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S. Maheswaran and ors. Vs. the State

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Court : Chennai

Decided On : Aug-05-1999

Reported in : 2000CriLJ1905

Judge : A. Ramamurthi, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482; Central Excise Act, 1944 - Sections 14, 40 and 40(2)

Appeal No. : Cri. O.P. Nos. 12998 and 13022 of 1999 and Cri. M.P. Nos. 5988 and 5999 of 1999

Appellant : S. Maheswaran and ors.

Respondent : The State

Advocate for Def. : N.R. Elango, Government Adv.

Advocate for Pet/Ap. : P. Rajamanickam, Adv.

Disposition : Petition allowed

Judgement :
ORDER

A. Ramamurthi, J.

1. The Joint Commissioner of Central Excise (Legal) and the four accused in C.C. No. 352 of 1999 on the file of learned Judicial Magistrate II, Madurai have filed these two petitions under Section 482 of the Code of Criminal Procedure, to quash the proceedings pending against these four accused.

2. The case in brief for the disposal of both the petitions is as follows :

On 23-12-98 on the basis of intelligence gathered and recorded, the four accused and other officers were directed by the Senior Officers to conduct raid on the factory premises of M/s. Sri Ram Agencies, Madurai and other connected premises thereto, which included the residential as well as business premises. During the said searches, number of documents and materials were also recovered. In the course of such searches, Sri Madan Mohan Mohanti, and D. Thillairaj were also present in the respective places of search. M/s. Sri Ram Agencies are the manufacturers of brass sheets and circles. They registered themselves under the Central Excise Department only from August '98 onwards. Hence, summon under Section 14 of the Central Excise Act, 1944 was issued to Madan Mohan Mohanti for his appearance before the Superintendent of Central Excise, Anti-Evasion, Madurai on 6-1-99 for him to participate in the investigation. He appeared before the officer accompanied by One Ponnusamy, Melting Contractor of M/s. Sri Ram Agencies. Enquiries were made and Sri. Madan Mohan Mohanti gave voluntary statement, which was written by a Hindi translator of the Department and partially written by him in his own hand in Oriya. Shri A. Ponnusamy also gave a voluntary statement on the same day, which was written by an officer of the department, as deposed by him.

3. Shri A. Ponnusamy in Order to intimidate the investigating officers of the Excise Department, has chosen to give a false complaint of wrongful restraint and causing hurt to Shri Madan Mohan Mohanty after obtaining a medical certificate regarding some alleged assault which came to be registered by the respondent police in Crime No. 29 of 1999. This complaint is false and it has been filed with ulterior intention. They also caused a publication in the local Press about the alleged assault. The department people also submitted a representation addressed to the Commissioner of Police and other officials. M/s. Sri Ram

Agencies is involved in a very serious offence of unauthorisedly manufacturing and clandestinely removing Excisable goods without payment of excise duty which works out to Rs. 18.48 lakhs. The prosecution has been launched in total disregard of the provisions of Section 40 of the Central Excise Act which calls for notice of one month either to the alleged offending officers or to the Central Government. The initiation of proceedings itself lacks jurisdiction and on this ground, the proceedings deserves to be quashed. Hence, these two petitions.

4. Learned Government Advocate also stated that Section 40 of the Central Excise Act has not been adhered to and as such, there is force in the contention of the petitioners.

5. Heard the learned counsel for both sides.

6. These two petitions are filed by Joint Commissioner of Central Excise (Legal) and four accused in C.C. No. 352 of 1999 on the file of Judicial Magistrate Court No. II Madurai, for quashing the proceedings pending against the four accused, in view of Section 40 of the Central Excises and Salt Act (Hereinafter referred to as 'The Act'). The officials of the Excise department searched the residence as well as the factory premises of M/s. Sri Ram Agencies. Subsequently, summons were also issued to Madan Mohan Mohanti and he was also accompanied by Shri A. Ponnusamy, Melting Contractor of M/s. Sri Ram Agencies, Both of them gave voluntary statement and the same was also recorded. Now Shri Ponnusamy has given a complaint of wrongful restraint and caused hurt to Shri Madan Mohan Mohanti after obtaining a medical certificate regarding the alleged assault and the same was registered by the respondent in Crime No. 29 of 1999.

7. Learned counsel for the petitioners contended that it is a false complaint given by the said Ponnusamy and the registration of the same is also not proper and correct. Learned counsel relied upon Section 40 of the said Act and Section 40(2) reads as follows :

No proceeding, other than a suit, shall be commenced against the Central Government or any officer of the Central Government or a State Government for anything done or purported to have been done in pursuance of this Act or any rule

made thereunder, without giving the Central Government or such officer a month's previous notice in writing of the intended proceedings and of the cause thereof or after the expiration of three months from the accrual of such cause.

8. It is admitted that before filing a complaint before the respondent, there is no record to show that they have sent a month's previous notice in writing of the intended proceedings. Sub-clause (2) of Section 40 is mandatory and this has not been taken into consideration by the respondent before registration of the case. Unfortunately, after registration of the case, charge-sheet has also been filed against the accused, who had discharged their official functions. In view of the bar under Section 40(2) of the Act, I am of the view that the proceedings itself lacks jurisdiction and on this ground itself, the proceeding is liable to be quashed.

9. For the reasons mentioned above, both petitions are allowed and the proceedings in C.C. 352 of 1999 on the file of learned Judicial Magistrate II, Madurai is liable to be quashed and, accordingly, it is quashed. Consequently, Cri. Ps. 5998 and 5999 of 1999 are closed.

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