

Vijay Kumar Vs. Deputy Director General of Foreign Trade

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Court : Delhi

Decided On : Jul-16-2002

Reported in : 2003(156)ELT827(Del)

Judge : V.S. Aggarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 397 and 482

Appeal No. : Crl. M. (M) No. 444 of 2001

Appellant : Vijay Kumar

Respondent : Deputy Director General of Foreign Trade

Advocate for Def. : A.K. Dutt, Adv.

Advocate for Pet/Ap. : Manoranjan, Adv

Disposition : Petition dismissed

Judgement :

ORDER

Vijay Kumar, J.

1. Petitioner has invoked Section 482 of the Code of Criminal Procedure while seeking setting aside of the order passed by the learned Additional Sessions Judge, Karkardooma dated 21st September, 2000 besides that of the Trial Court.

The learned Trial Court had held that prima facie case was drawn against the petitioner for offences punishable under Section 5 of the Impex Act read with Section 120B of the Indian Penal Code and also Section 5 of the same Act against accused Nos. 1 to 3. Petitioner had preferred a revision petition against the order passed by the learned Metropolitan Magistrate which was dismissed. Hence the present petition.

2. The respondent Deputy Chief Controller of Imports and Exports had preferred a complaint against the petitioner and others. It had been alleged that M/s. Choice Apparel Pvt. Ltd., Hauz Khas is a company registered under the Companies Act and is a merchant exporters. Shri C. Verghese and Ms. Mariya Kutty are the Managing Director and Director while present petitioner is a partner of M/s. Fashion Age, Hauz Khas, New Delhi. They entered into a criminal conspiracy with others, the object of which was to obtain advance license by fraudulent and dishonest means and to mis-utilise the imported material by not re-exporting the same as per the conditions of the Advance license issued to them and provisions of the Imports and Exports Policy of the 1984-85.

3. In pursuance of the said criminal conspiracy C. Verghese in his capacity as Managing Director of M/s. Choice Apparel Pvt. Ltd. moved an application in the month of August 1984 for Advance license to import raw silk other than Dupion Yarn in the office of the Joint Controller, New Delhi. Along with the said application he had submitted the necessary enclosures. In pursuance of the same conspiracy Shri C. Verghese in the application declared M/s. Creation as a supporting manufacturer without any agreement to that effect. The application of M/s. Choice Apparel had been moved through accused Verghese. The duty exemption had been given only for the import of 2274 kg. The condition of the license was that the licensee had to re-export the finished goods prepared out of imported material within six months. It is also alleged that in the said criminal conspiracy the application form, requisite enclosures and legal guarantee was filled in the office of the present petitioner by his clerk Ms. Anita. The bond was signed by Ms. T.R. Roy and Shri S.P. Dubay. In pursuance of the same conspiracy a bank account in the name of M/s. Choice Apparel was opened with Punjab and Sindh Bank, Nehru Place. Petitioner arranged Rs. 60,000/- from Mrs. Manorama Mittal and Rs.

40,000/- from J.L. Garg and Rs. 1 lakh was deposited in the account of M/s. Choice Apparel which was further passed on to M/s. V.K. Mahindra & Ors. He arranged and deposited in the account of M/s. Choice Apparel Pvt. Ltd., a bank guarantee for the advance license in question. The export order in question on basis of which advance license was issued was also arranged and signed by Vijay Kumar as buyer of M/s. Amba International, Sydney, Australia.

4. M/s. V.K. Mahindra & Bros. placed an indent for M/s. Jayanand International, New Navjivan Commercial Building, Bombay for import of raw silk. The raw silk against above license was imported at Bombay port. The licensee was under an obligation to re-export the finished material within six months. He failed to fulfill the condition of the license. Shri Vijay Kumar on 1-8-1986 requested for extension of time to fulfill the export obligation. He submitted an affidavit mentioning and admitting the issuance, importation and receiving of imported material against the advance license. Thus, it is claimed that the petitioner along with others had conspired to obtain advance license on basis of false and misleading facts. The purpose was to import and then to sell the imported material in the open market at high premium.

