

**Electrical Manufacturing Co. Ltd. Vs. D.D. Bhargava**

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**Court :** Delhi

**Decided On :** Nov-21-1966

**Reported in :** AIR1967Delhi41; 1967CriLJ868

**Judge :** I.D. Dua, J.

**Acts :** Imports and Exports (Control) Act, 1947 - Sections 5 and 6; - Indian Penal Code (IPC), 1860 - Sections 120-B and 420

**Appeal No. :** Criminal Revn. No. 273-D of 1965, against order of Addl. Dist. And S.J. Delhi, D/- 15-7-1966.

**Appellant :** Electrical Manufacturing Co. Ltd.

**Respondent :** D.D. Bhargava

**Advocate for Def. :** R.L. Mehta and ; R.K. Verma, Adv.

**Advocate for Pet/Ap. :** A.K. Sen,; Ved Vyas, (Senior) Adv.,; H.L. Anand,;

**Judgement :**

(1). These are two connected revision applications (Cr. R. 273-D of 1965 and Cr. R. 291-D of 1965) arising out of the same criminal proceeding. Cr. R. 273-D of 1965 has been presented by Electrical . Of Calcutta under sections 439 and 561-A of the Code of Criminal procedure and under Article 227 of the Constitution of India and Cr. R. 291-D of 1965 has been presented by Shri Om Khosla of Calcutta

under Sections 439 and 561-A of the Code of Criminal Procedure. both are directed against the order dated 9-12-1964 of a learned Magistrate 1st Class, Delhi, rejecting two identical application by the two petitioners presented in the trial Court on 26.9.1964 pleading that the complainant had not applied his mind while filing the complaint and that as such it deserved to be dismissed.

(2) In order to understand the real point in controversy, it may be observed that on 31-12-1962, Shri D.D. Bhargava, Deputy Chief Controller of Imports and Exports (Office of the Chief Controller of Imports and Exports) New Delhi, through Mr. Rao, P.P., S.P.E., presented a complaint under Section 120B read with Section 420, Indian Penal Code and Section 5 of the Imports and Exports (Control) Act, 1947, in the Court of the Special Magistrate 1st Class, Delhi. In brief the complaint proceeded to allege that during 1954-60, Electrical ., Calcutta, M> Nath, Chairman of the Board of Directors, Om Khosla, Director of Works of E.M.C. Ltd., S.G. Mukherji, in charge Extrusion Works of E.M.C. Ltd., and P.N. Mirchandani, one of the employees of the said Company, were all parties to a criminal conspiracy, having for its object the procuring of import licenses by cheating the licensing authorities and importing of goods on the basis of those licenses in contravention of their conditions.

On 15-9-1954, M. Nath as Chairman of the said Company made an application to the Chief Controller of Imports and Exports, New Delhi for an import license for the import of machinery and equipment for generator, transmission and distribution of electric energy. In pursuance of this application, license was granted to the said company in January, 1956, for the import of machinery and equipment to the value of Rs.5,00,000/- as mentioned in the list appended to the complaint. Certain details are then mentioned and the complaint proceeds on to allege that in the application for the license, it was indicated that the machinery would be installed at their works near Calcutta and in the license the name of the actual user in India was mentioned as 'self' i.e. E.M.C. Ltd., Calcutta. On the basis of the said import license, an indent, details of which are given in the complaint, for the import of Forging Press was placed by Om Khosla as Director on behalf of the said company on M/s. Emuco of West Germany.

The correspondence in this connection indicated that the said indent was placed by E.M.C. Ltd., Calcutta, only for the E.M.C. Works, Kanpur and not for the use of E.M.C. Ltd., at Calcutta. The Forging press was sent by the foreign supplier to E.M.C. Ltd., Calcutta in March, 1957 and immediately thereafter it was cleared at Calcutta docks and sent to E.M.C. Works, Kanpur, where it was installed. E.M.C. Works, Kanpur, is stated to be a separate entity which has nothing to do with the E.M.C. Ltd., Calcutta. The supply of the Forging press by E.M.C. Ltd., to E.M.C. Works, Kanpur, for the use of the latter at Kanpur is alleged to be a violation of the condition of the license. On the basis of the aforesaid license, Om Khosla as director of E.M.C. Ltd., is alleged to have placed another import indent in January, 1957 on M/s. Maschinenfabrik Herborn, West Germany, for the import of 'one complete set of wire drawing equipment and one complete set of spares required for one year's normal maintenance.'

