

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL M C 656/2005 & CRL M A 2217/2005

Reserved on: January 17, 2008

Date of decision: February 8, 2008

SHAKUN MOOLCHANDANI Petitioner
Through Mr. S.S. Gandhi, Senior Advocate with
Mr. Pradeep Jain and Mr. Sidharth Joshi, Advocates

versus

UNION OF INDIA & ANR. Respondents
Through Mr. Satish Agarwala with
Ms. Pooja Bhaskar, Advocates

and

CRL M C 671/2005 & CRL M A 2290/2005

KABIR J. MOOLCHANDANI Petitioner
Through Mr. S.S. Gandhi, Senior Advocate with
Mr. Pradeep Jain and Mr. Sidharth Joshi, Advocate

versus

UNION OF INDIA & ANR. Respondents
Through Mr. Satish Aggarwala with Ms. Pooja Bhaskar,
Advocate

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

DR. S. MURALIDHAR, J.

1. These petitions under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenges an order dated 17th December 2003 passed by the learned the Additional Chief Metropolitan Magistrate, New Delhi ('ACMM') in a Criminal Complaint titled *Shri D.V. Parashar, Intelligence Officer v. M/s. Baron*

International Limited and Others under Sections 132 and 135 (1)(a) of the Customs Act, 1962 ('Act'). The petitions also challenge a subsequent order dated 6th July 2004 passed by the learned MM directing service of summons by publication. The prayer for quashing of the criminal complaint has not been pressed during the arguments.

2. M/s. Baron International Limited ('BIL'), a company registered in Mumbai, was at the relevant time marketing Akai Brand Colour Television sets. BIL entered into a contract with M/s. Akai Limited, Japan and Akai Electronic Corporation, Japan whereby the rebate would be paid to BIL based on the sales volume for the specific period. According to the complaint, information was received by the Directorate of Revenue Intelligence ('DRI') that BIL and another firm, M/s. J.R. Electronics (which was later reconstituted as J.R. Consumer Electronics Private Limited) had been importing Akai brand colour TV sets in semi-knocked down ('SKD') form through the port of Mumbai by misdeclaring the same as components of colour TVs. The factory premises of M/s. J.R. Electronics at Noida, U.P., where the colour TVs were assembled, were searched by the Officers of the DRI, New Delhi on 17th October, 1995. The components of the colour TV and packages were found having a marketing of Baron India. In para 4 of the complaint it is stated thus:

"It was learnt by the DRI that certain investigations had been conducted by the officers of Central Excise, Noida, UP and Director General of Anti Evasion, Mumbai, into the activities of accused No.1 and 5 relating to manufacture of Akai Brand Colour TVs. It was also learnt that the various business premises of accused No.1 and 5 at Delhi and Mumbai were searched by the officers of Central Excise, Noida/DGAE, Mumbai in August/October, 1995, resulting in the recovery of a number of incriminating documents subsequent to which the statements of various concerned persons of accused No.1 and 5 were recorded. As it was felt that the said recovered documents and statements would be relevant for the offences committed by the said firm under

Customs Act, 1962 the same were obtained from the Central Excise/DGAE authorities for necessary scrutiny by the DRI.”

3. A show cause notice was issued to BIL on 23rd March, 2000 inter alia demanding customs duty amounting to Rs.20,92,49,625/-. Later a criminal complaint was filed in the Court of the learned ACMM on 17th December, 2003 on the same facts against BIL as accused No.1, Mr. Kabir J. Moolchandani, Managing Director as accused No.2, Mr. J.R. Moolchandani, Chairman-cum-Managing Director as accused No.3, Smt. Shakun Moolchandani, Chairperson as accused No.4 and Mr. Zaffar Hussain Rizvi, Proprietor M/s. J.R. Consumer Electronics as accused No.5. The addresses of accused 1 to 4 in the complaint were of Mumbai. The gist of the complainant under Section 132 and 135 (1)(a) of the Act was that the petitioners had willingly evaded customs duty to the extent of Rs.20,92,49,625.

4. On 17.12.2003 the learned ACMM, New Delhi when presented with the complaint, passed the following order:

“17.12.2003

Present: SPP along with complainant.

Fresh complaint presented. It be checked and registered. Photocopy of documents also been filed along with the complaint. Ahlmad is directed to check the documents as per index attached with these documents.

An application for exemption of personal appearance of complainant and for dispensing of recording of the preliminary evidence is also moved along with this complaint.

As this complaint is filed by a public servant in discharge of his public duty hence recording of preliminary evidence is dispensed with. Personal attendance of complainant is also dispensed with. Complainant is allowed to be represented through SPP.

Complaint and documents perused.