5. The learned Metropolitan Magistrate briefly considered the evidence of 16 witnesses that had been examined and concluded that a prima facie case was drawn and accordingly directed the charge to be framed. Petitioner filed a revision petition and the learned Additional Sessions Judge held that there are specific allegations of criminal conspiracy against the petitioner and at the stage of framing charge detailed scrutiny was not required and accordingly held that prima facie case had been rightly drawn, the revision petition was dismissed.

6. By virtue of the present petition the said orders are being challenged.

7. At the outset, the first and foremost question that comes up for consideration is as to whether in the present petition filed provisions of Section 482 Code of Criminal Procedure could be utilised where a second revision petition is barred.

8. There is no controversy raised at the bar that under Sub-section (3) to Section 397 of the Code of Criminal Procedure if a person has preferred a revision and

fails then the second revision petition challenging the said order is not maintainable. This provision had been enacted with the sole object to ensure speedy trial and early end to the litigation by curtailing further revision petition.

9. Learned Counsel for the petitioner has drawn the attention of this Court towards the judgment of the Supreme Court in the case of Krishan and Anr. v. Krishnaveni and Anr. decided on 24th January, 1997 to contend that even in such cases the inherent powers of the Court can be utilised and pressed into service.

10. From a perusal of the cited judgment it patent that principle urged at the bar is not correct. The Supreme Court held :

'Ordinarily, when revision has been barred by Section 397(3) of the Code, a person accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of the provisions of Section 397(3) or Section 397(2) of the Code. It is seen that the High Court has suo motu power under Section 401 and continuous supervisory jurisdiction under Section 483 of the Code. So, when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of process of the courts or the required statutory procedure of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue. It is therefore to meet the ends of justice or to prevent abuse of the process that the High Court is preserved with inherent power and would be justified, under such circumstances to exercise the inherent power and in appropriate case even revisional power under Section 397(1) read with Section 401 of the Code. As stated earlier, it may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings. The object of criminal trial is to render public justice, to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The recent trend is to delay the trial and threaten the witness or to win over the witness by promise or inducement. These malpractices

need to be curbed and public justice can be ensured only when expeditious trial is conducted.'

11. In other words a word of caution that was given that ordinarily when second revision petition is barred, the High Court will refrain itself but in an appropriate case the inherent powers can be utilised by the Court where the interest of justice so required.

12. At this stage reference can well be made to the decision of the Supreme Court in the case of *Rajathi v. C. Ganesan* : 1999 CriLJ3668 . The Supreme Court reiterated that the powers under Section 482 of the Code of Criminal Procedure is not a substitute for second revision. In paragraph 11 the Supreme Court had held :

'In the present case, the High Court minutely examined the evidence and came to the conclusion that the wife was living separately without any reasonable cause and that she was able to maintain herself. All this High Court did in exercise of its powers under Section 482 of the Code which powers are not a substitute for a second revision under Sub-section (3) of Section 397 of the Code. The very fact that the inherent powers conferred on the High Court are vast would mean that these are circumscribed and could be invoked only on certain set principles.'

13. Conclusions are obvious that when a second revision petition is barred a petition under Section 482 of the Code of Criminal Procedure ordinarily would not be maintainable. Section 482 cannot be a substitute for second revision petition. When the law itself bars a particular remedy, inherent powers of the Court will ordinarily not be so exercised. Section 482 of the Code of Criminal Procedure can only be pressed into service when it is necessary to give effect to any order of the Court passed under Code of Criminal Procedure or to prevent abuse of the process of any Court or secure ends of justice. The expression to secure ends of justice necessarily would vary with the facts and circumstances of each case. If in a particular case the interest of justice which by itself is a wide term so require the Court may exercise the inherent powers but it will not treat as a second revision to interfere unless it is one of those rare cases where power necessarily has to be exercised.

14. Learned Counsel for the petitioner took care and read statements of certain witnesses to urge that there is no criminal conspiracy that can be held to have been established qua the petitioner. Indeed once the Trial Court has held that there is a prima facie case drawn and revision petition has also been dismissed, this Court would ordinarily refrain itself from re-appraising the evidence and minutely go into the same. The interest of justice do not require in the peculiar facts of the present case that such an exercise should be gone into. Suffice to say without expressing any further opinion that it would not be appropriate to upset findings as if an appeal or revision was being heard. thereforee, necessarily the petition must fail.

15. For these reasons petition being without merit fails and is dismissed.

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