A letter of credit was opened with the State Bank of India Ltd., Calcutta in connection with this import in which the description of the goods to be imported was given as 'one complete set Herborn Non-slip Continuous Wire Drawing Machine, Model G-II with 8 drafts, individual motor drive, die holders, selective and emergency switches and wire length measuring device' and M. Nath as Chairman of the E.M.C. Ltd., subsequently addressed letters to the State Bank of India, in June, July and August 1957 for amending the letter of credit for increasing the amount and for making alterations in the description of the machinery to be imported and in the letter D/- 31-7-1957. M. Nath requested the bank to further amend the above description in the letter of credit as follows:

'One complete set of wire drawing equipment with complete spares required for one year's normal maintenance.'

Ultimately, the E.M.C. Ltd., imported machines under Invoice No. 760/8217 dated 31-1-1958 in which the description of the machines was mentioned as follows:-

'One complete set of wire drawing equipment with complete spares required for one year's normal maintenance.'

One Herborn Non-slip continuous wire Drawing Machine Model GII/8 with 8 drafts suitable to draw Aluminum wire from 3/8' dia.

One Herborn High Efficiency Continuous wire drawing machine model Tf 11B/15 drafts suitable to draw aluminum wire from .186'

One Herborn single Block wire drawing machine model Eg 11 and spares for all the machines'.

The above machines, according to the allegations, are specially designed to draw out aluminum wire and nto steel wire and the machines for drawing aluminum wire are nto covered by the license in question. The spare parts imported for these machines against this license have also been alleged nto to be covered by the said license. The E.M.C. Ltd., so proceeds the complaint, dishonestly represented that they would import wire drawing machine for manufacture of steel wire but imported wire drawing machine specially designed for drawing aluminum wire and thereby cheated the C.C.I and E. And imported goods nto covered by the license. Om Khosla is alleged to have placed antoher import indent on 19-2-1957 on behalf of the E.M.C. Ltd., on M/s. J.A. Kraft, West Germany, for the supply of spare parts for 18 Bobbin Sun and Palnet type slow speed stranded bevel gears against the said license and accordingly imported them there under, though they were nto covered by the same. The C.C.I. and E issued antoher license on 25-2-1958 to the E.M.C. Ltd., Calcutta for the import of Continuous Rod Making Press and Rod drawing machine on the undertaking given by Shri Om Khosla on behalf of E.M.C. Ltd., to the following effect:-

'We hereby undertake that we will nto manufacture any extruded sections in this process except aluminum wire Rod without prior permission of the Government of India.'

S.C. Mukherji who was in charge of Extrusions Works of the E.M.C. Ltd., in violation of the above undertaking, manufactured extruded sections of windows and doors from the Extrusion Press and Om Khosla sold them to various firms at Bombay and Calcutta and signed the invoices. M. Nath acknowledged receipt of payment of Rs.7,182/- being the cost of aluminium windows sold to Metalind (P)

Ltd., Calcutta. The complaint then proceeds to state that if the licencing authorities had known that E.M.C. Ltd., wanted to import the Extrusion Press for manufacture of extruded sections toher than aluminium rod, they would nto have issued the license. Om Khosla also placed indent on 9-5-1958 on behalf of E.M.C. Ltd., against a license mentioned in the complaint upon M/s. Empiria Products Ltd., London for the import of one Horizontal Bull Block Machine in the place of a Rod Drawing Machine as if it was an accessory to the Extrusion Press, though in fact it was nto so and accordingly imported the same contrary to the conditions of the license. The E.M.C. Ltd., according to the averments, thus cheated the C.C.I. and E and also contravened the conditions of the license. These, broadly speaking, are the averments on facts on the basis of which the complaint was lodged. Summons were apparently issued pursuance to this complaint and the accused persons appeared in response thereto, and were enlarged on bail in February, 1963.