Heard. After going through the complaint and the documents and arguments raised before me by learned SPP, I am of the opinion that this stage there are sufficient ground to proceed against the accused under Sections 132 and 135 (1)(a) of Customs Act. I take cognizance of offence under Sections 132/135(1)(a) of Customs Act. Issue summons to accused for 22.3.2004.

Sd/-
ACMM/17.12.2003”

5. Thereafter on 6th July 2004 the following order was passed:

“Present: Proxy for APP

Accused are absent.

Process received back unserved with report that present whereabouts of accused firm and accused persons are not traced out.

Issue summons to accused by publication in newspaper on 30.10.2004.

Sd/-
ACMM/6.7.04”

6. The Petitioners filed the present petitions Crl M C 656/2005 and Crl M C 671/2005 on 26th February 2005 and 28th February, 2005 respectively. On 28th February 2005 in Crl M C 656/2005 this Court passed the following order:

“Crl M A 2218/205 in Crl M C 656/2005

Allowed, subject to all just exceptions.

Crl M C 656/2005 & Crl M A 2217/2005

Learned Senior counsel Mr. Gandhi submits that the entire transaction has taken place at Mumbai and that the Courts in Delhi have no jurisdiction over the subject matter of the complaint. The prayer made in the petition is for returning of the complaint so that the complaint may be filed with proper jurisdiction. The other reliefs in the petition under Section 482 Cr.PC are not pressed. I have been taken through the complaint.

The petitioner is on interim bail. Till 5.5.2005 the complaint before the ACMM, New Delhi will remain stayed. This, however, will not prevent the complainant from praying for return of the complaint or the court

from returning the complaint for presentation to the court of competent jurisdiction. Dasti.”

7. On 1st March 2005 notice was directed to issue in the connected petition CrI.M.C 671/2005 and it was ordered to be heard along with CrI.M.C. 656/2005. In both petitions the interim order staying the complaint has continued till date.

8. The principal submission of Mr. S.S. Gandhi, learned Senior counsel appearing for the Petitioners is that the import of the goods and all transactions connected therewith have taken place at Mumbai and therefore the criminal court in Delhi has no jurisdiction over the subject matter of the complaint. He points out in particular that even as per the complaint the allegation regarding alleged evasion of duty/misdeclaration was stated to have been done at the time of import at Mumbai. The show cause notice was issued by the Commissioner of Customs, Mumbai, who subsequently passed the adjudication order against which an appeal had been filed before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai (‘CESTAT’). No offence was committed in Delhi nor had any goods been imported or sold in Delhi. He submits that the complaint would have to be returned by the learned ACMM, New Delhi to the Respondent for presentation in the Court of appropriate jurisdiction, which in this case would be at Mumbai. ***Union of India v. Ram Narain Bishwanath (1998) 9 SCC 285 Directorate of Revenue Intelligence v. Kanwarjit Singh 2005 V AD (Delhi) 62.***

9. Mr. Satish Aggarwala, learned counsel appearing for the DRI has contended that this petition is premature since the question of territorial jurisdiction can arise only at the stage of enquiry and trial. It is also contended that the Petitioners have filed an application before the learned ACMM, New Delhi raising the issue of territorial jurisdiction and that application is still pending. It is contended by relying upon CrI.MCs 656 & 671/2005

the judgment of the Supreme Court in *Trisnus Chemical Industry v. Rajesh Agarwal* 1999 Crl L J 4325 that the absence of territorial jurisdiction to try the matter is not a bar to a criminal court taking cognizance of the complaint. It is further contended that the scope of Sections 177 and 179 CrPC is wide enough to permit the criminal court not having territorial jurisdiction to take cognizance and subsequently transmit the case to the court of appropriate jurisdiction. It is contended that the allegation against the Petitioners includes the submission of false and fabricated invoices and since some of the invoices in question were made at Delhi that is sufficient to grant territorial jurisdiction to the court at Delhi. Mr. Aggarwala has relied upon two judgments of this Court. The first judgment dated 9th October, 2007 passed in Crl. M C 2386 of 2001 (*DRI v. Kumarpal*) and the second judgment is dated 14th January, 2008 passed in Crl M C 3325-26 of 2006 (*Amarjit Singh v. Vinod Kumar Sharma*).

10. The facts of the case are not in dispute. Admittedly, the import of the goods took place in Mumbai, a show cause notice was issued in Mumbai and the adjudication order thereon was passed in Mumbai. The further appeal against that order was filed before the CESTAT in Mumbai. All material events narrated in the complaint have taken place in Mumbai. The search of the factory premises of JR Electronics took place in Noida, U.P. Therefore no part of the cause of action arose within Delhi. The tenuous connection that is sought to be established by the Respondent is that invoices which either contained the misdeclaration of goods or were underinvoiced were prepared in Delhi. The fact remains that those invoices were presented in Mumbai and the offence took place on the detection there of the alleged misdeclaration or under-stating of the value of the goods at the time of import. Therefore, there is no event that can justify the criminal court in Delhi having jurisdiction over the case.

