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Ruli Ram and ors. Vs. Assistant Collector, Central Excise Division

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Court : Himachal Pradesh

Decided On : Jul-18-1985

Reported in : 1987(12)ECC192

Judge : H.S. Thakur, J.

Appeal No. : Cr.M.P. (M) No. 106 of 1982

Appellant : Ruli Ram and ors.

Respondent : Assistant Collector, Central Excise Division

Judgement :

H.S. Thakur, J.

1. A complaint under Section 135(1)(b)(ii) of the Customs Act, 1962, was filed by the Assistant Collector Central Excise, Chandigarh in the Court of Chief Judicial Magistrate, Simla, on December 1, 1981. The learned Magistrate in the order passed on 3-12-1981, observed that after due appraisal of the record of the case sufficient grounds exist to proceed against all the accused for the offences punishable under Section 135(1)(b)(ii) of the Customs Act. He ultimately ordered that the accused be summoned. On 23-3-1982, the learned Magistrate, observed that after due appraisal of the arguments advanced on behalf of the parties and the record of the case, a prima facie case punishable under Section 135(1)(b)(ii) of the Customs Act against all the accused was made out. Consequently, he framed

charges on 23-3-1982 under the said section against the accused. The accused pleaded not guilty and claimed trial. As such, witnesses were ordered to be summoned.

2. The petitioners feeling aggrieved have filed this petition for quashing of the proceedings before the Magistrate. It is contended by Mr. D.D. Sood vice Shri Chhabil Dass that the case was initiated on a complaint and not on a police report and, as such, no charge at that stage could be framed against the petitioners. It was also stressed that even otherwise the documents filed with the complaint were not sufficient to make [out] any offence under Section 135(I)(b)(ii) of the Customs Act. It is also emphasised that framing of charge without recording any evidence is illegal.

3. It may be noticed that an offence under Section 135(1)(b)(ii) of the Customs Act is punishable with imprisonment for a term which may extend to three years or fine or with both. In case the Code of Criminal Procedure is made applicable to the Customs Act, it would legitimately be treated as a warrant case and has to be tried as such. However, under Section 138 of the Customs Act, there is a provision for the offences to be tried summarily. It is convenient to reproduce the said section:

138. Offences to be tried summarily.--Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), an offence under this chapter other than an offence punishable [under Clause (i) of Sub-section(1) of Section 135 or under Sub-section(2) of that section may be tried summarily by a Magistrate.

4. The perusal of the said section shows that an offence alleged against the petitioners-accused may be tried summarily. This being a provision contained in the special Act; notwithstanding anything contained in the Code of Criminal Procedure, the procedure prescribed in the Code is not strictly applicable for the trial of the offence alleged against the petitioners.

5. For the foregoing reasons I am of the view that the case against the petitioners can be tried summarily and the procedure specified under Section 262 Cr. PC can be followed and in this way such like cases can be disposed of early.

6. The result of the above discussion is that the orders passed and the charges framed by the trial court against the petitioners are quashed and it is directed that the case be tried de novo summarily. The petition is accordingly disposed of.

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