(3) On 7-5-1963, accused No. 1 filed an application for dismissal of the complaining urging that the allegations in the complaint reveal commission of offences between 15-9-1954 and 9-5-1958 and during that period the only authority competent to lodge a complaint was a Customs Collector or an officer of Customs authorised by the Customs Collector. The complainant who is a Deputy Chief Controller of Imports and Exports was neither a Customs Collector nor an officer authorised by him and the complaint deserved to be dismissed as unauthorised. This objection was repelled by the learned Magistrate on 7-8-1963. The accused then submitted antoher application dated 14-8-1963 raising some toher objections to the trial of the suit which the learned Magistrate declined to go into with the observation that the accused was trying to delay the proceedings.

The matter was taken on revision to the Court of the Additional Sessions Judge who on 8-10-1963 declined to recommend the case to the High Court or to express any opinion on the various matters raised at that stage. The accused-petitioner, according to the learned Additional Sessions Judge, would be at liberty to re-agitate the points raised in those proceedings if after recording the preliminary evidence, the learned Magistrate declined to frame any charge. I may point out that on the same day the learned Additional Sessions Judge also dismissed the revision from the order of the learned Magistrate dated 7-8-1963

holding the complaint to be in order and rejecting the earlier preliminary objection. It appears that for certain reasons which are unnecessary to state, before the examination of complainant Shri D.D. Bhargava, the Court examined Shri C.J. Shah, Development Officer, as P.W.1 on 19-11-1963 and 20-11-1963 and Dr. P. Dayal, also Development Officer as P.W.2 on 20-11-1963 and 20-12-1963. The cross-examination of both these witnesses was deferred till after the examination of the complainant Shri D.D. Bhargava. Shri D.D. Bhargava was examined as P.W.3 on 24-2-1964 and 3-3-1964. He was cross-examined on 31-3-1964.

(4) On 26-9-1964, two identical applications were presented in the Court of the trial Magistrate one by Mr. Om Khosla, accused No. 3 and the toher on behalf of the Electrical ., through B.K. Sarkar (constituted Attorney) praying that 'no cognizance should be taken of the purported complaint' and that the complaint be dismissed. An ad interim order restraining Shri D.D. Bhargava from proceeding with the complaint or the trial was also sought. The ground on which this prayer was founded, in substance, was that 'in order to maintain the prosecution it was incumbent for the prosecution to establish that the complainant had applied his mind to the facts and circumstances of the case and to the available evidence and material and had come to its own conclusion and the prosecution having failed to do so, the present proceedings were and are wholly incompetent, illegal and nto maintainable in law.'

In support of this ground, it was pleaded that 'the evidence of Shri D.D. Bhargava before the learned Court clearly established that the alleged complaint initiating the prosecution was purported to be signed by him without himself considering any of the facts and circumstances of the cases or available records or materials and without in any way applying his mind thereto but upon mere conjectures'. Section 5 of the Imports and Exports (Control) Act, 1947, according to the averments in the said application 'enjoins that the entire facts connected with the offence must be placed before the competent authority and the initiation of proceedings is to be done on consideration of them.'

(5) In the arguments in the trial Court, reliance was placed on behalf of the accused on two decisions of the Supreme Court reported as Feroz Din v. State of

West Bengal : (1960)ILLJ244SC and Madan Mohan Singh v. State of Uttar Pradesh : AIR 1954 SC637 , in support of their contentions, but these decisions were distinguished by the learned Magistrate as no sanction is required for filing a complaint under Section 5 of the Imports and Exports (Control) Act and the complaint filed by Shri D.D. Bhargava was in accordance with the law.

(6) The matter was taken on revision before the learned Additional Sessions Judge before whom a decision of the Supreme Court in Jaswant Singh v. State of Punjab : 1958 CriLJ265 , and a decision of the Privy Council in Gokul Chand v. The King , were also cited. That Court repelled the contention raised on behalf of the accused observing that under Section 6 of the Imports and Exports (Control) Act, the prosecution was not required to place before the complainant all the documents and the entire evidence collected by the Investigating Officer before presenting them complaint, adding that the facts of the case in hand were actually placed before the complainant Shri D.D. Bhargava, who drafted the complaint against the accused and it could not be said that the complainant did not know the evidence on the facts of the case which the Investigating Officer had collected against the accused.