11. In *Union of India v. Ram Narain Bishwanath* in one of the cases in the batch, the goods were cleared for import at Bombay. The Supreme Court held that the customs authorities in Bombay alone had jurisdiction. In another case in the same batch where the goods were imported at Paradip in Orissa, it was held the mere fact that they were subsequently transported to Howrah where they were seized by the customs authorities could not bring the case under the jurisdiction of the customs authorities in West Bengal. Although the Supreme Court was concerned with the jurisdiction of the customs officers and not of the concerned criminal courts, the principle would remain the same viz., the criminal courts having territorial jurisdiction in the port where the imports took place will alone be competent to try the criminal case concerning such import.

12. In *Directorate of Revenue Intelligence v. Kanwarjit Singh 2005 V AD (Delhi)* **62** the DRI's officers intercepted a truck at Kundli on the Delhi-Haryana border which resulted in the recovery of 520 gold biscuits worth Rs.2.12 crores. The question thereafter was whether the court of the learned ACMM, New Delhi would have jurisdiction over the complaint filed by the DRI. The Punjab and Haryana High Court held that the learned ACMM, New Delhi did not have the jurisdiction to take cognizance of the offence committed at Kundli within the State of Haryana. The DRI then moved an application before the learned ACMM, New Delhi for returning the complaint for presentation in the appropriate court. By an order dated 8th December 1998 the learned ACMM, New Delhi dismissed the application. This Court while setting aside the order of the learned ACMM directed that the order of the High Court of Punjab and Haryana could only mean that the learned MM, New Delhi had to pass an order under Section 201 CrPC returning the complaint to the complainant for presentation in the appropriate court in accordance with law.

13. On the strength of the law as explained in the aforementioned judgments the inevitable conclusion in the case on hand is that the complaint of the Respondent has to be returned by the learned MM, New Delhi to the Respondent for being presented in the appropriate court.

14. In *DRI v. Kumarpal* the question was whether the complaint itself had become bad in law on account of lack of territorial jurisdiction of the court where such complaint was presented. It was held that even if the question of territorial jurisdiction stood decided in favour of the accused the complaint would have to be transferred to the competent court. This is precisely what the Petitioners are praying for here.

15. In *Amarjit Singh v. Vinod Kumar Sharma* the Petitioner who was facing proceedings under the Act approached the Settlement Commission in Delhi and offered to pay the disputed duty. The Settlement Commission granted immunity from penalty and fine but not from prosecution. In response to the submission of the accused that since some of the imports had taken place in Mumbai, the criminal court in Delhi did not have jurisdiction, this Court held that this issue could be decided by the trial court itself. Clearly the facts of the present case are different since all material events have taken place only in Mumbai.

16. The application filed by the petitioners on the point of territorial jurisdiction before the learned ACMM could not have proceeded in view of the stay granted by this Court. Since the law on the point is clear and remanding the case to the learned MM for deciding it can only delay matters further, this Court is not inclined to adopt that course. Further the order passed by the learned ACMM taking cognizance and issuing cannot be recalled by the learned ACMM in view of the

CrI.MCs 656 & 671/2005

judgment of the Supreme Court in *Adalat Prasad v. Rooplal Jindal AIR 2004 SC 4674*.

17. On a conspectus of the above facts and the law as explained in the various judgments this Court concludes that the court of the learned ACMM, New Delhi did not have jurisdiction to try the criminal complaint filed by the Respondent DRI against the petitioners.

18. Accordingly, the impugned orders dated 17th December 2003 and 6th July 2004 passed by the learned ACMM, New Delhi are hereby set aside. It is directed that the criminal complaint in question will be returned to the complainant DRI by the learned ACMM, New Delhi for being presented in the appropriate court, which in this case would be in Mumbai. The court at Mumbai will proceed to deal with the complaint from the stage of its presentation to it and decided afresh about taking cognizance of the offences and issuing summons to the accused uninfluenced by the impugned order dated 17th December, 2003 as well as the order dated 6th July, 2004 passed by the learned ACMM, New Delhi.

19. The parties will now appear before the court of the learned ACMM, New Delhi on 28th February 2008 at 11 am for further consequential directions in terms of para 18 of this judgment. These petitions and the pending applications are disposed of accordingly with no orders as to costs.

S. MURALIDHAR, J.

FEBRUARY 8, 2008
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