

Kewal Krishan and anr. Vs. State Through Central Bureau of Investigation

Kewal Krishan and anr. Vs. State Through Central Bureau of Investigation

SooperKanoon Citation : sooperkanoon.com/702832

Court : Delhi

Decided On : Sep-12-1995

Reported in : 63(1996)DLT16; 1998(98)ELT306(Del)

Judge : J.K. Mehra, J.

Acts : Import and Export (Control) Act, 1947 - Sections 5

Appeal No. : Criminal Revision Appeal No. 147 of 1995 and Criminal Miscellaneous Appeal No. 2931 of 1995

Appellant : Kewal Krishan and anr.

Respondent : State Through Central Bureau of Investigation

Advocate for Pet/Ap. : J.S. Arora and; S. Lal, Advs

Judgement :

J.K. Mehra, J.

(1) I have heard the arguments. Counsel for the petitioner has raised several pleas in support of the petitioner's case. I, however, do not consider it necessary to go into those in view of my findings on the plea of lack of sanction / authority in the person signing and filing the complaint, as is required under Section 6 of the Imports and Exports (Control) Act, 1947. My attention has been drawn to the provisions of Sections 5 and 6 of the Imports and Exports (Control) Act, 1947,

which read as under:

'5.Penalty-If any person contravenes or attempts to contravene or abetts contravention of, any order made or deemed to have been made under this Act, or any condition of a license granted under any such order, or any authority under which imported goods were received from or through a recognised agency, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Customs Act, 1962 (52 of 1962) be punishable- (a) Where the value of the goods, in relation to which such contravention or attempted contravention or abetment of contravention has been made, exceeds ten lakhs rupees, with imprisonment for a term which may extend to seven yeas and also with fine; and (b) in any other case, with imprisonment for a term which may extend to three years and also with fine. Provided that in the absence of special and adequate reasons to the contrary to be recorded, in the judgment of the Court, such imprisonment shall not be for less than six months.'

'6.Cognizance of offences-No Court shall take cognizance of any offence 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 a Magistrate of the First Class shall try any such offence.'

(2) It is not disputed before me that the person signing and filing the complaint had not been authorised as required under Section 6 quoted above. Mr. Lal, on being asked as to how the prosecution could be sustained in the absence of compliance with the provisions of Section 6, pointed out that in fact, a criminal report has been filed to the effect that no case could be established for want of evidence, but notwithstanding that, the learned Magistrate had proceeded to take cognizance of the offence.

(3) In my opinion, no cognizance could have been taken at the very threshold since the alleged act, admittedly even if proved, amounted to an offence, punishable under Section 5 of the said Act and cognizance thereof could have been taken only if a complaint had been brought before the Court in writing made by an officer authorised in this behalf by the Central Government by general or

special order. No such writing has been pointed out. If such mandatory requirements are provided in the Act, it is incumbent on the Trial Court to satisfy itself as to whether the said requirement has been complied with before taking cognizance of the offence. In the light of the above discussion, I hold that the impugned order cannot be sustained and the same is set aside. The accused are discharged. This petition and application stand disposed of in the above terms.

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