(7) On revision in this Court, Shri A.K. Sen, learned counsel for the accused has questioned the conclusion of the learned Additional Sessions Judge, that the complainant had before him all the relevant facts of the case. In support of this challenge, reference has been made to the statement of Shri D.D. Bhargava as PW3 when he stated that he had come to know of the present case from a report received from the S.P.E. at the end of September 1962 and it is forcefully argued that this report was not produced in Court, with the result that there is no material on the record legally establishing that the complainant had before him all the facts and material when he made up his mind to lodge the complaint.

It is added that the non-production of the report is a fatal omission and this Court should draw an inference against the prosecution and hold that if produced that report would not have supported the assertion that all the facts were actually placed before and considered by the complainant before drafting the complaint and filing it in Court. The decisions of the Supreme Court and of the Privy Council

mentioned above have been relied upon before me as well and it has been very eloquently agreed that these decisions supply a close analogy and should be held to cover the present case as well. Emphasis has been laid on certain passages specifically read out from the decisions just mentioned.

(8) On behalf of the respondent it has been strongly urged by Shri Mehta, that the decisions relating to prevention of Corruption Act and the Industrial Disputes Act with which the Court was concerned in the decisions relied upon by the petitioners clearly distinguishable and the ratio decidendi of those decisions cannot be appropriately applied to Section 6 of the Imports and Exports (Control) Act which is differently worded. According to the counsel, all that is required by Section 6 is that a complaint in writing be made by an officer authorised in this behalf by the Central Government by a general or a special order so as to enable the court to take cognizance of an offence punishable under Section 5 of the said Act. While developing this point, he has referred to S.A. Venkataraman v. State : 1958 CriLJ254 , Indu Bhushan Chatterjee v. State of West Bengal : 1958 CriLJ279 , Biswabhusan Naik v. The State : AIR1952 Ori289 and N.G. Sabde v. The Crown Air 1950 Nag 12.

The Counsel has relied on the decision in the case of Indu Bhushan Chatterjee. : 1958 CriLJ279 for the proposition that it is not for the complainant to judge the truth of the allegations made against the accused by calling for the records of other cases and if the papers placed before him give him the necessary material upon which he decides that it is necessary in the ends of justice to accord sanction, when the principle laid down by the Privy Council should be considered to have been complied with. This case, it may be pointed out also construed section Section 6 of the Prevention of Corruption Act, 1947, is in the following terms:-

'6. Previous sanction necessary for prosecution. (1) No Court shall take cognizance of an offence punishable under Section 161 or Section 164 or Section 165 of the Indian Penal Code or under Sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction,-

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Section 34 of the Industrial Disputes Act, 1947, reads as under:-

'34. Cognizance of offences.

(1) No Court shall take cognizance of any offence punishable under this Act or of the abutment of any such offence, save on complaint made by or under the authority of the appropriate Government.

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Section 6 of the Imports and Exports (Control) Act, 1947, is as follows:-

'6. Cognizance of offences.

No Court shall take cognizance of any offences punishable under Section 5 except upon complaint in writing made by an officer authorised in this behalf by the Central Government by general or special order, and no Court inferior to that of a Presidency Magistrate or Magistrate of the first class shall try any such offence'.

It is obvious that neither the language of clause 23 of the Cotton Cloth and Yarn (Control) Order, nor of S. 6 of the Prevention of Corruption Act nor of Section 34 of the Industrial Disputes Act is completely identical with that of Section 6 of the Imports and Exports (Control) Act, 1947. Whereas clause 23 of the Cotton Control Order and Section 6 of the Prevention of Corruption Act expressly speak of previous sanction of a third party, S. 6 of the Imports and Exports (Control) Act merely provides that the complaint should be made in writing by an officer authorised in this behalf by the Central Government by a general or a special order. Section 34 of the Industrial Disputes Act is a third category of the provision which provides that the complaint should be made by or under the authority of the appropriate Government.

