person who commits an offence has to be brought to book and must be punished for the same,. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of the principle that the Court normally does not interfere with the investigation of a case where an offence has. been disposed. But it cannot be said that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation.

Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to

interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

In *State of Haryana v. Ch. Bhajan Lal*, reported in AIR 1992 SC 604 : 1992 Cri LJ 527 the Apex Court observed as follows (at pages 551-552; of Cri LJ) :-

In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a Case against the accused.
2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
3. Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an, order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is (manifestly attended with mala fide and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In *Union of India v. B. R. Bajaj* AIR 1994 SC 1256 : 1994 Cri LJ 2086 the Apex Court reiterating the guidelines laid down in *State, of Haryana v. Bhajan Lal's* case (supra) and after considering the facts of the case observed that the FIR containing some of the important allegations which make out a cognizable offence at that stage and registration of F.I.R. was only beginning of investigation. That being the case quashing of F.I.R. by the High Court not proper. Treating whole matter as though it was an appeal against the order of conviction was not permissible in exercising inherent power under Section 482 particularly at stage of F.I.R. when the same discloses commission of cognizable offence which had still to be investigated by the police. In *Rashmi Kumar v. Mahesh Kumar Bhada* (1997) 2 Supreme Court Cases 397 while considering the power of High Court to quash the proceeding at initial stage, it has been held :

The High Court should sparingly and cautiously exercise the power under Section 482 of the Code to prevent miscarriage of justice. The High Court would be loath and circumspect to exercise its extraordinary power under Section 482 of the Code or under Article 226 of the Constitution. The Court would consider whether the exercise of the power would advance the cause of justice or it would tantamount to abuse of the process of the Court. Social stability and order require to be regulated by proceeding against the offender as it is an offence against the

society as a whole. This cardinal principle should always be kept in mind before embarking upon the exercise of the inherent power vested in the Court.

6. In the present case, the offences alleged against the petitioner are under Sections 120B, 420, I.P.C. and under Section 13(2) read with Section 13(1)(d) of the [Prevention of Corruption Act, 1988](#). Out of the offences alleged, the offence under Section 420, I.P.C. is a cognizable offence.

7. Keeping in view the law laid down by the Apex Court we considered the case of the petitioners. We find that the case of the petitioners does not come under any of the categories enumerated by the Apex Court in Bhajan Lal's case warranting interference by the High Court in exercise of its inherent power under Section 482, Cr. P.C. or extraordinary power under Article 226 of the Constitution. We also find that besides the petitioners, one public servant namely, Shri G. B. Panda is also implicated with the alleged offences. Considering the gravity of the offences alleged it is also not considered to be a fit case where this Court should interfere with the investigation.

8. The petitioners contention that the allegations do not make out any cognizable offence and as such the investigation illegal is not acceptable to us as we find that the F.I.R. on the face of it discloses prima facie Offences under Section 120B, I.P.C. and under Section 13(2) P.C. Act besides an offence under Section 420, I.P.C., which is a cognizable offence. The next contention that the investigation without obtaining previous sanction of the competent authority as envisaged under Section 19 of the Prevention of Corruption Act is illegal is also not acceptable to us as absence of sanction as envisaged under Section 19, P. C. Act bars the Court from taking cognizance and has nothing to do with the investigation. The principle of double jeopardy as envisaged under Section 300, Cr. P.C. is also not attracted to the present case as the petitioners have not yet faced any trial and the matter is still under investigation. Further, it may also be mentioned that no other investigation under the Code is in progress against the petitioners. The inquiry which is pending against the petitioners under the provisions of Central Excises & Salt Act and the Rules made there under is not before any Court and the scope of that inquiry is also quite different from the criminal proceeding under challenge

which can be seen from the notice to show cause (Annexure-1) the relevant portions of which have been extracted earlier. Stay of further proceeding in the aforesaid, enquiry granted by the CEGAT as has been stated in the affidavit dated 24-6-98 filed by the petitioner No. 3 cannot also be a ground to stall or quash investigation into the offences alleged in the F.I.R. The investigation does not also offend Article 21 of the Constitution as the investigating agency is empowered under law to investigate the same.

9. The contention raised by the learned counsel for the opposite parties that the petitions are barred under the principle of res judicata or for that matter under the principle of constructive res judicata since the matter came up before the High Court Of Calcutta in Criminal Revision No. 416 of 1996 and has been dismissed not only on the ground Of lack of jurisdiction but also on merit is also not acceptable to us as it is not disputed before us that the High Court of Calcutta had no jurisdiction to decide the matter and as such any finding recorded by the said, Court cannot have any binding effect and operate as res judicata.

Keeping in view the law laid down by the pex Court in the cases cited above and in absence of any material/circumstance to take a different view we consider it a fit case where this Court shall not interfere with the investigation. Accordingly, we refuse to exercise the extraordinary power under Article 226 of the Constitution inherent power under Section 482, Cr.P.C. and consequently we dismiss both the petitions.

A.N. Phukan, C.J.

10. I agree.