One thing is thus obvious that under Section 6 of the Imports and Exports (Control) Act, all that is required is that the person lodging the complaint or initiating the proceedings must be authorised in that behalf by the Central Government by a general or a special order. No sanction or authority for any

complaint in a given case is required by this provision. It is the locus standi of the complainant alone which is the subject-matter of Section 6. If he is clothed with the requisite authority, then he has the necessary locus standi to make the complaint to the Court which would be competent to take cognizance of the offence. On the other hand, even under Section 34 of the Industrial Disputes Act, the Legislature has provided that the complaint in a given case should be made by or under the authority of the appropriate Government to enable the Court to take cognizance of the offence which is the subject matter of the complaint. On plain language of the four provisions of law reproduced above, distinction between Section 6 of the Imports and Exports (Control) Act and the other provisions of law appears to be obvious, and it is inappropriate to import into Section 6 considerations wholly uncalled on its language though attracted by the other provisions.

(10) I may now appropriately turn to the decisions relied upon on behalf of the petitioners, Gokul Chand's case. is concerned with clause 23 of the Cotton Cloth and Yarn (Control) Order (1943). In that case, a Sub Inspector of Police, Food Control, Shalpur made a written report to the Sub-Inspector of Police, Sholapur, which contained facts assumed by the Privy Council to have been proved and to constitute an offence under clause 18(2) of the said Control Order. On 5-1-1945, sanction to the prosecution of Gokul Chand for breach of the provisions of clause 18(2) was given by the Government of Bombay. On an objection being raised to the validity of the sanction, the trial Court held the sanction to be sufficient but acquitted the accused on the merits. The High Court on appeal convicted the appellant. On further appeal, the Privy Council pointed out that the sanction, though specified the person to be prosecuted and the clause of the order which he was alleged to have contravened, did not specify the acts of the accused alleged to constitute the said contravention.

Holding the view of the facts adopted by the High Court not to be supported by the evidence on the record, the Privy Council came to the conclusion that there was no evidence that the necessary facts on which sanction was granted had been placed before the sanctioning authority. It was, however, made clear, that sanction under clause 23 was not required to be in any particular form nor even to be in writing and though it was considered to be plainly desirable that the facts should

be referred to on the face of the sanction, this was expressly stated not to be essential. According to the ratio of this decision, in order to comply with the provisions of clause 23, it must be proved, if necessary by extraneous evidence, that the sanction had been given in respect of the facts constituting the offence charged. This decision clearly does not cover the present case, but it is argued that this decision has been construed by the Supreme Court in a manner which brings the present case within its fold.

In *Biswabhusan's case* : AIR1952 Ori289 the Court was concerned with S. 6 Prevention of Corruption Act, and the principle laid down in *Gokul Chand's case* was applied to that case because it was considered no more necessary for the sanction under the Prevention of Corruption Act to be in any particular form or in writing or for it to set out the facts in respect of which it was given, than it was under clause 23 of the Order which the Privy Council had considered. The Supreme Court, however, came to the conclusion on facts that the letter of the District Magistrate, asking for sanction was enough to show the facts on which the sanction had been based. Sanction based on the facts set out in the letter was considered to be valid.

In *Feroz Din's case* : (1960)ILLJ244SC the Court was concerned with S. 34 Industrial Disputes Act. Of the five appellants in the Supreme Court, four were employees of the Indian Iron and Steel Company Ltd., and the fifth an outsider. The Company a public utility service had a slow down strike in one of its sections and it issued charge-sheet, to some of its workmen, including the four appellants in its employment, for taking part in the strike and instigating others. After enquiry the four employees were dismissed from service, but as a result thereof, the strike gained in strength. The Company thereupon issued a notice to the workers concerned to record their willingness to operate the plant in question, to which some responded favorably, but a large number went on a sit-down strike till 20-4-1953. On 25-4-1953, the Company issued another notice to the workers to record their willingness to operate the plant describing it to be the final notice.

This was followed by a strike on 27-4-1953. On 19-5-1953, the Company filed a complaint under Section 27 of the Industrial Disputes Act with the sanction of the

Government granted on 2-5-1953. After disposing of the arguments on the merits of the case, the Supreme Court dealt with the last point raised before it which related to the propriety of the sanction under Section 34 of the Industrial Disputes Act. It considered the decision of the Privy Council in the case of Gokul Chand on which the appellants' counsel had relied and observed that the Judicial Committee had itself laid down that the sanction would be good if it was proved by evidence. In the case before the Supreme Court there was ample evidence showing that the entire facts connected with the offence had been placed before the sanctioning authority and the sanction had been granted after a consideration of them.

In Jaswant Singh's case : 1958 CriLJ265 also, the sole point which arose for decision before the Supreme Court related to the validity and effect of sanction given under S. 6(1) of the Prevention of Corruption Act. Jaswant Singh, a Patwari, was charged with habitually accepting or obtaining illegal gratification and also of receiving Rs. 50 from one Pal Singh on a specific occasion. The offence committed was stated to fall under S. 5(1)(a) punishable under S. 5(2) of the said Act and the accused was convicted of the same by the trial Court. On appeal, the High Court observed that the accused could not be charged or convicted of the graver offence of habitually accepting bribes, but the sanction was considered valid in respect of acceptance of Rs.50. The conviction was upheld but the sentence reduced. On further appeal to the Supreme Court, it was contended that the sanction being confined to the illegal gratification of Rs.50 and the charge being for habitually accepting illegal gratification, the entire trial was without jurisdiction and the accused could not be convicted even in respect of the offence mentioned in the sanction.

The sanction, which it is unnecessary to reproduce, clearly mentioned the facts relating to the acceptance of Rs.50 as illegal gratification. The contention that because the accused had been tried under the charge of being a habitual receiver of bribes, the trial was by a Court without jurisdiction, and, therefore, wholly void, was repelled by the Supreme Court. Sanction under the Prevention of Corruption Act, it was pointed out, is not intended to be nor is an automatic formality and it is essential that the provisions in regard to sanction should be observed with complete strictness. After referring to the decision in the case of Basdeo Agarwala

v. Emperor it was observed:

'It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution and, therefore, unless the matter can be proved by other evidence, in the sanction itself the facts should be referred to, to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case.'

The passage just quoted has been pressed into service by Shri A.K. Sen but obviously it is of little assistance to the learned Counsel. This passage must be read and construed in its own context and so considered, clearly it does not advance the petitioners' case.

(11) The foregoing discussion makes it abundantly clear that the ratio decidendi of the decisions cited on behalf of the petitioners cannot apply to the present case. There is no dispute that Shri D.D. Bhargava has been authorised by the Central Government to make a complaint in writing as contemplated by Section 6 of the Imports and Exports (Control) Act. If that is so, then nothing more need be shown in order to enable the Court to take cognizance of the offence punishable under S. 5 which is the subject-matter of the complaint. The complaint, the contents of which have already been broadly stated, clearly shows that all the facts mentioned therein were before the complainant for he has himself signed the complaint. There is no provision of law which imposes a further obligation on the complainant for satisfying the Court that he had applied his mind to the facts before coming to a decision to draft and present the complaint in the Court.

There is certainly no provision which bars the jurisdiction of the Court to take cognizance of the offence till it is satisfied judicially on evidence that the complainant had applied his own mind to all the relevant facts and that the complaint was filed pursuant to such application of mind. The result, therefore, is that the objection raised on behalf of the accused is untenable and was indeed wholly misconceived. It is unfortunate that the complaint presented in the trial Court as far back as 31-12-1962, should at the close of nearly four years, be still at the initial stage at which we find the present case to be. Criminal cases, it must

always be borne in mind, deserve to be disposed of with due dispatch, for reasonably speedy disposal of such cases is in the interest both of the prosecution and the accused. To unduly prolong trial of such cases keeps the sword of Damocles hanging on the accused and it also defeats its purpose so far as the administration of criminal justice is concerned. I hope the Court below will now earnestly endeavor to proceed with the case with due dispatch, keeping in view the interests of both the accused persons and the administration of criminal justice. 'Justice delayed is justice denied' is true in case of justice both on civil and criminal sides: may be more on criminal side.

(12) For the foregoing discussion, these revisions fail and are dismissed. The records may be transmitted to the trial Court without undue delay. The parties are directed through their counsel to appear in the Court below on 2nd December, 1966, when the Court would proceed further in accordance with law in the light of the observations made above.

CH/NRK/G.G.M.

(13). Petition dismissed.